

Response to Critics: Toward the Reform of Actually Existing Democracies

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Abstract

In this essay I offer responses to seven distinguished critics of my book, Democracy When the People Are Thinking (Oxford University Press, 2018). I defend the book, and my research program, against charges that I am too pessimistic about the public dialogue and the prospects for deliberation outside organized mini-publics. I further defend the book against the charge that institutionalization of my Deliberative Polling approach (or related models) would simply replace one form of unaccountable elite rule with another. I also engage and in many cases accept several suggestions for enhancing the normative and sociological legitimacy of Deliberative Polling, embedding it more deeply into decisional processes, and devoting further thought to certain normative, empirical, and practical issues to which I have not previously given sustained attention—including issues of inclusion that might arise from complex or ambiguous jurisdictions.

Keywords: *deliberative democracy, Deliberative Polling, public consultation, democratic theory, public opinion*

This symposium is an extraordinary collection of thoughtful perspectives on the fundamentals of deliberative democracy and my own efforts to understand and secure them in real-world settings. I am delighted that my book

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could provide an occasion for bringing such a group together. While I cannot hope, in a brief space, to deal with all their comments and questions. I will try and suggest lines of response. Hopefully, this can spark a continuing dialogue.

Grönlund

Grönlund offers an admirably lucid summary of my basic argument about deliberation and democratic control. As he recognizes, the ultimate purposes of Deliberative Polling (DP) are two. One is to demonstrate that “the people” can rule, in a meaningful sense and in reasonable fashion, given a carefully designed framework that fosters informed, consequential deliberation among genuinely representative proxies. The other is to generate and gather evidence about what such a framework should look like and how it can and should be linked to official and effective decision making.

I believe that Deliberative Polling is fulfilling its purposes, though such purposes, by their nature, may be impossible to fulfill completely. Along the way, DP has demonstrated its potential to meet what my colleagues and I consider to be, in Grönlund’s accurate paraphrase, the “four criteria for popular control of government: *inclusion, choice, deliberation and impact.*” DP uses stratified random sampling to create a highly representative microcosm of the polity—a “mini-public.” If built permanently into constitutional processes, DP would offer every citizen equal opportunity to participate at some point (or several) in deliberative policy formation. Along with inclusion, DP offers real choice to the public, as it is designed to address contested issues with plural and clearly distinguishable responses already abroad in the public discourse; DP does not ask citizens to imagine utopias. DP is deliberative in that people are not just encouraged but empowered—through information, expert facilitation, and moderated small group discussion—to think critically about competing alternatives. Finally, as Grönlund notes, DP has been institutionalized in several settings worldwide so that its outcomes directly and in some cases legally direct or constrain government action. In short, DP has had an impact, and has potential for much more.

Certainly, not all impacts are positive, and not all deliberations are productive. Grönlund identifies one of the most significant concerns raised by critics of deliberative democracy and, by extension, Deliberative Polling: that in the real world, deliberation promotes not personal reflection and intellectual growth but groupthink and ideological polarization. Luckily

for me, Grönlund himself has led the way in some important experiments designed to address this very issue. He finds that deliberation in natural settings without moderation or the establishment of group norms will, indeed, lead to polarization, as Cass Sunstein and his colleagues have shown. But he also finds that properly structured deliberation, facilitated by trained moderators enforcing norms of mutual respect and balanced discussion of competing, evidence-based arguments, actually helps groups resist polarization and, even when groups are homogeneous, polarized thinking.

This is an important finding and goes beyond what we have found in Deliberative Polls, which are, by their normal design, diverse in the composition of the small groups. Yet Grönlund's focus on the importance of norms of civil discussion to the quality and outcomes of deliberative experiences suggests that if those norms could be spread to the broader population we might build a bulwark against the very polarization that some critics of deliberative democracy fear. In this vein, my colleagues and I plan some experiments with Grönlund and his colleagues on the application of the automated moderator to populations outside the random samples of the mini-publics to see if this kind of discussion can be effectively spread to a larger scale of participation. Does it require a human moderator or can an automated one effectively engage such norms? Are there variations in the role of the automated moderator that will make it more or less effective? These are novel empirical questions which may shed light on the feasibility of deliberative mass engagement, and their answers amount to normative and strategic gambits. Why not attempt to use technology constructively for deliberation at scale rather than cede our public dialogue to the forces of disinformation and disaffection?

As Grönlund rightly points out, the entry points for actual decision need to be carefully developed for this agenda of experimentation to continue. He has arranged meetings with the Finnish Parliament in which we have participated, in order to discuss an initiative of government-sponsored deliberations on selected topics of interest to the Parliament. Stay tuned. We hope he succeeds and stand ready to help.

Mansbridge

I hope that Mansbridge is right that Deliberative Polling has “come of age.” If this is true, it is still only in young adulthood, open to all the vagaries and risks of youth in a time of hopeful exploration. Those applying mini-publics

constituted by random sampling around the world are still experimenting with different entry points for decision, the practicalities of various designs and their suitability for different kinds of input to the decision process. My book tries to make the case that for most tasks, the Deliberative Polling (DP) design has great advantages. However, I also make it clear that it is far from the best possible design. As this general research program continues, even better designs will likely be developed and even better connections to the policy, and the political process will be tested empirically. In the book I spend some space offering criteria for evaluating these various designs, Deliberative Polling included.

Mansbridge is right to identify legitimacy as indispensable to such criteria. The greater the decisional power of the DP or DP-like processes, the more pressure there is to ensure legitimacy, both normative and perceived. Mansbridge (in stark contrast to Lafont—more on that below) urges decisional power for DPs and other mini-publics, presumably to play a constructive role in the overall political system and to demonstrate that efforts to implement deliberative democracy are more than just talk.

In my view, the case for DP's normative legitimacy rests ultimately on the simple hypothetical inference: *this is what the people would think under good conditions for thinking about the issue*. Then, if one cares about democracy (or accepts the premise that democracy has a normative claim, even if over-rideable in cases of tyranny of the majority), the expression of “what the people would think under good conditions” should carry normative force and in that way have a claim to legitimacy. We have found that the basic idea of this hypothetical is simple and clear and usually resonates with lay citizens. Hence this simple rationale can do some important work, both for normative and for perceived legitimacy, provided it is clearly communicated.

While based on a simple idea, however, this argument engages some complex issues. The first complexity is that the account of “good conditions” cannot simply be a normative stipulation. It has been, and should be, itself the subject of empirical investigation about what can go wrong and under what conditions. As I discuss in the book, there is a literature on distortions of dialogue, on the various ways in which seemingly appealing or commonsensical dialogic arrangements seem either to permit the more advantaged to dominate or to germinate predictable patterns of group polarization. Either result, as a general pattern following from a given design, would undermine the claim that it is the “unforced

force of the better argument” that is determining the deliberative result. Instead it could be other forces that determine the result: power and prestige of the more advantaged, for example, or the social pressures for reaching an agreed jury verdict. Indeed, most distortions of dialogue seem to occur in jury-like processes, which incentivize social pressures for consensus and are loosely enough structured that the more advantaged can dominate. We do not see any such distorting patterns in the DP. But the point stands: the account of “good conditions” needs both normative argument and further investigation—more specifically, ongoing empirical investigation.

The second complexity is that the good conditions must actually apply to the people through some mode of inclusion. In the DP, the mode of equal inclusion is random sampling (usually stratified to ensure representativeness of various relevant groups with different interests or perspectives). So the abstract idea of offering an equal chance, familiar from lotteries to many in the public, has to be engaged here as Mansbridge notes. Note the reasons for evaluating the resulting representativeness in terms of both demographics and attitudes. If evaluation of the microcosm’s representativeness was only on the basis of demographics, it might be satisfied even if the people in a given demographic exhibited unusual interest or intense views (somewhat like the population of a primary). Hence the need for some attitudinal evaluation at the start. If the starting point of the sample is far away from that of the rest of the population then the conclusions of the deliberation would have less claim on our attention. The hypothetical inference at the heart of the DP would be undermined. At the very least we need transparency and appropriate data collection to evaluate the sample, before and after deliberation.

The third complexity is that we are talking about a representation of the hypothetical views of the broader public—their likely considered judgments as expressed by a microcosm. Real people deliberate and hopefully represent what the *rest* of the public *would* think if they were to engage the issue under similarly good conditions.

Reliance on the hypothetical views people *would* have under specified, normatively appropriate conditions has become a commonplace in the post-Rawlsian world of political theory. Theorists are constantly invoking what cognitively typical individuals should be expected to endorse given adequate information, or virtue, or incentive structure, etc. However, the Rawlsian hypothetical is utterly abstracted from all particular knowledge about one’s self or one’s society.

I contend that the microcosmic deliberative strategy is more realistic because it is more modest. It does not require anyone to ignore their personal histories or environments. This modesty has strengths and weaknesses. One strength is that we have our lived experiences as a basis for discussion and choice. Real people have experience with health care or crime or the economy or voting rights or whatever the issue might be. They bring those experiences to bear in the deliberations in a context where they can also listen to the experiences of others. A civil, reason-giving environment will allow deliberation to flower. Those voices will also contribute to perceived legitimacy if the process of their airing and sharing is connected to media outreach that communicates it. Others, outside the sample, will recognize their voices and concerns. They can see themselves or their perspectives in the dialogue.

A weakness of this strategy is that we live in a world of manipulation and disinformation whenever contested issues are at stake. People do not come with a blank slate to ponder carefully vetted briefing materials in shared discussion. Rather they bring their impressions and preconceptions, sometimes artifacts of persuasion campaigns directed at the broader public, or specific segments of it. Can civil, face-to-face discussion with diverse others overcome the effects of disinformation and motivated reasoning? This is an empirical question. My colleagues and I are cautiously optimistic about it, but it requires more focused and systematic work.

What is not in doubt, at least for me, is that other efforts to express a normatively relevant hypothetical, based on a decision process, have gone far down the road toward abstracting completely from the actual voices of real people under real conditions. The Rawlsian journey began with an early article “Outline of a Decision Procedure for Ethics,” which posited only modest impartiality requirements to abstract from the information in actual life.¹ However, progressive refinements eventually yielded a process which shielded the decision maker from virtually all the particulars of actual life. Having spent years in a previous academic life writing within a Rawlsian frame, I eventually concluded that despite its enormous fruitfulness as a theoretical perspective, it yielded a dead end for decision-making, even for fundamental first principles. Even slight differences among assumptions in the original position, all intuitively plausible, lead to starkly contrasting first principles.² This conclusion is not original with me, but it helps explain the change of direction of my work from the theory of justice to the theory—and practice—of deliberative democracy.

Lafont

Amid this change there is, of course, continuity. As mentioned, we can think of deliberating mini-publics as a much more modest version of a hypothetical decision procedure. They offer a version of the democratic process in which the participants are engaged to revise and refine their views under good conditions—through deliberation (just as Madison thought the deliberation of representatives would “refine and enlarge” the views of their constituents). These refined views can allow for real decisions that connect to the public’s actual fundamental concerns. The views are the actual ones by the end of the deliberations for the members of the mini-public. But (assuming the significant opinion change they often facilitate) they remain counter-factual for the rest of the population.

The challenge of perceived or sociological legitimacy—of the acceptance of the process and its results by the broader public—is Lafont’s focus. She asks, why “blindly follow” a decision in which they had no part and may barely understand. The key both for normative and sociological legitimacy is the word “blindly.” The microcosm needs to be connected to the broader public so that people who are not participants can understand the reasons and concerns being weighed on either side and ultimately, why the deliberations came out the way they did. In my view a mini-public should have the same sort of connection to the broader public that J. S. Mill envisioned in *Representative Government* for a “Congress of Opinions,” his account of an ideal parliament. All of us should be able to see our views expressed as well or better than we could express them ourselves and then countered by others expressing different perspectives as well or better than most others holding those positions could express them. Moreover, as Mill writes, “those whose opinion is over-ruled [must] feel satisfied that it is heard and set aside not by a mere act of will but for what are thought superior reasons.”³ Even the wide adoption of this *aspiration* is not easy to achieve starting from a world of motivated reasoning where people who feel strongly talk, but may not listen to those with whom they disagree. On the other hand, if such an institution takes root, the social norms and practices they facilitate may also spread.

To accept the result from such an institution, should one exist, is not to follow others “blindly” but on the basis of articulated reasons which have been weighed against other articulated reasons in a process that represents everyone and in which you can see your viewpoints and interests represented. If such institutions were to become commonplace, I believe they

would acquire empirical (psychological and sociological) legitimacy as people came to understand them by participating in them.

The idea is really the Athenian idea of rotation. People do not, and cannot, deliberate all the time. But they can have rotating opportunities at various levels of government. Mansbridge lays out the vision very well when imagining a polity “in which almost every citizen would have participated at least once and perhaps several times over a lifetime in a Deliberative Poll” or similar deliberative microcosm. Rotation alone is not sufficient to achieve legitimacy. It should be combined with three related strategies: education, organized mass deliberation before elections (including referenda, where they occur, perhaps at the state level), and the use of new technology to expand the deliberative sphere beyond the microcosms.

All of these points are mentioned in the book (especially in Part IV), but perhaps not adequately emphasized. They are also the substance of my answer to Chambers’ charge that I am completely reliant on one model of citizen participation, the randomly selected microcosm. On the contrary, I agree with her recommendation to “[take] the lessons learned in Deliberative Polls outside of Deliberative Polls to democracy at large” rather than “address the question of citizen competence entirely through the proliferation of one institutional model. One such lesson, with broad applications, is that moderated discussion with diverse others can engage citizen capacities to weigh the reasoning on either side of even complex public issues, and confront the hard choices posed by real policy trade-offs. Providing information is not enough. The magic elixir of deliberation is civil discussion with diverse others. Or that is the key empirical lesson thus far, in my view. In aggregate, the capacities of the public are real, not just folklore or wishful thinking, as Achen and Bartels would have us think. The people are not incapable of self-governing. Rather, their institutions fail to prepare or enable them to do it.

One way of addressing this failure is through the schools. Under Alice Siu’s leadership, we have experimented with engaging students in a form of active deliberation as civic education. We have even engaged students in developing the agenda and briefings for a Deliberative Poll-like experience and then implementing it with the participation of virtually the entire senior class at three local high schools. Results show effective content acquisition, reason-based opinion change, and mutual respect on contentious issues.⁴ One attractive aspect of this form of civic education is that it would provide a route to scaling the DP experience through dissemination of curricula.

Let's take that idea further. Some years ago, Bruce Ackerman and I wrote a book called *Deliberation Day*, which proposed engaging very large numbers of voters in a Deliberative Poll-like experience before a national election. We envisioned millions of voters meeting in schools and other public places, with payment of an effective incentive for participation in small group discussions and plenary sessions where campaign representatives would answer small groups' questions. There would be no Deliberative Poll results from a microcosm, but if the process involved large numbers, we could expect exit polling (from a stratified random sample of all those who participated) that would amount to much the same thing.

Imagine if everyone actually deliberated. The results would no longer be hypothetical or counter-factual. Even in anticipation of such an event candidate behavior would change. As Sintomer points out, the idea was treated as a curiosity at the time, primarily because it seemed impractical. However, technology makes it somewhat more practical and we intend to pilot it and see if it can spread online.⁵ Indeed, I am sure we have only begun to see the constructive possibilities of technology for creating a more deliberative society. Such efforts need to be a focus of our shared research program—innovations to help nurture and spread deliberation outside mini-publics constituted by random sampling. My active commitment to them is also my ultimate answer to Lafont's concern that I am too focused on empowering the mini-public. Immediately, I disagree that my work fits into the box she describes for an "epistocrat." My aim is to improve collective public will formation, in order to make democracy more meaningful. It is not to discover truths that may be revealed by public deliberation. This does not mean that public opinion is arbitrary, but it is, ideally, a matter of thoughtful collective decision arising from considered judgments after weighing competing arguments.

The real challenge of Lafont's important criticisms lie in her discussions of heuristics as a "second best" and of the issue of resting "decisional power" in the microcosm. Unlike Mansbridge, Lafont appears to reject most or all "decisional power" for microcosmic deliberation. Her objection is that this leaves the vast majority of the population in the position of "blindly" following the conclusions of deliberations in which they have no part. Lafont and I agree that what I call "a deliberative society" is the first best solution to the problem of self government. If everyone could have adequate chances to deliberate, either through rotation or through simultaneous realization of deliberation (as in the *Deliberation Day* proposal) then it is arguable that all four principles of democracy—political equality, participation, deliberation

and non-tyranny—could be realized simultaneously. That is a first best solution and it would satisfy my criteria for collective popular control.

It is in those (currently ubiquitous) cases where large portions of the population cannot be enabled or enticed to engage in substantive deliberation that Lafont parts company with me. She quotes my suggestion that we “build on the important work with heuristics to allow a representative sample of the public to deliberate and make its recommendations and then somehow to make those recommendations effectively available to many other voters. This strategy would spread cues that resulted from the public’s extensive deliberations. It would, in effect, allow the voters in microcosm to make recommendations to the wider electorate. . . . *In theory, if the people’s deliberations create the cues and the rest of the public follows the cues that could realize a form of deliberative popular control*” (51; Lafont’s italics). Lafont invokes the “general theory of the second best” to challenge such a combination of deliberation and political equality as a second-best solution.

Hers is an intriguing argument. The general theory of the second best in economics, which she cites, is specifically directed at achieving the “Paretian optimum”: an outcome in which non-realization of one important factor in an ideal solution may actually make non-realization of the other main factors preferable to their maximum realization in defining a second-best solution. This may seem counter-intuitive. If you need to do the best possible on four dimensions, and can only do three, why not maximize those three? The reason is that in trade policy and in some other areas, maximizing the realization of those three, absent the fourth, may actually make overall trade relations and outcomes worse. But this claim depends on specific empirical connections.

The empirical question is, for democratic theorists, what is the relationship between the four principles of political equality, participation, deliberation and non-tyranny? Will a sacrifice in one mean that increases in the others would make things worse? In democratic theory, it does not seem plausible that maximizing political equality and deliberation without mass participation will make things worse. Our criteria for better and worse come from the criteria for popular control. Political equality and deliberation without maximizing mass participation will produce a *kind* of popular control. It would be more effective and more empowering to the public if it were accompanied by mass participation (as in a Deliberation Day scenario) but it is still a mechanism of thoughtful popular self-government absent that factor.

I do think Lafont has a point that to use the cue of DP-generated results without any effort to transmit the considerations behind it, would fail to stimulate further public deliberation and, to that degree, would unnecessarily fail our shared ideal. I do not see that it would backfire or be counter-productive (as in the conundrum of the second best in economics) but I do think it would be a lost opportunity. Thus maximum transmission of the reasons behind the results of deliberation are vital efforts to spread the *experience* of deliberation.

Had the U.K. held a national Deliberative Poll on Brexit before the referendum (as had Denmark before the Euro referendum and Australia before the Republic referendum), the cue that X percent, *after* deliberation, supported leave or remain, could have altered the referendum outcome if effectively communicated by the media. Admittedly, such a process is more a third-best than a second-best solution. The real second-best solution would be to use the results to dramatize the reasoning behind the conclusion, and to spread opportunities to discuss with the same vetted and balanced materials. Lacking full realization of the ideal of a deliberative society, however, I do not see the wisdom in doing nothing or in giving up on the prospects for more deliberative self-government. Spreading the experience will spread the demand and help us get at least incrementally closer to the ideal.

Chambers

To do nothing is to leave us at the mercy of what Chambers calls my “diagnostic Schumpeterianism.” In Chambers’s words, I paint “a very glum picture of democratic life outside the Deliberative Poll,” noting, as I do, the dangers of misinformation, manipulation, public inattention, and elite domination. This “glum picture” is not just a matter of opinion. It seems confirmed by a great deal of evidence, not just gathered by me, but by many others, some of it documented in the book. There may well be rare occasions where a national debate approximates a constitutional moment—where it is thorough and extended and evidence-based and largely free of distortion and manipulation. Perhaps, as Chambers asserts, the Scottish referendum is an example. But such cases are and will remain unusual because the referendum is a flawed instrument vulnerable to the darkest campaign arts, as we saw in Brexit and as we know from its long history going back to Mussolini and, indeed, Napoleon.

But it need not be that way. Referendums can be set up to be productively deliberative, but they would require departures from current common practice. Suppose the Brexit case had been organized as what I call a “deliberative referendum” in the book (187–88): an initial referendum, preceded by a Deliberation Day for mass discussion, followed by a period of reflection for two years, and closing with a second round of deliberation and a final referendum. For the most important constitutional decisions, a second referendum, built into the process from the start, permits a long period of discussion and reflection that enhances potential for better decisions without appearing to disregard the people’s initial decision (the current conundrum in the U.K.).

As for Chambers’s criticism that I am overly enamored with one design. I fully admit that there are other mini-public designs and these need to be tested empirically. Perhaps the Irish Citizens Assembly was a great success, but I do worry about a design combining members of Parliament with citizens in the same deliberations. A key design consideration is not to introduce inequality into the deliberative process itself. But this is an empirical question that needs further investigation. My focus on the DP is supported by the fact that it has a good record of satisfying the design criteria set out in the book. As the world collaboration on mini-publics continues, there will be more designs and more data. The possibilities are endless and only beginning to be explored.⁶

In the book, I quote Chambers’s comment that “Habermas is maddeningly vague when it comes to the details of deliberative democracy” (156). In her critique, Chambers explains that this is not a criticism of Habermas, but a recognition of his insight that statutes can only “claim legitimacy” if they gain public “assent” through a discursive process “that in turn has been legally constituted.” But seeking imaginary discourse conditions that would have to be legally constituted is of little help in designing empirically supportable or testable conditions for deliberative democracy. Nor does it help us identify which of our *actual* legally constituted conditions for legislation may be vulnerable to the criticisms of a “diagnostic Schumpeterianism.” Real, legally constituted conditions for legislation may be (are!) open to distortion and manipulation. Without further specification of possible imaginary legally constituted conditions, however, we are at an impasse for making practical improvements. Whatever the merits of the Habermasian project, and I believe they are very great, all of us living in actually existing democracies face the challenge of how to improve the public sphere that he has so brilliantly characterized and imagined. My theoretically much more

modest strategy is to make the application of deliberative democracy practical in the version of that sphere that we inhabit.

Sintomer

In contrast to Chambers, Sintomer strongly endorses my pessimistic account of current democratic practice. He quotes me approvingly: “political and policy elites mostly manipulate public opinion to electoral advantage and then invoke it afterward as a mandate.” I, in turn, strongly embrace Sintomer’s astute reading of my work as an attempt, through deliberative microcosms, to “give voice to the voiceless.” Sintomer argues that the development of such attempts in the modern era has faced three risks—risks that have been partially overcome but pose a continuing challenge. The first risk is that of rigidly instituting a single ideal model that would restrict “the flow of democratic imagination.” My hope is that the wave of experimentation we are presently experiencing will satisfy Sintomer on this count, at least for now.

The second risk echoes Lafont’s concerns: that the confined spaces for organized mini-publics are easily disconnected from the broader public sphere. Perhaps they will create “a new kind of elitism” leaving out the vast majority of citizens who are not randomly selected. As we have seen, this is a genuine problem. In my view the solution is to connect in every way possible the citizen deliberations within the mini-public to the broader public sphere, dramatizing the reasons for its conclusions and invoking them in the decision process. Connect and amplify rather than isolate. As our media systems are transforming themselves, we have probably only seen a small portion of what is possible for live-streaming and social media connectedness.

The third risk is that the use of mini-publics becomes a largely top-down affair, preventing opportunities for issues and concerns to bubble up from the people and/or from social movements. Sintomer is right that I barely use the term “social movements” in the book. But I do not believe that the deliberative process need be top down. The Ulaanbaatar city project on the priorities in the master plan, for example, was the product of years of open meetings and public consultations to suggest the agenda of projects. The Power 2010 project in the U.K. was a Deliberative Poll on political reform where the proposals were gleaned from a large number of public suggestions submitted online. The Texas Deliberative Polls on energy choices was itself

the product of years of mobilization by the Environmental Defense Fund and other groups to require public consultation before decisions could be made. Finally, in the Mongolian constitutional revision process there were proposals submitted by a wide range of political parties for consideration at the Deliberative Poll. Many of these proposals reflected the demands of social movements for one sort of change or another. And many were solicited in public meetings that were held around the country.⁷

Hence, this is an area of experimentation where crowd sourcing, the organization of social movements, as well as the mobilization of political parties can all be engaged to get attention for proposals. Such processes can be bottom up as much as top down and should be part of the agenda-setting process for organized public deliberation.

Warren

Warren lucidly identifies the normatively driven agenda of empirical work that my colleagues and I are trying to explore with the DP and its research programs:

Can social inequalities be overcome within deliberative processes? Does more deliberation tend to polarize opinion or to [encourage] consensus? Do more vocal and/or educated participants distort opinion as it is formed? Can and do ordinary citizens become informed enough to become lay experts on the matter at hand?

But Warren also offers six key areas in which this research program is not enough. I agree with all of them. We are still at early stages.

First, Warren writes, “we still know very little empirically about the democratic legitimacy of deliberative minipublics.” He speculates that citizens seem to like them when they know about them. But why? How do we further establish their legitimacy? Mansbridge raised this question as well. Her answer, which I find compelling, is that if more people experienced them their legitimacy would spread more easily. Experiencing them from the inside is probably the best route to public understanding and endorsement.

Second, Warren notes that I say almost nothing in the book about defining the relevant demos to which random sampling should be applied. This is a fair critique. However, I would note that as the applications of mini-publics, Deliberative Polling included, have moved from media events

to policy inputs for real decisions, the boundaries of the relevant demos are more frequently pre-determined by the boundaries of the relevant polity that will make a decision. Just as Warren says that the political reform of British Columbia had to take the boundaries of the province as defining the relevant demos, many other decision problems have a clearly determined demos. For a media event one might draw a different boundary, but for a project aspiring to decisional relevance for a given polity, the boundaries of that polity are likely to be already determined.

Even so, Warren is right that the boundaries problem is under-theorized and deserves more attention. Here it is worth adding that there may be cases where an argument from affected interests, or from cross-border jurisdictions, may permit the demos for a DP to take into account additional populations and interests. The DP can, in theory, cross jurisdictions. For example, the DP on electric utility choices conducted for Southwestern Electric Power (Swepco) covered the relevant populations in Arkansas, Texas, and Louisiana.

Third, Warren shrewdly notes that “random selection will usually exclude people who are intensely interested in an issue,” and while this may be justifiable from the standpoint of democratic theory, it often poses political obstacles. Intense interests may think they will get a better deal from status quo decision-making than from a deliberative mini-public in which intensity and mobilization of those who feel strongly is not guaranteed to carry the day. If organized interests currently have an effective veto they may not want to give that up. Here again, Warren is correct that the transition from what Robert Dahl called “minorities rule” is under-theorized. It will require normative engagement with the claims of those who argue that “engagement” should be rewarded and that academic “experts” are suspect. It will also doubtless require empirical experimentation to see what transitions are actually feasible.

Fourth, Warren asks why “elected political elites might make room for mini-publics within the legacy institutions of representative democracy.” Once again, he is right that we have no general theory about this. We have only cases offering different insights into motivations for different entry points. A case since the book was published is instructive. President Moon in South Korea left the final decision on whether to complete construction of two nuclear reactors to a randomly selected mini-public convened on the model of a Deliberative Poll. Why would he do this? One thought is that it was a hard choice and it allowed the public to share responsibility. Other cases along these lines are discussed in the book.⁸ I suspect

that if the process becomes more widespread, political incentives for such burden-sharing between elites and publics will spread to other kinds of cases. The story is still to unfold.

Fifth, Warren argues that:

We need to build theory to help us to judge how citizens might divide their participatory and deliberative labours in ways that are democratic. Within a good division of labour, there will be a high density of trusted information proxies, as citizens rely on one another for cues about how and when to participate. One of the most interesting possibilities for deliberative minipublics is that they can function as trustworthy information cues by those who are not directly participating or deliberating.

Here, Warren is taking a position in stark opposition to Lafont's on cues and heuristics, arguing that if we want to empower and encourage regular and informed participation among the citizenry at large, then we need to highlight cues provided by representative deliberative processes. After all, in the course of their day-to-day life, people will come across cues. Why not have them produced thoughtfully, representatively, and systematically, rather than arbitrarily? Now for Lafont, such an effort undermines thoughtful democratic agency. But if efforts are made to connect such cues to the reasoning behind them (why do people support or oppose X after deliberation) then the process is not bidding citizens to follow anyone "blindly." It may lead to more effective, deliberative self-government, even if it does not lead to widespread deliberative participation. Hence it is second, or third best, but perhaps realizable.

Sixth, Warren also argues that we "need to recognize the very large extent to which democratic innovations are driven by governance problems outside of the traditional political systems altogether." He asks us to theorize further about the use of mini-publics "within administrative systems, driven by bureaucrats who are finding that electoral democracy isn't providing the legitimacy they need to govern." I agree. Indeed, one of the most effective entry points we have encountered was the Texas Public Utility Commission fostering public consultation on the state's future energy choices in all eight service territories of the electricity companies. The decisions of the commission to approve "Integrated Resource Plans" based on public consultation allowed a key entry point for public deliberation. In an administrative context, the commission could make decisions on the merits, based on public input, without regard to partisan electoral considerations. Regulatory

commissions and the administrative state represent a fertile ground for this sort of consultation and merit future emphasis.

Lessig

Lessig places his interest in deliberative democracy within the broad historical sweep of how two technologies—broadcast television and public opinion polling—briefly coincided to make collective public opinion and public will formation possible at a national level. The co-development of broadcasting and polling “helped construct the normative significance of “we the people” in the minds of the world.” Despite many limitations, the network news broadcasts (and some other media) provided easy access to a shared public sphere. Public opinion polling provided responses to the collective discussion and the unfolding of news and factual reporting. This conjunction helped fulfill James Bryce’s prophecy that if only someone could solve the “mechanical difficulty” of how to measure the public’s views, the U.S. would lead the world in the coming practice of “government by public opinion.” Gallup provided a solution to the mechanical difficulty and tirelessly invoked Bryce in explaining his rationale. Television later stimulated a degree of shared information and discussion to make a sort of shared public sphere possible. Lessig offers a brilliant analysis explicating the real implications of technologies whose convergence we took for granted—until recently.

Now we live in a post-broadcast age of social media and filter bubbles driven by algorithms that yield like-minded and one-sided interactions. The result is fragmentation, polarization, ignorance, and partisanship. No longer do we have anything like a shared public sphere where arguments offered are answered by others and people can draw their own considered conclusions. The basic Millian prescription that the cure for the ills of speech is more speech no longer holds for those who will never hear the other side of the argument.

Gallup’s vision was for his polling to provide the unofficial voting mechanism for something like the “town meeting” adapted to a national scale. What we would now call the media system (initially radio and newspapers, then later television) would allow everyone to consider the relevant arguments. It would be as if “everyone is in one great room,” just like a town meeting.⁹ Now that we are fragmented into our filter bubbles, Lessig sees the role that deliberating microcosms could play in modelling both

dialogue and decision across our disconnections. I believe he is right that this is a part of the rationale for deliberative democracy that becomes even clearer in his presentation than in mine.

Most importantly, Lessig advances the discussion of potential entry points for deliberative democracy in the American constitutional process. His proposal for multiple “shadow conventions” built around the Deliberative Polling model would bring representative reason and reflection to any article V convention that could consider constitutional change. I recognize that there are terrible risks in calling the latter. That is at least partly because the current process of moving toward one is largely one of mobilization and participatory democracy. Adding deliberative democracy to the mix can only help by producing more representative and more thoughtful input. And at some point, we will need to figure out how to practically make changes to our most unamendable of all constitutions. We need to revise the constitution in so many ways, but we also need to revise the process.

Lessig also grapples productively with the debate over publicity versus confidentiality in constitutional deliberations—a debate successfully managed by the founders who deliberated without publicity during the process itself. Lessig thinks the deliberations should be sequestered like a jury. I think there is a lot of force to his argument in an age of social media and disinformation. On the other hand, such a strategy puts even more pressure on the convention and its participants (in all five of his simultaneous cases) to have an effective post-event media strategy. One of the weaknesses in the British Columbia Citizen Assembly was that the public did not know much about its deliberations so it was not prepared to weigh its results in their voting decisions. Since it is the process that legitimates the results, the process has to be established as the “poll with a human face” in the public mind. Its reasoning on key issues has to be clear with effective outreach. I think this communicative strategy is part of Lessig’s proposal, and I hope that he or others will devote imaginative and experiential energy to developing it.

Levinson

For decades Levinson has understood better than almost anyone else what I am trying to do with deliberative democracy. He anticipated challenges and roadblocks to the effort, often before I did. In its earliest days, he warned

me about how intense partisanship might undermine my hopes for deliberation; how “team spirit” could easily supplant any evidence-based rationale for a particular vote—or for voting at all. In the United States, the partisanship and polarization have only gotten worse in the time since, and the pretensions of our current institutions to embody deliberation by representatives seem more and more hollow. (Who now seriously refers to the Senate as the “world’s greatest deliberative body”?)

My first reaction to Levinson’s warnings about parties and partisanship was to make it a positive argument for deliberations by the people. If we could not expect elected representatives to deliberate that was all the more reason to turn to the people themselves, and to experiment with institutional designs that might foster their deliberation. While I clearly believe there is merit in this approach, it goes only so far. At some point, when deliberative democracy efforts, including Deliberative Polling, truly “come of age,” their supporters will want them to be more than just talk. They will need to be consequential in order to contribute to self-rule. And at that point they will run up against partisan obstacles, both to the convening of the mini-publics themselves and to the meaningful application of their results.

Levinson is also right to point out the challenge to any design which requires “thinking like a social scientist” to achieve legitimacy or widespread acceptance. Hence my earlier discussions of long-term strategies in response to Mansbridge, Lafont, Warren. People accept lotteries if they might be on the winning end of the transaction. Perhaps if learning deliberation by doing it is spread in the schools, the approach can find long-term and widespread acceptance. We need to do something. As Levinson warns, modern proponents of what used to be called “benevolent despotism” wait for the right opportunity to fill the breach between our own inspiring political ideals and our dispiriting political reality.

I am gratified by the hope Levinson finds in the potential of deliberative designs to reframe the focus of political theory away from political culture and toward the design of institutions. But I think both are actually necessary—culture and institutional design. We need a more deliberative political culture combined with designs that visibly support it. The two can be reinforcing. Drawing on some of the cases in the book, deliberating microcosms have brought wind power to Texas, helped reform the Japanese pension system, helped de-segregate the Roma-only schools in Bulgaria, mandated heating and insulation for the schools of Ulaanbaatar (the coldest capital city in the world), secured sewage treatment plants

in a township in China, and improved the educational prospects of girls in rural Uganda. In all of these cases and more, deliberative democracy methods have been employed to influence decisions and they have produced thoughtful and widely supported decisions—rather than deadlock. Ultimately such implementations are what we need to demonstrate that people are capable of self-rule and that technocratic elitism (arguably embodied in the Singapore model) is not the only viable response to the crisis of democracy.

Democracy is under threat around the world, because it is entirely identified with the neo-Schumpeterian model of party competition and—in an age of filter bubbles and polarization that Lessig describes—that model seems likely to deliver deadlock more than effective decision. Democratic theory cannot help meet this threat so long as it, too, is hampered by outdated thinking and gridlock. If nothing else, I hope that *Democracy When the People Are Thinking* helps to open up the field of democratic theory to its responsibilities and potential. As Levinson notes, the book may be difficult because it crosses sub-fields. It combines quantitative analyses with normative argument. I think that is what is necessary if we are to arrive at the empirical assessment of normative democratic designs. We can't just imagine that a design works. We can't just stipulate. We need to explore the viability of new institutional designs empirically, while we are, at the same time, always engaged in the normative debate about what it would mean for such designs to succeed.

I hope this symposium promotes and contributes to such self-reflective inquiry and debate. It is certainly the best collection of interlocutors I could imagine for such a dialogue.

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NOTES

1. John Rawls "Outline of a Decision Procedure for Ethics," *Philosophical Review* 60, no. 2 (April 1951), 177-97.

2. Most notably compare the Harsanyi model of the original position in which one knows one has an equal chance to be anyone and the Rawlsian model in which it is simply uncertain (without the further specification of an equal chance). One leads to average utility and the other is alleged to lead to Rawlsian justice.

3. John Stuart Mill, *Considerations on Representative Government* (repr. Amherst, NY: Prometheus Books, 1991; first published 1861), 116.

4. <http://cdd.stanford.edu/2016/report-on-deliberative-polling-for-summit-public-schools-voting-rights-and-being-informed/>.

5. Based on what we have learned from the online version of the DP, conducted with small group video-based discussions, we have a working version of an automated moderator. My center at Stanford shares an NSF grant with my Stanford colleague Professor Ashish Goel in Management Science and Engineering. His team has developed the technology. Our plan is to recruit participants via social media and use an algorithm to assign them to diverse small groups. They will deliberate using video-based software convened by our automated moderator. The automated moderator has now been well tested and it ensures roughly equal discussion by controlling the talking time and the speaking queue. It draws on the intelligence of the group to determine if the discussion is going off track. It takes the group through a prepared agenda of policy options and arguments for and against each proposal, culminating in a group process to prepare an agreed question. We will pilot this in the presidential campaign with the groups posing questions to campaigns that will be posted on YouTube and/or other social media. The idea is to spread the experience of moderated small group discussion with diverse others to as many as possible.

6. One promising example might be to convene a national face-to-face Deliberative Poll to select an agenda, then to have the group continue its deliberations online via video-based small group discussions and then to have it reconvened in person for climactic sessions to close the deliberations.

7. Sintomer quotes a critical article which cites flawed question wordings in the Deliberative Poll. However, none of those questions existed. We wrote a reply published in the same journal available at: <http://constitutionnet.org/news/deliberative-polling-constitutional-change-mongolia-unprecedented-experiment>. Even in a polarized atmosphere with disinformation, the DP process seems to proceed successfully.

8. See, for example, the discussion of Italy's Regione Lazio DP, page 214 n52 of my book.

9. George Gallup, *Public Opinion in a Democracy: The Stafford Little Lectures* (Princeton: Princeton University Press, 1939), 15.