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Deliberative Conflict and ‘The Better Argument’ Mystique

Albena Azmanova

Since James Fishkin designed deliberative opinion polls almost two decades ago, they have been conducted around the world—from Argentina, Brazil, and the United States, through a number of European countries, to Japan and China. This particular type of deliberative polling, reconceptualized most recently in *When the People Speak*,¹ is likely the most effective institutional mechanism known to date for bringing to life the ideal of deliberative democracy, that is, of subjecting democratic policy-making to what Jürgen Habermas has called “the unforced force of the better argument.”² As such a device, the polls’ claim to validity rests on creating conditions under which “results are driven by consideration of the merits of competing arguments and not distorted by some pattern of domination or group psychology.”³ Thus, avoiding manipulation, domination and ideological distortion is a core objective of deliberative polling.

In what follows, I will discuss the practice of justification in the settings of public deliberation,⁴ focusing especially on the extent to which judgments of justice, thus generated, are impermeable to ideological manipulation and domination—one of the core concerns of critical theory.⁵ How does ‘the force of the better argument’ win the upper hand over what Fishkin admonishes as perils of non-deliberative public opinion formation? These perils concern the vulnerability of public opinion in mass societies to manipulation, rooted in the public’s low information levels, in citizens’ ‘rational ignorance’ (i.e., their deficient willingness to be informed), in their propensity to form ‘top of the head’ impressions under the impact of sound bites and headlines;⁶ in publics’ vulnerability to the politics of impression management,⁷ to pressure by the more advantaged,⁸ or else by ‘groupthink’⁹—to name just a few of the dangers standing in the way of informed, considered opinions.

My attention to the extent to which deliberative polls themselves might be liable to ideological domination and manipulation of public opinion was first drawn by a *Financial Times* article reporting on the Europe-wide deliberative polls in 2007.¹⁰ “Debate eases acceptance of EU reform,” the article announced, welcoming the fact that “Europeans are prepared to accept liberal reforms when they are given a chance to debate them.”¹¹ As a result of the deliberative polls, described as a process of getting the London cab driver to talk to the Marseilles dockworker,

Wparticipants reportedly increased their support for raising the retirement age, as well as for encouraging foreign investment and free trade.¹² While the majority of people at first had opposed reforms of the pension system, they eventually agreed that “keeping the retirement rules the way they are will bankrupt the retirement system.”¹³ Thus, the trans-European deliberative polls effectively brought about a shift to the right on two policy issues that have been at the heart of ideological conflicts in Europe: labor-market liberalization and market openness. The *Financial Times* article concluded on the salutary note that “[t]he poll is encouraging for EU leaders who claim reform is needed but fear unpopularity if they pursue it.”¹⁴

Making allowance for the tendency of mass media to misconstrue events, the reported mobilization of such an impressive amount of public support for the neo-liberal policy agenda nevertheless could be seen to betoken that

deliberative polls themselves might be an instance of what Fishkin rebukes as the danger of the persuasion industry first shaping public opinion and then invoking that opinion in the name of democracy.¹⁵ Are not deliberative polls, despite their strong claim to democratic legitimacy (or exactly due

to it), becoming an important part of the persuasion industry they are allegedly countering? If that were the case, it would mean that the measures that deliberative polling adopts are, unwittingly, opposed to its own cause.

So the question is: How do we know that public deliberations are really free of power asymmetries, ideological idiom, and various forms of manipulation; that deliberative polling engages communicative, rather than instrumental rationality? It is with this concern in mind that I attended, at the organizers’ invitation, a round of deliberative polling in 2008 in Hungary.¹⁶ In what follows, I will explore this issue by drawing both on Fishkin’s *When the People Speak*, as well as on my own observations of the practice of deliberative polling.

The book offers two explicit sets of answers to the issue of validity of outcomes of deliberation—the first centers on procedural conditions, the second—on substantive outcomes. I will explore both and then bring to light an alternative mechanism of critical validation, present less explicitly in the book, but which I observed at work during the deliberative polls in Hungary. My general claim is that although deliberative

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polls are indeed vulnerable to manipulation and ideological distortion, they nevertheless trigger processes of critical judgment that counteract manipulation. In the first part of this analysis, I will examine the procedural and substantive tools on which deliberative polls rely for generating considered judgments as grounds for non-manipulated preference formation. In the second part I will offer my account of the process of critical justification as I have observed it taking place in the course of deliberative polling.

The Promise of Reflexivity

Non-manipulation being among the key virtues of deliberative polls, the search for an antitoxin sets out from the following diagnosis of the malady:

A person has been manipulated by a communication when she has been exposed to a message intended to change her views in a way she would not accept if she were to think about it on the basis of good conditions ...¹⁷

The most general answer to the question of why deliberative polls can be trusted to generate non-manipulated formation of preferences (an enlightened public opinion) is that they foster *reflexivity*, or what Fishkin describes as 'thoughtfulness'—participants think and come to a considered judgment,¹⁸ they sincerely weigh the issues on their merits, deciding, in the end, on the basis of the 'force of the better argument.'¹⁹ Reflexivity is attained thanks to five procedural conditions ('good conditions') of deliberation: (1) reasonably accurate information; (2) substantive balance; (3) diversity; (4) conscientiousness; (5) equal consideration.²⁰ These five conditions approximate the environment in which the deliberative polls are conducted to what Jürgen Habermas has described as 'the ideal speech situation.'²¹ When resulting from deliberations under such conditions, decisions are based on considered judgments, rather than on distorted or ill-considered ones.²²

This solid and sophisticated design of the procedural setting of deliberation nevertheless invites the following objections, in reference to the alleged goals of non-domination and non-manipulation:

First: The remedy to uninformed public opinion consists of informing it through balanced briefing materials prepared by advisory groups; and plenary discussions with experts and policy makers.²³ Importantly, experts and policy makers represent a variety of viewpoints in satisfaction of procedural conditions 1 and 2 (reasonably accurate information and substantive balance). However, both the selection of information and the role of experts to be consulted inevitably implies an asymmetrical distribution of power. Experts have considerable structural power over the audience,²⁴ a fact that goes against the principle of

equality. Although they do not participate directly in the making of decisions (thus, they cannot apply their relational power), by virtue of their being experts and, allegedly a source of reliable knowledge, they affect the formation of opinion.

Second: At least since Thomas Kuhn's critique of scientific rationality, we know that there is no such thing as objective knowledge, or balanced and accurate information. Scientific communities operate within a framework of reference that is always partial, incomplete, and reflects the bias of some convention. Most importantly, it unavoidably excludes and silences facts and perspectives, a silencing that is at the root of what Arendt called 'banality of evil' (evil that works through acts of omission, rather than acts of commission). Even when the experts represent competing or conflicting positions (as in the case of deliberative polls) we can never be sure that a valid position has not been overlooked.²⁵

Third: The superiority of deliberation-based preference formation is based on a dichotomy between raw (unenlightened) public opinion and refined public opinion under 'good conditions.' Deliberations under such conditions are said to eliminate uninformed opinion. However, such a dichotomy between raw and deliberatively enlightened opinion is sociologically implausible. To view deliberation as a setting for preference formation is unrealistic: our preferences are formed in the course of diverse and intensive social interactions within practices that shape who we socially are. To invoke Bourdieu, our taking of a particular stand in a debate (*prise-de-position*) is related to our social position (*position*)—i.e., to our positioning within the structure of social relations.²⁶ Preferences are neither formed, nor changed primarily via argument (that happens only in the seminar room, if ever) but via experience. We cannot reasonably expect that, even under the most extensive deliberation under perfect epistemic conditions, the narrow social experience of mutual reason-giving will, or should, trump identity features that evolved throughout a person's lifetime engagement in a variety of social practices such as work, advocacy, and affective relationships.

Fourth: Valuing deliberative democracy as a process of transforming raw opinion into refined (filtered and enlarged) public opinion implies that communicative interactions are of higher validity than our participation in social processes within which our so called 'raw' opinions are formulated. Our views of the social environment we inhabit are not exclusively formed in unreflective exposure to mass media (the susceptibility to 'sound bites'), but in the course of participation in a variety of social practices. Such admittedly unreflexively formed (raw) opinions are therefore highly relevant to that identity-conferring social experience. There is therefore no reason that 'raw' opinions

should be given a lower status as compared to opinions formed in the procedurally sterile settings of public deliberations under ‘good conditions.’

Fifth: Even when we are confident that the deliberative polls follow a design propitious to conscientiousness and equal consideration (conditions 4 and 5) we cannot be sure that such features of ideal communicative interaction effectively prevail.

On the basis of the above demurrals, it could be concluded that some of the procedural conditions that are meant to ward off manipulation and distortion can do so only uncertainly, if at all. As likely as that might be, the effective transformation of ‘raw’ into ‘refined’ opinion under good conditions of deliberation is insufficient to ensure that opinions are indeed formed as considered judgments, free from ideological manipulation. Like all symbolic practices, deliberations are inevitably permeated by real interests and ideological distortions, and no less so when allegedly objective information is delivered by well-meaning experts. While the provision of information and expert consultation are strategies aimed at increasing thoughtfulness and information, they might be letting in manipulation and domination through the backdoor, mostly due to the ‘structural power’ of expert opinion.

This means that, empirically speaking, almost anything can come out of democratic deliberations. How then can we be sure that the procedure of deliberation has gone well? If procedural conditions are insufficient, we need to clarify further the validity moment by addressing the nature of substantive outcomes.

In *When the People Speak*, non-procedural answers to the issue of validity of outcomes are provided within two competing ontologies. I will next describe them in terms of the *Who*, the *How* and the *What* in public deliberations.

The Public Voice

The first ontology is a holistic one, within which the merits of arguments are assessed in terms of their alignment with the moral identity of a community, the higher-order general will of the whole public. Anything that does not align with this identity is a distortion of the public voice.²⁷

The Who

The entity that is being represented in deliberations is the whole public, the ‘public voice,’ ensured by random sampling which gives representation of ‘the whole public’ the ‘broader public.’²⁸ The random sample constructs a microcosm

representing the singular superordinate identity of the political community to which the contending parties allegedly belong. The *Who*, in this case, is the larger political community, as in the ancient political life-form of the democratic polis that inspires this project.²⁹

The How

The *How* is deliberation under ‘good conditions,’ as described in the first section here. If public opinion manipulation happens because the public is inattentive and/or uninformed,³⁰ then deliberations under good conditions remedy the deficiency of information and ensure that distortions, partial perspectives and special interests are filtered out.³¹ Thus, deliberations take place as a collective process of public will formation,³² a process of refining and enlarging the public views,³³ thereby articulating the true voice of the public.

The What

What is the outcome of deliberations? Deliberations aim at discerning the opinion “generally shared by the entire mass public,”³⁴ “the consent of the people,”³⁵ the “cool and deliberate sense of the community,”³⁶ “the public will,”³⁷ “the true interests of the country,”³⁸ and “the permanent and aggregate interests of the community.”³⁹ In this sense, they seem to be providing a reflective endorsement of a higher order will, which orients a lower order will towards realizing a collective identity.

The ‘public voice’ ontology, it seems to me, is open to the following objections:

First: When we speak of distortions, we imply that there is an ‘authentic’ entity (opinion) from which these ‘distortions’ are deviations. However, if such a thing as shared (undistorted) public will existed, we would need logic, not deliberation, to get to it.

Second: A thick collective identity, especially in modern complex democracies with porous boundaries, does not exist; it is but a naturalizing fiction. I purposefully abstain from entering into this issue here, which has been a central topic of the heated debate between communitarians and liberals that took central stage in American political philosophy in the late 20th century.⁴⁰

Third: This ontology invites us to valorize the whole over individual interests and identities. But why is the ‘broader public good’ of a higher normative value than the alleviation of the

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suffering, say, of one insignificant minority? This entails the issue of second-order reasons (of having reasons for having reasons), which Fishkin does not render explicit.⁴¹

Fourth: Deliberations are designed to filter out partial individual or group interests and passions.⁴² On this view, social conflict, driven by passions and interests, is set against the conflict-free general interest of the larger superordinate community. However, special interests and partial, socially particular identities are valid features of our social existence (as I contended in the preceding part); they are valuable as such and deliberation should not filter them away.

Fifth: The ancients, from whom the model takes its inspiration, had no notion of social conflict, they excluded it from the public sphere. What in complex modern societies is shared are not so much substantive values, but social interactions to which conflict is endemic. Moreover, social conflicts are the source of moral disagreement; these conflicts are what triggers deliberation in the first place. As John Dewey often reminded, our moral problems arise when there are incompatible values within shared activities—outside of normative conflicts within shared practices the question of justice does not even arise.⁴³

I conclude, therefore, that the ontology of the uniform, superordinate public good attained by the force of the better argument is not plausible enough, because the ideal conditions for deliberation are too demanding to make the model a reliable tool against domination and manipulation. There is simply too much ideal theory in it. The deliberative process of the better argument, put to the service of the public voice, remains a mystique—therefore, it cannot securely ground the deliberative polls' claim to validity.

If the value of deliberative polls resides neither in their being a constructivist device for public will formation, nor in their being a device for the endorsement of an 'authentic,' 'undistorted,' previously available public will, then where should we seek it?

The answer is provided, I believe, within an alternative ontology to that of the 'public voice.' Although it takes a secondary place in the conceptualization of public deliberations in the book, as it often runs against the prevailing 'public voice' ontology, it is nevertheless present in the practice of deliberative polling that I have observed. I will next turn to this alternative view on public deliberations, in order to argue that the deliberative polls derive more securely their validity from their emancipatory power, rather than from their capacity to filter the 'voice of the people.'

Rendering Account

This second view of deliberations, somewhat more marginally located in *When the People Speak*, but present nevertheless, centers not on conflict-free collective identity, but on social conflict and the endogenous need (for any political community) for justification of claims and actions—of giving reasons for having reasons.⁴⁴

The Who

The Who of deliberations in this case is not a *community* but a *society*, a plurality of differently situated social groups, a *socium* held together by social practices. On this view, deliberations are set off not because citizens seek the public good. Rather, they are instigated by grievances, by experienced social injustice produced in shared practices. Thus, the partial identities and differences among participants are not entities that need to be overcome for the sake of the general will, but things that need to be made explicit, and confronted.

The How

The reflexive attitude appears in an unconstrained, rather than in controlled (sanitized) debate; the offering of arguments from opposing points of view triggers a process in which actors reveal the reasons for their arguments. This is not just a matter of role-taking that generates empathy. Rather, this is a process in which private interests and grievances attain generalisable qualities by references to the social origin of these grievances. The crucial procedural condition is that of diversity (number 3 in the list of 'good conditions'), obtained via random sampling. In this, the deliberative polls designed by Fishkin are by far superior to other existing models of public deliberation.

Let me illustrate this process by drawing on my observations of deliberative polls in Hungary. I witnessed the following exchange taking place between a Roma woman (participant A) and a businessman (participant B):

B: Employing gypsies to clean the streets is a waste of money because gypsies are lazy and sloppy. (Note here the lack of such high-profile conditions, typical for the deliberative democracy literature, as equal respect and conscientiousness).

A: How can you say that? (A hurt, emotional reaction.)

B: I say this because these people are paid with money from my taxes. (This utterance established that the two participants were connected within a generalizable pattern of social relations).

A: Yes, we are lazy because we always end up with the bad jobs.

Subsequently, the issues of employment and related social opportunities surfaced as the particular social evil that embodied

the group's complex connectedness and remained at the center of discussion.

The exchange between the Roma woman and the businessman began as stating of positions on labor-market policy, but it evolved from offering (first order) arguments to giving (second-order) reasons for these arguments. Importantly, the second-order arguments were not of moral nature, neither were they concerns with the larger good of the community, as 'best arguments' tend to be. Rather, second-order arguments related to each participant's positioning within the web of social practices constituting the shared social environment. This process of 'rendering of account' eventually revealed the way the two participants were connected within a pattern of social relations that generated the particular form of social injustice in which they were both involved, and which gave meaning to their exchange.

On this vision, deliberations take place as a process of *diasparagmos* (to borrow a term from Orphic mythology)—tearing apart the public body (like the Thracian women did with Orpheus), in order to reveal the ills of social injustice that permeate it.⁴⁵

The What

As Fishkin writes, "while people may not agree which alternatives are best, they do come, through discussion, to a meta-agreement on what the issues really are and what shared dimension underlies their differences."⁴⁶ What is achieved is a collective meaningfulness,⁴⁷ which is not the same as collective public will. I will go even further: Public deliberations are a place where social conflict is *communicatively enacted*. To invoke Bourdieu again, such a process makes explicit how our taking-of-positions is related to our social positions, or positioning in reference to others, which renders debates meaningful to all participants, even in the absence of agreement. Such dynamics of public deliberation ultimately reveal to us how we are all entangled together in processes of social (re)production—processes that are those structural sources of social injustice generating moral disagreement in the first place.

The end result is a (shared, to some extent) understanding of key social conflicts, of the way we are engaged with the practices underlying these conflicts, and of the way we might be complicit in the production of social injustice, even when we are seen as victims of it. By this account, we are better citizens not when we can overcome our individual perspectives for the sake of the 'broader public good' but in so far as we understand the

multiple social conflicts that make up the fabric of the societies we inhabit; insofar as we become aware of the production of social injustice; better still—when we become aware of our complicity in other people's suffering. This process of 'rendering account,' of demanding justification, and justifying ourselves to others, does not require ideal conditions, an 'ideal speech situation.' The only procedural condition is diversity, achieved through random sampling of the relevant population. Such random sampling ensures that all social positions, all elements of the *socium*, are represented, and thus—relevant social conflicts are communicatively enacted.

Conclusion

I have endeavored here to examine the extent to which the deliberative polls, as designed by James Fishkin, are liable to the suspicion of public opinion manipulation, often voiced by critical theorists. Preventing manipulation and the related dangers of ideological bias and hegemonic domination are explicit values on which deliberative polls, as most recently presented in *When the People Speak*, stake their legitimacy. I noted that the question of validity of outcomes is treated in the book under two somewhat conflicting ontologies: that of the harmonious unity of a collective public will, achieved through the 'force of the better argument' and that of the oppugnant unity of social conflict, achieved via what I described as 'rendering account.' Although the former is given a more prominent status in the book, I believe that the significant added value of deliberative polling is to be found in the latter. On close examination, preference formation even in the good conditions under which deliberative polling takes place, is susceptible to ideological bias and manipulation. However, the process of critical judgment that these conditions facilitate counters the pervading tendencies of manipulation. Deliberative polls strengthen democracy by force of their capacity to trigger what I called a 'deliberative diasparagmos,' of communicative tearing apart of the public body through rendering of account, rather than through the dubious mystique of the 'better argument' and the resort to a holistic fiction of a community. The deliberative polls' most valuable contribution to democratic politics is not so much via the alleged representation of the public will, but rather via the communicative expression of social conflict—a process which enables critical political judgment. It is in this counter-current to hegemonic discourses, rather than in disabling manipulation that, it seems to me, the compelling allure of deliberative polls for complex modern democracies resides.

The deliberative polls' most valuable contribution to democratic politics is not so much via the alleged representation of the public will, but rather via the communicative expression of social conflict—a process which enables critical political judgment.

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Endnotes

1. See also his *Democracy and Deliberation* (Yale University Press, 1991) where Fishkin first outlined his proposal for deliberative polls in the format in which they have been subsequently implemented, namely: a large number of participants selected by random sampling and availed of balanced information, who deliberate on specific issues in small groups; their opinion is being polled before and after deliberations in order to register opinion shift. For an exact definition, see James Fishkin, *When the People Speak: Deliberative Democracy and Public Consultation* (Oxford: Oxford University Press, 2009), 10.

2. See, for instance, Jürgen Habermas, "Introduction," *Ratio Juris* 12:4 (1999): 329–35, at 332.

3. Fishkin, *When the People Speak*, 95.

4. I follow here Fishkin's working definition of deliberation as "face-to-face discussion by which participants conscientiously raise, and respond to, competing arguments so as to arrive at considered judgment about the solutions to public problems." Page 17.

5. I refer to the strand of social philosophy that originated at the Institute for Social Research (Institut für Sozialforschung) in Frankfurt in the 1930s. Without establishing a formal 'school of thought,' the first generation of Frankfurt school authors (i.e., Theodor Adorno, Walter Benjamin, Erich Fromm, Max Horkheimer, Leo Löwenthal, Herbert Marcuse, Franz Neumann, and Friedrich Pollock) practiced reflective social science styled as critique of ideology.

6. Fishkin, 2–3.

7. *Ibid.*, 98.

8. *Ibid.*, 128.

9. *Ibid.*, 133.

10. The polls were held at the European Parliament in October 2007. They were sponsored by the European Commission and organized by Notre Europe, a French think-tank, and TNS-Sofres, a polling company, under the guidance of James Fishkin and his research team at Stanford University's Center for Deliberative Democracy. From an initial poll of 3,500 people a representative sample of 362 people was drawn, who spent a weekend debating 59 questions with each other, in 22 languages, at the European parliament in Brussels. See relevant documentation at <http://www.tomorrowseurope.eu/>.

11. Andrew Bounds, "Debate Eases Acceptance of EU Reform," *Financial Times*, October 17, 2007.

12. *Ibid.*

13. The support for "raising the retirement age" went up from 26% to 40%. And support for "making it attractive to work longer before retiring" went from 57% to 70%. "Regarding economic reforms, those somewhat or strongly in favor of encouraging foreign investment went from 58.4% to 69.3%." (Tomorrow's Europe, Official Press Release at: www.tomorrowseurope.eu/spip.php?article169). Retrieved 28 November 2009.

14. If there were doubts about the objective necessity for labor-market liberalization and deregulation, commonly justified with the impending bankruptcy of public finances, these doubts were dispelled when states pored billions of public funds into the banking system during the 2008–9 global financial crisis to bail out financial capital. A state intervention on such a large scale and so systemic in its nature brought to light the hegemonic nature of the discourse on the necessity for neo-liberal reforms of the labor market, reforms that shift responsibility, and risk, onto individuals.

15. Fishkin, 6.

16. The deliberative poll on issues of unemployment and job creation in the area of Kaposvár (Hungary) was held on June 21–22, 2008. I am grateful to the organisers for allowing me unconstrained attendance, and supplying me with an interpreter.

17. Fishkin, 6; italics in the original.

18. *Ibid.*, 2.

19. *Ibid.*, 39.

20. Participants' selection by random sampling ensures diversity of the viewpoints represented; briefing materials are prepared by advisory groups and panels of experts and policy makers answer questions in order to ensure that participants are availed of substantively balanced information; participation is conscientious rather than strategic and ideas are considered equally on their merits regardless of the status of those offering them. See especially pages 10, 26, 99.

21. Safe for two features concerning the goal of deliberations and the time spent in deliberation. In the settings of Habermas's 'ideal speech situation,' deliberation is oriented towards consensus and there is no limit on the time spent to reach consensus. In Fishkin's model of deliberative democracy, (1) the goal of deliberations is not consensus but reflexive preference formation and (2) there is a time limit to deliberations. Fishkin's model combines deliberation for preference formation with a method of decision that employs aggregation. See page 88.

22. *Ibid.*, 84.

23. See for example pages 10, 26, 39, 99.

24. I use the term 'structural power' (in contrast to 'relational' power) as it was introduced by Susan Strange. While relational power refers to the capacity of an actor to influence directly the behaviour of other actors, structural power refers to an actor's capacity to affect outcomes by changing the environment in which interaction takes place, i.e. the capacity to set the terms of debate. See Susan Strange, *States and Markets*, 2nd ed. (London: Pinter Publishers, 1994), especially 23–43.

25. Consider, for instance, that in the pension-reform debate the two opposing positions for and against the reform of the pension system exclude considerations of alternative financing of pension funds as part of the broader design of national budgets. Similarly, debates on labor market deregulation typically revolve around the dilemma of giving access to labor market outsiders versus protecting the positions of labor-market insiders. This dilemma obscures the option of conditioning social security provision not on employment history (as in the conservative model of welfare states), but on citizenship (as in the Scandinavian, or social democratic model of welfare states), as it is ultimately the prospect of economic insecurity that underlies resistance to labor-market deregulation. These are examples of instances when even when citizens are exposed to opposing experts' views, they are not guaranteed that all relevant options are presented to them.

26. Pierre Bourdieu, *La Distinction: Critique Sociale du Jugement* (Paris: Éditions de Minuit, 1979). See also his *Raisons Pratiques: Sur la Théorie de l'Action* (Paris: Éditions du Seuil, 1994).

27. Fishkin, e.g., 5–16, 49–60, 76–94.

28. Fishkin, 8.

29. *Ibid.*, 11–12.

30. *Ibid.*, 6.

31. *Ibid.*, 84.

32. *Ibid.*, 143.

33. *Ibid.*, 156.

34. *Ibid.*, 13.

35. *Ibid.*, 34.

36. *Ibid.*, 16, quoting *The Federalist*.

37. *Ibid.*, 66.

38. *Ibid.*, 71.

39. *Ibid.*

40. For a critical account of the debate see Rainer Forst, *Contexts of Justice: Political Philosophy Beyond Liberalism and Communitarianism*, trans. John Farrell (Berkeley, CA: University of California Press, 2002 [1994]).

41. Joseph Raz introduced a distinction between *first-order reasons*, which are reasons to perform an act, or pass a judgment, and *second order reasons* which are reasons to act for a reason. (Joseph Raz, *Practical Reason and Norms* (London: Hutchinson, 1975).

42. Fishkin, 72.

43. See for example, John Dewey, “*The Ethics of Democracy*” (1888) in *The Early Works of John Dewey (1882–1888)*, ed. Jo Ann Boyston (Carbondale: Southern Illinois University Press, 1969).

44. I describe this ontology of critical judgment in detail in my book *The Scandal of Reason* (Columbia University Press, forthcoming).

45. The Orphic rituals entail a symbolic tearing apart of the body (in seven parts) thus enabling a spiritual catharsis. I am grateful to Jonathan Pollock for drawing my attention to this term, during a hike in the Rhodopa mountains, Orpheus’s birthplace, in the summer of 2009.

46. *Ibid.*, 104.

47. *Ibid.*, 146.