

# Democracy in the Open

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## Abstract

*While acknowledging the monumental and important contribution James Fishkin has made to deliberative democracy theory, I argue that his very pessimistic view of citizen competency outside of Deliberative Polls limits his ability to develop a full theory of democracy. I also suggest that he is hampered by a narrow focus on the Deliberative Poll as the primary institution of democratic reform.*

**Keywords:** *Deliberative Poll, democracy, public sphere, deliberative democracy, citizen competency*

Deliberative democracy, both as an empirical research agenda and a normative theory, has developed along two parallel tracks. On one track, we see research that centers on what James Fishkin calls “deliberating microcosms” (for example, 70–71). These are designed settings that bring citizens together as a subset of a larger public (hence also often called “mini-publics”) on a face-to-face basis to discuss and sometimes decide upon public matters. The Deliberative Poll is one such microcosm and James Fishkin its leading theorist and practitioner. No one has done more than he to raise the profile and develop this branch of deliberative democracy.

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Along the other track, we find scholars and researchers investigating deliberative democracy as it plays out at the macro level. Here the broad public sphere, political communication outside controlled settings, and the media are among the topics of interest. Following in the footsteps of people like Jürgen Habermas and John Dryzek, I place myself in this second camp.

Recently there has been an exciting reconnection and intersection between these two strands of deliberative democratic inquiry. One example is the deliberative systems approach, articulated for example by Mansbridge et al. in their 2012 “manifesto” (Mansbridge et al. 2012). James Fishkin’s *Democracy When the People Are Thinking* is another example. Fishkin’s mission in this latest book is to place the Deliberative Poll (and similarly designed deliberative microcosms) in the larger context of mass representative democracy and offer a comprehensive macro level view of the democratic potential of Deliberative Polling. In his thirty years of research and development he has refined and perfected the design of Deliberative Polls such that they are truly the state of the art when it comes to face-to-face deliberation. What has remained for some, as a question mark and a target of criticism, however, is Fishkin’s vision of the function and role of Deliberative Polls in the broader democratic landscape. This book intends to address that question.

This is an ambitious project and I am sympathetic. The book opens up and investigates all sorts of innovative and democracy-enhancing ways Deliberative Polls can interface with institutions of mass democracy. Part IV, “Reimagining Democratic Possibilities” is particularly rich in this regard, pointing to a number ways Deliberative Polls can connect to and supplement existing democratic institutions through, for example, informing candidate selection for general elections; agenda setting for ballot initiatives and referendums; connecting deliberated opinion to policy development processes undertaken by representatives and other political elites; and even proposing new representative assemblies chosen through random selection. The picture is one of an exciting set of possibilities for future reform of democracy. To this ambitious agenda and Fishkin’s extraordinary efforts to advance it, I can only respond, Bravo!

And yet. . . . Although the book draws useful and creative connections between Deliberative Polls and the broader democratic context, it still falls short, it seems to me, of offering a full picture or workable approximation of a deliberative democracy at the macro level. Two things handicap Fishkin in taking the final step toward a fully adequate democratic theory of deliberation. The first is what I call Fishkin’s diagnostic Schumpeterianism.

The second is his love affair with the Deliberative Poll and more particularly, random sampling.

### A Diagnostic Schumpeterian?

Part of the strategy in this book, as in all Fishkin's books, is to paint a very grim picture of democratic life outside the Deliberative Poll. Granted, he criticizes what could be called the new Schumpeterians, people like Achen and Bartels (2016), who cannot see beyond the standard political science catalogue of impediments to democracy: citizen incompetence, cognitive weakness, epistemic pathologies, and susceptibility to manipulation. Many of us who work in deliberative democracy point to Deliberative Polls and Fishkin's path-breaking research as evidence that citizens are not fundamentally incompetent: cognitive biases, group polarization, information deficits, and manipulation are all mitigated or completely absent under conditions of the Deliberative Poll. This empirical evidence supports deeper theories of human cognition and evolution suggesting that we humans are collective problem solvers rather than individual truth seekers, and thus gain better cognitive results when thinking interactively and intersubjectively (Chambers 2018). From there, many of us try to bring these insights into the broader arena of democracy and challenge the new Schumpeterians on their measures and conclusions. Even if it proves impossible to recreate the exact conditions of the Deliberate Poll for everybody in the open spaces of the public sphere, we argue, the evidence we have about the conditions under which citizens think clearly and develop informed and reasonable opinions still applies. Critical studies of framing effects (e.g., Druckman and Nelson 2003) confirm the intuition that human cognitive capacities do not change when we step outside a Deliberative Poll. Thus we should be able to leverage some of what we learn in the Poll to the outside context.

Oddly, in my view, Fishkin appears to agree with the new Schumpeterians that deliberation out in the open of mass democracy is hopeless. Although he criticizes the new Schumpeterians, part of his defense of Deliberative Polls is to invoke the very same catalogue of citizen incompetence, cognitive weakness, epistemic pathologies, and susceptibility to manipulation that the new Schumpeterians emphasize. "Outside the protected sphere of a deliberative forum, there are many potential distortions of dialogue: Communication among the like-minded, spread of misinformation, unanswered attempts at manipulation of public opinion, the habits

of inattention by most of the public most of the time, the opportunities for the more advantaged to dominate the discussion in the public sphere,” Fishkin writes. “Without an institutional context for relatively equal, civil, and evidence-based discussion, the individual citizen is isolated, indeed atomized in mass society. Hence we need to think about the strategic placement of deliberative forums such as the Deliberative Poll inside the broader societal process of discussion and decision” (201). I call this position a *diagnostic* Schumpeterianism because, although it does not come to the conclusion that citizens should be limited to consumerist choice among political elites, it does assume the inherent morbidity of mass democracy.

I have two issues with Fishkin’s embrace of the Schumpeterian diagnosis and the Deliberative Poll cure. First, I question the plausibility of such a stark line between behavior and capacity in protected spaces and behavior and capacities in open spaces. It is a Jekyll and Hyde story that appears to deny the possibility of transforming lessons and skills across contexts. In that sense Fishkin appears to abandon the public sphere as a site of meaningful and deliberative citizen participation. It seems to me that we should be taking the lessons learned in Deliberative Polls and applying them to democracy at large, not thinking that we can address the catalogue of democratic ills entirely through the proliferation of one institutional model. This brings me to my second question about Fishkin’s Schumpeterian diagnosis and Deliberative Poll cure: How much weight should a dynamic, pluralistic society give to a democratic theory wedded exclusively to one institutional model of citizen participation?

### Institutional Innovation and Democratic Theory

Fishkin and I approach the task of institutional innovation from opposite directions. Fishkin begins with the Deliberative Poll, looks for all the possible places it could be useful, and builds a broad theory of democracy from there. I begin from a broad theory of democracy and ask which institutions (innovative or not) could enhance deliberative democracy in a given context. To illustrate, let me address Fishkin’s discussion of my own work’s intersection with that of Jürgen Habermas. Fishkin faults Habermas (along with John Rawls) for operating in the realm of ideal theory, focusing on hypothetical thought experiments rather than real, executable experiments. Fishkin suggests that Habermas ignores practicable institutional renovation and design and thus, unintentionally, helps preserve the status quo.

Fishkin quotes my statement that Habermas “refuse(s) to elaborate institutional venues of deliberation” (21) as evidence that even sympathetic readers of Habermas find his lack of interest in institutional design problematic. In fact, however, I did not find Habermas’s refusal to engage in institutional design problematic at all. Habermas’s disinterest in designing things like mini-publics is linked to his view that philosophy cannot determine in the abstract if a specific institutional design is appropriate or right in any given circumstance. Instead, Habermas provides a broad recount of democratic legitimacy that, in his view, should inform institutional design. Fishkin, by contrast, appears to build a democratic theory upon the success of one particular institution, the Deliberative Poll. On Habermas’s view, democratic legitimacy is tied to what citizens would agree to under discursive conditions leaving the institutional instantiation of discourse conditions very open: “only those statutes can claim legitimacy that can meet with the assent of all citizens in a discursive process of legislation that in turn has been legally constituted” (Habermas 1996, 110). There is a hypothetical involved in this picture but I would add that the Deliberative Poll also contains a strong hypothetical in the sense that Fishkin often asks us to think of Deliberative Polls *as if* the whole public had been given the opportunity to develop their opinions in a deliberative context. Habermas’s hypothetical is different. A “discursive process of legislation that . . . has been legally constituted” is not a concrete face-to-face deliberative encounter among citizens happening at some designated time and place. Instead Habermas is suggesting that we understand processes of legislation in discursive terms or *as if* they were structuring a type of conversation. Habermas is not saying we need to institute a discursive process of legislation in order to achieve true democratic legitimacy, but rather that the only way to make sense of liberal democratic claims to legitimacy is to understand them in discourse-theoretic terms. If we look at democracy this way, then our constitutions, rights and freedoms, our equal opportunities to participate and speak, the fair regulation of the public sphere, and the accountability of our representatives, and so on, are all to be understood in discourse-theoretic terms, that is, as a legally constituted discursive process of legislation. This way of looking at liberal democratic constitutional orders then highlights certain normative priorities and evaluative standards. The circulation of information becomes central to maintaining democratic legitimacy. Equal access to that information and to the public debates that articulate policy priorities also becomes central. Creating communicative connections between citizen’s real world problems, claims, and needs and the centers of power and decision becomes

an imperative mission in enhancing democracy. From this perspective it is clear that Deliberative Polls can often step in and perform an important function in this broader picture of deliberative democracy. But when and where a Deliberative Poll is appropriate is not a theoretical question. It is a contextually bound pragmatic question.

Let me briefly introduce three examples of relatively successful experiments in democratic deliberation, the design of which fit the context but deviated from the Deliberative Poll. The first was the establishment of Irish Constitutional Convention in 2012 (Suiter, Farrell, and Harris 2016). The Convention had 100 members: one chair, sixty-six randomly selected ordinary citizens, and thirty-three places reserved for legislators allocated proportionate to party's seats in Parliament. This make-up was an innovative departure from pure random selection assemblies and "deliberative microcosms" in bringing together ordinary citizens with the expertise and perspective of law-makers across the ideological and partisan spectrum. The Convention began with a remit to review and consider a number of constitutional questions. After much deliberation, consultation with civil society, and input from citizens at large, the Convention submitted forty recommendations to the government for consideration, a number of which would require constitutional referenda to enact. Three have subsequently gone to referendum, the most significant being marriage equality referendum of 2015.<sup>1</sup> This process is a good illustration of how to think about discursive legitimacy in concrete terms. Popular opinion and will formation took place through the triangulation of three institutions mediated by an open, free, and critical public sphere: a democratically elected Parliament, a special Constitutional Convention with a significant citizen component, and a popular referendum process. None of these institutions alone represent the definitive exercise of democratic legitimacy; the people exercising democratic self-determination can be seen in a retrospective assessment of the deliberative quality, inclusiveness, and fairness of the process as whole.

My second example is the 2018 Irish referendum on abortion, which came out of a separate Citizens Assembly of 100 randomly selected citizens. In the abortion case, members of Parliament were not invited to participate in the Assembly, as it was designed for wrestling with one issue rather than thinking through a more general restructuring of the constitution (Contiades and Fotiadou 2018). Political elites were given no role in this process for fear that they would have derailed the conversation with partisan moves. The evaluation of this process has been generally very positive (Farrell, Suiter, and Harris 2019).

From the point of view of institutional design, what is interesting here is the decision to rely on random sampling and a citizen-only assembly for the abortion question, while opting for a mixed make-up for the Constitutional Convention. This speaks to Habermas's point that the details of institutional design have to fit the situation with very broad normative ideals in the background. Fishkin is very enamored with random sampling and almost all his criticisms of other institutional designs zero in on failures to meet a high standard of random sampling (Fishkin 2018, 164). But as the Irish case illustrates, sometimes random sampling is not what is called for to initiate and support healthy debate and deliberated outcomes (Suiter, Farrell, and Harris 2016; Farrell, Suiter, and Harris 2019).

The final example I want to examine is the deliberative process in advance of the Scottish referendum on independence from the United Kingdom amended by the Scottish government in January of 2012 and held in September of 2014. (The proposition for independence was defeated.) Mini-publics did not play a large part in this process. Yet according to multiple accounts (Parkinson 2018; Tierney 2015), the wide, unstructured public debate was able to avoid the pathologies of public opinion formation so often pointed to by the new Schumpeterians, who allege that such referenda are highly susceptible to elite control and manipulation, serve to "aggregate pre-formed opinion" rather than "foster meaningful deliberation," and risk enshrining majority interests at the expense of minority or individual interests (Tierney 2015, 2).

Although the Scottish referendum was initiated from above, a number of factors mitigated against the referendum process being dominated by an elite agenda. The fact that the Scottish government had to coordinate with the U.K. government to produce a lawfully recognized process meant that the public was in on the debate from the very beginning. Such issues as, Who gets to initiate a referendum? Who gets to set the question? and, What guidelines should govern the framing of the question? were aired in public and discussed in the press. This introduced a level of public self-reflection about the process itself that made it possible to think self-consciously about what it means to reform a constitution. Public scrutiny and discursive involvement were present at all stages of the referendum, from initiation, to question setting, to the actual deliberation on the question. Meanwhile, the referendum's closest student concludes that its public deliberation phase was broadly inclusive and of good quality (Tierney 2015, 14). Two main factors contributed to its quality. The first was the length of the referendum campaign. The referendum was proposed nearly three years before it was

held and both sides had almost two years from the time the question was set to argue their cases.<sup>2</sup> “The length of the process facilitated deliberation by giving people time to learn about, reflect upon and deliberate with others over the issues at stake” (Tierney 2015, 15). But even more important than time was the development of a fruitful two-way conversation and practical cooperation between civil society and government representatives. In a post-referendum survey of activists, journalists, and academics, John Parkinson notes that “all agreed that one of the crucial factors was a decision by Scottish government not to engage in designing the process, but to step back and let activists in non-governmental organizations (NGOs) with pre-existing networks to [sic] take over” (2018, 254). The result was a lot of civil society buy-in that facilitated discussion at multiple levels, formal and informal. A purely government-initiated information campaign would not have achieved this. Parkinson quotes a representative from the Scottish cabinet office explaining: “the job of government was to be ‘host not heroes,’ to create a space for the public sphere rather than to organize it, institutionalize it and dominate it” (2018, 255). In Scotland, the referendum was supposed to function as a catalyst for a national conversation and so was designed with this in mind. Examples like Scotland, especially in comparison with counterexamples like Brexit where most agree the short referendum campaign was dominated by a number of deliberative pathologies, can tell us quite a lot about conditions, structures, and procedures that foster deliberation in the open public sphere. The answer is not always the Deliberative Poll or indeed any deliberative microcosm.

## Conclusion

The Deliberative Poll is the most successful face-to-face deliberative experiment to date. Its proliferation and adoption across the globe should gratify deliberate democrats, who can have no doubt that it is a beautifully designed tool to promote democracy. But the Deliberative Poll, like all deliberative microcosms, is but one tool in a whole toolbox of institutional possibilities. The Deliberative Poll is one from which we can extrapolate important applications to other circumstances, especially with regard to the value and creation of conditions of thoughtfulness, epistemic clarity, and open-mindedness. But it is not a cure-all for the ills facing democracy, which continue to degrade and draw attention to the broad, unstructured public sphere that is its essence.



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#### NOTES

1. The other question on the 2015 ballot was to reduce the age of candidacy for the Presidency from 35 to 21. The third question to go to referendum, in October 2018, was whether to repeal the law against blasphemy.
2. Parkinson argues that the debate actually began seven years before the referendum when the issue was first raised by the independence party (2018, 253).

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