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The Prospects & Limits of Deliberative Democracy

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Introduction

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

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

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

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

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

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

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

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

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

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

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

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

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

to authorized policy-makers. Some randomly selected mini-publics even make binding decisions.[9]

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

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

The essays are organized roughly in five groups. To introduce the topic of deliberative democracy, Claus Offe sketches the conflict between distrusted elites and the populism of Brexit and other plebiscitary processes, arguing that deliberation via random sampling could help fill the void, connecting the people to policy-making. Nicole Curato, John Dryzek, Selen Ercan, Carolyn Hendriks, and Simon Niemeyer offer a systematic overview of what they regard as the key findings of the deliberative democracy research around the globe. Their findings are optimistic and differ from some of the critical perspectives presented later in the issue.

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

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

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

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

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

Bächtiger and Beste contest the "standard argument that politicians do not want to deliberate and citizens are not able to." They draw on extensive empirical work with the "Discourse Quality Index," which examines the reasoning offered by deliberators in legislatures, especially on the question of whether they offer justifications for their assertions. They find that, despite the current cynicism about representative democracy, room for genuine deliberation appears in some parliamentary contexts, particularly those characterized by "coalition settings, second chambers, secrecy, low party discipline, low issue polarization, and the strong presence of moderate parties." Their institutional prescription for parliament contrasts sharply with Shapiro's. Regarding public deliberation, they draw on Europolis, a European-wide Deliberative Poll with a sample of ordinary citizens, and provide evidence that the citizens were able to reason in ways comparable to those of the parliamentarians.

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

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

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

The final section focuses on applications. The essays shed light on the questions: who deliberates, and in what context? As Cass Sunstein notes, the term *deliberative democracy* was coined in a study of how deliberation took place in the Senate, in ways that, to some degree, matched how the Constitution's framers thought the Senate ought to act.[10] Deliberation is a crucial part of government in the executive and judicial branches. Sunstein distills his experience in government to offer a compelling picture of deliberation taking place within the policy teams grappling with interagency issues and the production of good policy in the executive branch of the U.S. government. His account seems to satisfy all the criteria for high-quality deliberation. In this case, however, high-level policy-makers, rather than the people themselves or their elected representatives, are doing the deliberating.

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

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

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

This issue examines a wide range of deliberative democratic practices and applications. It includes competitive democracies, authoritarian regimes, and developed and developing countries. It opens up debates on how to improve deliberation in legislatures and other governmental bodies, and on what institutional roles and decision power randomly selected citizens might have after they have been able to discuss issues in some depth under good conditions. It asks how we might effectively reform mass politics and public debate to avoid not only fake news, but also the increasing pressures of narrow-casting in the commercial media, self-sorting into information bubbles on social media, and geographic sorting by ideology as people move to more politically homogeneous communities. It should leave the reader asking: What challenges and critiques are most telling for deliberative democracy? How serious are the ways in which deliberation can go awry? Whatever conclusions our readers reach on these questions, this issue depicts a vibrant area of democratic experimentation at a time when many have lost confidence in the processes of electoral representative democracy.

ENDNOTES

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

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

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

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

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

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

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

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

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

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

[10] Bessette, *The Mild Voice of Reason*.

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

Claus Offe

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

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

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

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

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

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

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

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

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

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

3) If political mobilization and contestation occur at all, they do so, to a rapidly growing extent, in rightist populist ways: by appeals not to shared interests or some version of the common good, but to primordial and ethnonational identities and "moral majorities," and in confrontational opposition to established elites, outside groups, minorities, and everything "foreign," including, in the EU context, Brussels as the location of its executive branch. The kind of social protection populists offer derives not from constituted state power to achieve collective goals through policies, but from territorial borders of nation-states. Populist movements and parties are, in many cases, not instrumentally focused on policy, but expressively focused on the politics of protest, obstruction, and the assertion of some kind of identity against a distrusted "establishment" and political class, as well as minorities and foreign or supranational powers. They also focus on "strong" leaders whose space of action must not be unduly constrained by liberal constitutional and other inhibitions, thus giving rise to the oxymoronic phenomenon of illiberal democracy and more-or-less soft forms of electoral authoritarianism. Its preferred form of legitimation (of both leaders and policies) is by reference to plebiscitarian acclamation and referenda, which allegedly are best suited to reveal the true, authentic, unified, and uncorrupted will of the people – a will that, in reality, is often but a mere artifact of media and party campaigns confronting the "establishment," foreign forces, and minorities.

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

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

The battle cry of rightist populism is: "Let us, the people decide" and take control out of the hands of untrustworthy national elites and illegitimate supranational forces. The arsenal of plebiscitarian methods (which, to be sure, are sometimes also advocated by some nonpopulist forces) includes referenda on policy issues, citizen initiatives to hold such referenda, and agenda initiatives to force legislatures to address certain policy issues. The use of survey research for identifying popular preferences and then elevating them to the status of policy priorities on leaders' platforms can sometimes be seen as cases of social science–assisted populism. Thirty-six of the forty-seven member states of the Council of Europe have by now adopted one or all of these direct-democratic devices as part of their constitutional repertoire. In 2012, the EU itself introduced the European Citizen Initiative as a device of supranational direct democracy. In recent years, these instruments of direct democracy have been applied to policies as varied as whether to permit or ban the construction of minarets, restrictions on migration, the public use of a minority language, the acquisition of agricultural land by foreigners, same sex marriage, the (retroactive) imposition of inheritance taxes, and the introduction of a basic income. For example, in the context of the recent failed military coup in Turkey, President Erdoğan has gestured at holding a referendum on reintroducing the death penalty. The target groups of these referendum campaigns may be Muslims, migrants, sexual minorities, wealthy heirs, foreign real estate speculators, European institutions, criminal enemies of the state, or ethnolinguistic minorities. Although Switzerland has the oldest and most famous tradition of direct democratic legislation in Europe (usually preceded in that country by extensive and reasonably balanced public debates on issues), these practices have spread in more limited forms to other countries in Europe, with hot spots in the rightist populist regimes that have emerged in many of the post-Communist polities. In Hungary, a national referendum on a mandatory EU migrant quota was held (and lost by the government due to insufficient turnout) in October of 2016. Yet probably the most consequential referendum held in Europe to date appeared in precisely the European country where parliamentary representative democracy was born: the United Kingdom.

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

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

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

Both of these purposes were, to an extent, achieved, the second more fully than the first. The turn to plebiscitarian methods (which are foreign to the United Kingdom's constitutional traditions) came at the price of undermining the authority of Parliament, the members of which opposed Brexit by a large majority. Having won the 2015 elections and being bound by his referendum promise, Cameron initiated the EU Referendum Act, which was passed by the House of Commons in December 2015. When the referendum was eventually held on June 23, 2016, the result was 51.9 percent Leave versus 48.1 percent Remain, with the citizenry sharply divided along class, age, and regional lines, but not equally sharply along party lines. Given a turnout of 71.8 percent of all eligible voters, roughly 37.3 percent of the electorate will have caused (if it actually comes to that) Britain's exit from the EU by a margin of just four percentage points.[2]

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

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

Not only were the two major parties split in their preferences between Remain and Leave, but voters were also "cross-pressured" at the individual level. Many voters were motivated by the issues of immigration and "sovereignty," with the support for the Leave alternative fueled by an identity-based opposition to having to adopt "foreign-made" EU laws ("let's take back control of our country"). Yet, at the same time, many of the same voters "regarded the economic impact of leaving the EU negatively. . . . No less than 40 [percent] reckoned that Britain would be worse off economically if it left the EU. . . . The two central issues of the campaign were seemingly pulling voters in opposite directions."[7] Fears for the economy, based on socioeconomic interest, provided a reason for voting in favor of Remain. In this implicit debate of identity versus interest, the elderly and the less-educated considered EU membership both a cultural and economic threat and hence gravitated toward the Leave option, while the best-educated, younger (below age forty-five) voters welcomed diversity within Britain because they could "compete with ease in an internationalised labour market."[8]

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

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

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

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

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

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

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

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

Applying some or all of these provisions could have been justified by the fact that the Brexit referendum was a one-shot and highly consequential decision, which will create consequences that are certain to be felt in the long term. In contrast, the "normal" democratic procedure of holding contested elections is defined by its periodicity, meaning that governing authority is granted *pro tempore* and that losers of an election will have another chance in four or five years' time, with both competing parties and members of the general public given a learning opportunity to revise platforms and preferences during the interval. An election constitutes both a government and an opposition of losers, while a referendum constitutes a *fait accompli* that can no longer be challenged.[15] If after an ordinary legislative election, policies are considered to have gone wrong, there is someone to blame (and punish) in the next election, whereas the voting public can only blame itself (that is, nobody in particular, since the vote is secret and nobody can be held accountable) in case the results of a referendum turn out to be widely seen as mistaken.

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

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

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

Having unleashed the plebiscitarian forces voicing fear of foreign control and foreign migrants, neither the political parties nor the members of Parliament could henceforth afford to advocate any solutions to future UK-EU relations that could be denounced as defying the referendum's "advice." Politicians cannot be expected to commit electoral suicide by refusing to follow the "will of the people," the expression of which they themselves had allowed for, even if only as part of a power game. These problems (and *not* an electoral or parliamentary defeat) made the committed Remainer David Cameron disappear from the scene of UK national politics in a matter of weeks, while the most prominent Leave protagonist, Boris Johnson, moved up to the position of Britain's Foreign Secretary. The new prime minister's signature tautology – "Brexit means Brexit," being void of any information about what Brexit means – ratifies the unconditional surrender of representative to plebiscitarian will formation. It also gives *carte blanche* to rulers to define the meaning *ex post*. As constitutional scholars Richard Gordon and Rowena Moffatt have stated with unfathomable yet inconclusive juridical wisdom: "In practice, the … referendum outcome will bind the government. In theory it is advisory but in reality its result will be decisive for what happens next."[17] At the time of the submission of this essay in December 2016, the answer to this question is by no means settled by the referendum, but remains a pending case before the highest court of the country.

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

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

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

The second shift moves from an ideal of maximizing the citizens' expression of political preferences (in participatory democracy, as many people as possible should have a chance to voice their preferences on as many issues as possible and as directly as possible) to maximizing the citizens' capacity to *form* preferences and judgments on public affairs they will not later regret. How can preference formation be improved so as to make the citizen preferences that will later be translated into policies by governing elites more regret-proof?

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

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

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

Even thornier than the issue of readiness to participate is the issue of competence. Members of issue-specific deliberative panels need to acquire a measure of understanding and expertise, as do members of legislative bodies, in order to arrive at minimally reasoned conclusions. Such expertise can be provided by an adequate number and diversity of recognized experts made available to members of a mini-public as providers of information. Concerns about deficiencies in the knowledge and experience of members of deliberative mini-publics are further reduced by the fact that no political decision-*making* power is vested in them. Deliberative panels would perform a purely consultative function,[21] helping citizens form preferences that they would then express in elections and possibly referenda. And citizens must be provided access to those recommendations through the reporting of print media, brochures, and (public) electronic media. The role of deliberative bodies should be strictly advisory, addressing both elites and voters. That role should also be limited to the specific issue of public policy about which a deliberative panel is commissioned to elaborate a recommendation. The lay policy-makers who jointly author such a recommendation may conclude with a consensual recommendation or with majority and minority positions. In the latter case, a second order consensus on what stood in the way of a consensual recommendation should be provided. The two panels may also disagree in their consensual recommendations. If the recommendation is both consensual within panels and identical between the two locations, this is likely to translate into the highest degree of persuasiveness and impact on electoral outcomes. This impact is due to the enlightened vicarious judgment that "people like us" have formed on the issue at hand. The more consensual the recommendation within and between panels, the stronger its influence ought to be and probably will be on the decisions that voters and elected representatives will make.

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

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

For such reflexive preference learning to take place at the level of mass constituencies, deliberative panels need to be institutionalized: that is, made part of the rules regulating the process of legislation. To illustrate, one conceivable institutional design would be the following. A deliberative panel would come into being at the initiative of at least 20 percent of the members of the state or federal legislature. These members would also define the policy issue on which the panel is commissioned to deliberate. The panel would deliberate one year prior to a decision to be taken by the legislature or executive branch on the policy. Such panels would always come in pairs, with both being active in two (according to some "most different" design) selected subterritorial entities (counties or cities). A statute would regulate the size of the panel, the sampling method, the mode of operation (including a budget for expert assistance and compensation payments), the role of facilitators and moderators, and the scheduling of meetings. Their work of (at most) six months would result in policy recommendations (consensual or otherwise) in the form of an executive summary, together with the reasoning from which the recommendations derive. The identity of members would ideally be kept anonymous through the time of deliberations so as to shield the deliberators from outside influence. Neither governments nor citizens would be pressured to follow those policy recommendations. Governments (and, perhaps, political parties) might, however, be formally required to publish an official statement specifying the reasons why they did *not* follow the advice, in cases in which they decide not to do so.

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

ENDNOTES

[1] This generalization does not apply to the Chinese case of industrial capitalism presided over by a "Communist" party. But that model is neither intended for export nor appealing to elites or masses of Western societies.

[2] The day after the referendum, Philip Stephens, chief political commentator of the *Financial Times*, commented in undisguised horror: "Who would have thought pragmatic, moderate, incrementalist Britain would tear down the political temple? This week's referendum result was a revolt against the status quo with consequences, national and international, as profound as anything seen in postwar Europe." Philip Stephens, "How a Cautious Nation Came to Tear Down the Political Temple," *Financial Times*, June 24, 2016, https://www.ft.com/content/b90a7278-3a02-11e6-9a05-82a9b15a8ee7.

[3] The ironic label "post-truth" has been attached by several commentators to populist movement practices. This label is not only deserved by the generous use populist campaigns have made of outright lies, but also, as in the Trump campaign, by their anti-intellectual aversion to expertise and educated intelligence.

[4] Princeton economist Ashoka Mody has put it well: "Cameron misjudged . . . by making an economic case for remaining in the European Union rather than attempting a serious political argument for Europe – one based on shared values." Ashoka Mody, "Don't Panic: Britain's Economy Can Survive Just Fine Outside the European Union," *Independent*, July 4, 2016, http://www.independent.co.uk/news/business/analysis-and-features/dont-panic-britains-economy-can-survive-just-fine-outside-the-european-union-a7118736.html.

[5] There is more than a grain of truth in Edmund Burke's famous claim: "Your representative owes you . . . his judgment; and he betrays, instead of serving you, if he sacrifices it to your opinion." In the case of Brexit, it was the plain cowardice of representatives facing a populist challenger that caused this sacrifice. Edmund Burke, "Speech to the Electors of Bristol," November 3, 1774.

[6] Jon Elster, "Arguing and Bargaining in Two Constituent Assemblies," *Journal of Constitutional Law* 2 (2) (March 2000): 345 – 421.

[7] John Curtice, "Brexit: Behind the Referendum," *Political Insight* 7 (2) (2016), http://pli.sagepub.com/content/7/2/4.full.pdf+html.

[8] Ibid. Wolfgang Streeck has argued that "the losers under neoliberal internationalism [globalization] place their hopes on their nation states." Wolfgang Streeck, "Where Are We Now? Responses to the Referendum," *London Review of Books* 38 (4) (July 14, 2016), http://www.lrb.co.uk/v38/n14/on-brexit/where-are-we-now#streeck. This causal explanation of the outcome commands a great deal of empirical plausibility. But equally great is the temptation to exclaim, with the words of the great Austrian poet Ernst Jandl, "What an error!"

[9] A reciprocal loss of socioeconomic status rights applies to British citizens who were economically active in EU member states and, after Brexit, are now relegated to the status of third country nationals.

[10] Benjamin D. Hennig and Danny Dorling, "In Focus: The EU Referendum," *Political Insight* 7 (2) (2016), http://pli.sagepub.com/content/7/2/20.full.

[11] This was widely seen by commentators to have happened in a Dutch referendum held on the highly technical as well as politically rather marginal issue of a Dutch Approval Act on a European Union–Ukraine Association Agreement, which was held in The Netherlands on April 6, 2016. The outcome was a turnout of 32.8 percent, with 61 percent voting against the Act. In an interview after the referendum, the members of the rightist nationalist Citizens' Committee EU that had successfully campaigned for holding it admitted not caring about Ukraine, but rather were just against the EU political system. See Wilmer Heck, "Oekraïne kan ons niets schelen," NCR, March 31, 2016, https://www.nrc.nl/nieuws/2016/03/31/oekraine-kan-ons-niets-schelen-1606419-a969298.

[12] See James Crouch, "Voters React to Post-Referendum World," *Opinium*, July 1, 2016, http://opinium.co.uk/voters-react-to-post-referendum-world/. The thought that voting for Brexit means "taking back control" is plainly delusionary, at least in the short and medium term. Article 50, which is still binding for the United Kingdom, stipulates that "the Union shall negotiate and conclude an agreement with [the UK]." In the interest of the Union to prevent the Brexit decision from becoming a template that other member states might follow, the EU is likely to opt for the harshest possible terms in negotiating Britain's exit arrangement, thus "taking control" over the economic fates of the United Kingdom to an unprecedented extent. The Lisbon Treaty, Article 50 of the Treaty of European Union, December 13, 2007.

[13] There is, however, a strong argument for having a second referendum at a later point. As the proponents of Brexit had no plan (and could not have one) concerning the many and very different versions of what is going to happen next in re-embedding Britain into the international political economy, the eventual outcome of negotiations with the EU must also be subject to a (dis)approval by voters. As Simon Wren-Lewis has cogently argued: "I cannot see the logic in saying people should have a direct say in whether to leave the EU, but no direct say on what to leave *for*." Simon Wren-Lewis, "Why We Must Have a Second Brexit Referendum," *Social Europe*, August 29, 2016, https://www.socialeurope.eu/2016/08/must-second-brexit-referendum/. The emphasis is mine.

[14] As one commentator has noted: "It is highly unusual [in mature democracies] that, particularly on issues of great constitutional significance, a simple majority of those who happened to vote on a particular day should be regarded as binding." Brendan Donnelly, "After Brexit: The Light at the End of the Tunnel is Several Oncoming Trains," *Social Europe*, July 18, 2016, https://www.socialeurope.eu/2016/07/light-end-tunnel-several-oncoming-trains/.

[15] "The 48 [percent] of voters . . . who wanted to remain in the European Union now suddenly find themselves substantially unrepresented in the British Parliament." Ibid.

[16] This question touches on the thorny issue, not to be dealt with in the present essay, of what kind of policy issues are "safe" to be processed by plebiscitarian methods. Referenda on constitutions can arguably enhance the self-binding effect and thus the constitution's validity and longevity. The adoption of legal rules, the consequences of which are easily understood, predictable, and largely uncontroversial (such as local referenda on opening hours of stores), would also seem unproblematic. The same can surely not be said of the plebiscitarian adoption, now common in several EU countries, of rules that discriminate against moral, ethnic, migratory, sexual, religious, or criminal minorities (as in the current initiative of the Turkish president to hold a referendum on the reintroduction of the death penalty).

[17] Richard Gordon and Rowena Moffatt, *Brexit: The Immediate Legal Consequences* (London: The Constitution Society, 2016), 7.

[18] Future-regardingness, other-regardingness, and fact-regardingness can serve, taken together, as a standard of political rationality. See Claus Offe, "Crisis and Innovation of Liberal Democracy: Can Deliberation Be Institutionalised?" in *Citizens in Europe: Essays on Democracy, Constitutionalism and European Integration*, ed. Claus Offe and Ulrich K. Preuss (Colchester, United Kingdom: ECPR Press, 2016), 73–98.

[19] See Hubertus Buchstein, "Elective and Aleatory Parliamentarism," in *Parliamentarism and Democratic Theory*, ed. Kari Palonen and José María Rosales (Opladen, Germany: Budrich, 2015), 255–278; and David van Reybrouck, *Against Elections: The Case for Democracy* (London: The Bodley Head, 2016). Some also use the word "sortition" and others "the lot" to describe this feature of representation through random selection.

[20] Rousseau was still convinced that a democracy must be built on a mix of territorial and aleatory representation. See chapter three of book four of Jean Jacques Rousseau, *Du contrat social*.

[21] See Patrizia Nanz and Claus Leggewie, *Die Konsultative: Mehr Demokratie durch Bürgerbeteiligung* (Berlin: Wagenbach, 2016). See also Baogang He and Mark E. Warren, "Authoritarian Deliberation in China," *Dædalus* 146 (3) (2017) for the spectrum between advisory/consultative deliberative panels and empowered ones.

Twelve Key Findings in Deliberative Democracy Research

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

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

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

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

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

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

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

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

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

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

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

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

perspective.[12] Resolution here requires distinguishing carefully between deliberation and discussion.

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

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

Deliberative democracy involves multiple sorts of communication. Some democrats have charged deliberative democracy with being overly rationalistic. For political scientist Lynn Sanders, deliberation works undemocratically for it excludes "those who are less likely to present their arguments in ways that we recognize as characteristically deliberative."[19] Sanders refers to women, racial minorities, and the poor, whose speech cultures depart from "rationalist" forms of discourse that privilege dispassionate argumentation, logical coherence, and evidence-based claims as practiced in the most exclusive kinds of scholarly debates, parliamentary procedures, and judicial argumentation. A similar kind of critique has been raised by political theorist Chantal Mouffe, who criticizes deliberative democrats for missing the crucial role that passion plays in politics and for emphasizing the rationalism of liberal democratic political thought.[20]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Third, political scientist Kimmo Grönlund and colleagues have demonstrated that polarization only applies under unstructured conversation;[48] polarization is not found when groups are run on standard deliberative principles with a facilitator. Their experiment involved citizens deliberating immigration in Finland, and after deliberation, a group that was moderately to extremely hostile to immigrants shifted toward a generally more tolerant opinion. After unstructured discussion, a similar group was, on average, more extreme. Deliberation does, then, provide solutions to group polarization, most obviously when it moves beyond unstructured discussion.

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

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

Twelve Key Findings in Deliberative Democracy Research

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

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

Innovative quantitative methods have been developed to remedy these shortcomings:[54] they can involve analyzing the content of deliberations to assess deliberative practice against normative standards, to measure the quality of deliberation, and to evaluate the intersubjective consistency of deliberators across preferences and values.[55] Qualitative and interpretive methods have also generated empirical insights into public deliberation, particularly through in-depth case studies. Methods such as in-depth interviews and observation have been used to examine the views and behavior of political actors in and around deliberative forums.[56] Frame and narrative analysis have been used to map discourses and analyze the communicative dynamics of deliberative systems.[57]

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

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

ENDNOTES

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Collusion in Restraint of Democracy: Against Political Deliberation

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

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

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

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

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

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

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

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

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

The U.S. system is a hybrid. The SMP electoral system produces two large parties, but the independently elected president weakens them, and the system of checks and balances forces consensus-seeking and compromise to the extent possible. The American founders intended the Senate, in particular, to be a constraining body made up of what Jefferson would later refer to as an "aristocracy of virtue and talent." It has been heralded as such by commentators dating back at least to Alexis de Tocqueville.[6] The idea that the Senate is the world's greatest deliberative body, which first gained currency with Daniel Webster's three-hour soliloquy in defense of the Union in 1850, has been repeated to the point of banality, no matter how scant its connection with reality.[7] I will have more to say about the kind of competition the U.S. system fosters shortly. As a prelude to this, notice that, unlike the Westminster model, which gives temporary control of the government's power monopoly to the majority party and relies on alternation over time as its main mechanism of accountability, the U.S. model divides up the control of power on an ongoing basis. Madison's slogan was that "ambition must be made to counteract ambition."[8] The checks and balances force the players in the different branches to accommodate themselves to one another; hence its affinities with the deliberative ideal.

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

In short, deliberation requires people to act in good faith, but it is not possible to design institutions to induce good faith. "If men were angels," Madison wrote, "no government would be necessary."[9] In-

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

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

The various deliberative institutions that have been tried out or proposed in recent years are exclusively consultative. Deliberative Polls and citizens' juries have no authority to decide anything. They might affect how people vote, but it is the voting that will be decisive. Objects of theoretical conjecture like ideal speech situations are even more radically divorced from politics, since they depend on armchair speculation about what people would decide in settings that are devoid of power relationships. Questions can and have been raised about whether such speculations add up to anything we should believe, or whether the changes in people's views produced by Deliberative Polls and other consultative mechanisms tried thus far are really improvements on their pre-deliberative views or simply changes.[13] These issues need not detain us here, however, since my present point is that – whatever its merits – institutionalizing deliberation turns out to be an elusive endeavor. If it is purely consultative, it is not clear why anyone will or should pay attention to it. Yet if rules are created to institutionalize deliberation and give it real decision-making teeth, they can all too easily undermine political competition and empower people with leverage to appropriate them for their own purposes.

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

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

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

Representation should be geared to maximizing the chances that public debate will center on the policies that parties, if elected, will implement as governments.[15] This is why SMP beats PR, and why strong, centralized parties are better than weak, decentralized ones. Supporting a party in a multiparty system can help voters feel better represented because their representatives' views are likely closer to their ideals than would be the case in a two-party system. But this is an illusion. What really matters is the policies that governments will implement. That cannot be known until after the coalition is formed, post-election. Coalition governments decrease accountability, since different coalition members can blame one another for unpopular policies.[16] Americans got a taste of this when unusual conditions produced a cross-party coalition to enact the Budget Sequestration Act in August 2011, putting in place $1.1 trillion of automatic spending cuts over eight years split evenly between defense and domestic programs, unless Congress passed an alternative by January 2013. The Sword-of-Damocles proposal was widely said to be sufficiently draconian that the representatives would be forced to find a compromise. In the event, they did not and the sword fell, with each side blaming the other for intransigence. Perhaps it was a cynical way for both parties to achieve cuts without being savaged by their electoral bases. Whether due to blundering or collusive cynicism, the result was that everyone had an alibi and no one was undeniably responsible for the outcome. Coalition governments live perpetually on such ambiguous terrain, undermining accountability for what governments actually do.

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

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

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

Some will say that making the system responsive to voters with intense preferences is a good thing. There is, indeed, a strand of democratic theory dating back to James Buchannan and Gordon Tullock's *Calculus of Consent* in 1962 whose proponents defend vote trading and vote buying on the utilitarian ground that it improves the overall social utility.[18] But democracy's purpose is to manage power relations, not to maximize social utility. The contrary view would suggest that it was right for the U.S. government to abandon Reconstruction when Southern whites opposed it with greater intensity than most voters favored it, and that it was right for the intense preferences of neoconservatives who wanted the United States to invade Iraq in 2003 to override those of more-numerous but less-fervent skeptics.[19] This is to say nothing of the fact that in politics, preferences are always expressed subject to budget constraints. The intense antiregulation preferences of the multibillionaires Charles and David Koch are massively amplified because their budget constraints differ vastly from those of the typical voter.[20] In short, there are good reasons for the rules of democratic decision-making to reflect how many people want something, rather than how intensely they want it.

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

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

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

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

ENDNOTES

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

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

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

[4] Joseph Schumpeter, *Capitalism, Socialism, and Democracy* (London : George Allen & Unwin, 1942), 269.

[5] Where there is substantial regional variation, by contrast, as in India, SMP systems can produce party proliferation.

[6] Tocqueville described the Senate as peopled by America's "ablest citizens" ; men moved by "lofty thoughts and generous instincts." By contrast, the House of Representatives consisted of "village lawyers, tradesmen, or even men of the lowest class" who were of "vulgar demeanor," animated by "vices" and "petty passions." Alexis de Tocqueville, *Democracy in America*, ed. J. P. Mayer (New York : Anchor Books, 1969 [1835, 1840]), 200 – 201.

[7] Terence Samuel, *The Upper House : A Journey behind Closed Doors* (New York : Palgrave MacMillan, 2010), 68.

[8] James Madison, "Federalist No. 51," in *The Federalist Papers*, ed. Ian Shapiro (New Haven, Conn. : Yale University Press, 2009 [1787 – 1788]), 264.

[9] Ibid.

[10] Jane Mayer, *Dark Money : The Hidden History of the Billionaires behind the Rise of the Radical Right* (New York : Doubleday, 2016), 198 – 225.

[11] The House of Lords Act of 1999 reduced the membership from 1,330 to 699 and got rid of all but ninety-two of the hereditary peers, who were allowed to remain on an interim basis, and an additional ten who were made life peers. On the recent evolution, see Meg Russell, *The Contemporary House of Lords : Westminster Bicameralism Revived* (Oxford : Oxford University Press, 2013), 13 – 35, 258 – 284.

[12] For elaboration, see Ian Shapiro, *Politics against Domination* (Cambridge, Mass. : Harvard University Press, 2016), 73 – 78.

[13] See Ian Shapiro, *The Real World of Democratic Theory* (Princeton, N.J. : Princeton University Press, 2010), 266 – 271.

[14] James Lyons and Sanya Burgess, "Corbyn Reelected as Labour Leader with Increased Mandate," *The Times*, September 24, 2016, http ://www.thetimes.co.uk/edition/news/corbyn-re-elected-as-labour-leader-with-increased-mandate-c7jqjgjm7.

[15] The argument in this and the next two paragraphs will be developed more fully in Frances Rosenbluth and Ian Shapiro, *Democratic Competition : The Good, the Bad, and the Ugly* (New Haven, Conn. : Yale University Press, forthcoming 2018).

[16] Kathleen Bawn and Frances Rosenbluth, "Short versus Long Coalitions : Electoral Accountability and the Size of the Public Sector," *American Journal of Political Science* 50 (2) (2006) : 251 – 265.

[17] Charlie Cooper, "EU Referendum : Final Polls Show Remain with Edge over Brexit," *The Independent*, June 23, 2016, http ://www.independent.co.uk/news/uk/politics/eu-referendum-poll-brexit-remain-vote-leave-live-latest-who-will-win-results-populus-a7097261.html ; and Anushka Asthana, "Parliamentary Fightback against Brexit on Cards," *The Guardian*, June 26, 2016, http ://www.theguardian.com/politics/2016/jun/26/fightback-against-brexit-on-cards-remain-eu-referendum-heseltine.

[18] James Buchanan and Gordon Tullock, *The Calculus of Consent : Logical Foundations of Constitutional Democracy* (Ann Arbor : University of Michigan Press, 1962). Robert Dahl flirted with the notion that attending to intensity might be desirable from the standpoint of political stability, though he was skeptical that it could be measured. Robert Dahl, *A Preface to Democratic Theory* (Chicago : University of Chicago Press, 1956), 90 – 123.

[19] For discussion of the dangers inherent in catering to intense preferences, see Shapiro, *Politics against Domination*, 46 – 61.

[20] See Mayer, *Dark Money*, 120 – 158, 226 – 270, 354 – 387.

[21] See *Buckley v. Valeo* 424 U.S. 1, 59 (1976) ; *Citizens United v. Federal Election Commission* 558 U.S. 310 (2010) ; and *SpeechNow.org v. Federal Election Commission* 599 F.3d 686, 689 (D.C. Cir. 2010).