

# Deliberative Polling Comes of Age

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## Abstract

*Democracy When the People Are Thinking* reveals how *Deliberative Polls* are today becoming embedded to various degrees in the policy processes of some democratic states. Some are legally required and even given close to decisional power at points in the democratic process. Here I warn that the more powerful *Deliberative Polls* and other *minipublics* based on “civic lotteries” become—the more they make important decisions instead of merely giving advice—the more they will come under attack from individuals and groups who benefit comparatively from traditional democratic processes. The more they come under attack, the more they will require both normative and perceived legitimacy. Robust legitimacy derives not only from appropriate delegation but from the design and the public presentation of the *mini-publics* themselves. A contingent analysis argues that the more embedded these institutions become in the state, the more important it will be first to ensure and then to publicize effectively the representativeness of the randomized assembly, the balanced and comprehensive nature of the materials and experts that the citizen deliberators consult, and the quality of the deliberation. Some practical suggestions follow.

**Keywords:** *normative legitimacy, perceived legitimacy, contingent analysis, political embeddedness, power, minipublics, representativeness, balanced materials, deliberative quality, civic lottery*

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With James Fishkin's new book, *Democracy When the People Are Thinking*, Deliberative Polling has come of age.<sup>1</sup> To the best of our current knowledge as reported in this book, Deliberative Polls and other well-structured randomized mini-publics are good both for the citizens who participate in them and for reasonable decisions. If these two features of Deliberative Polls continue to hold, it would probably benefit democracy if Deliberative Polling or similarly structured mini-publics became more embedded in the policy processes of democratic states. By "embedded," I mean legally required at certain points in the democratic process and given deciding power at certain points in that process. Yet the more Deliberative Polls make decisions instead of merely giving advice and the more important those decisions are in the polity, the more they will come under attack. The more powerful they become, the more they will need legitimacy. I therefore focus here on mechanisms for creating political legitimacy for Deliberative Polls and other randomized mini-publics, under a contingent analysis arguing that the more embedded these institutions are in the state, the greater must be their normative and perceived legitimacy.

As this book demonstrates, Deliberative Polls are now mechanisms for the exercise of citizen political agency in many venues. The state of Texas in the United States provides a relatively typical instance of the *shallow* embeddedness of institutionalized influence rather than direct or indirect agency on the part of the citizen deliberators. From 1996 to 1998, when the state utilities were deregulated, the state Public Utilities Commission, required by law to "consult the public" on its decisions, convened a series of Deliberative Polls for guidance. On the basis of significant opinion shifts after deliberation,<sup>2</sup> the Texas commission introduced what became the biggest wind-power production project in the United States. In Mongolia in 2017, the most *deeply* embedded instance, the parliament passed a law requiring Deliberative Polling as public consultation both before the parliament could consider constitutional amendments and before local development funds could be distributed. Although these instances reflect different degrees of political embeddedness, in each case they were commissioned by legally empowered administrators who committed themselves in advance to accepting the decisions of the citizens gathered in the Deliberative Polls.

What normative arguments for such procedures and outcomes can be offered? First, authorized delegation. In each of the instances above, and so far in all other instances of citizen influence through embedded Deliberative Polls, any direct power of the Deliberative Polls has been mediated either by

the parliament (as in the Mongolian constitutional arrangement) or (as in Texas) by an administrator, who in democracies is appointed by democratically elected legislators, executives, or some longer line of delegation. The administrators may commit themselves in advance, promising to implement whatever the citizens in the Deliberative Poll decide, but if the result should be significantly different from what the democratically elected legislature or executive is willing to accept, that legislature/executive could legally nullify the process and even remove the administrator. The authorized delegation and potential veto of the democratically elected legislature or executive confers some normative procedural legitimacy on a Deliberative Poll. Yet despite the normative legitimacy derived from delegation and despite the legal recourse that the legislative or executive branch technically has in such cases, such delegation alone will usually be insufficient to generate a high degree of perceived legitimacy, that is, citizen respect for the resulting decision, when the public does not understand, or have a lived respect for, the process itself. Thus, to play an empowered role in democratic political systems, Deliberative Polls and other such mini-publics must also generate their own independent normative and perceived legitimacy. The more power, the greater the need for such intrinsic legitimacy.

Deliberative Polls and other randomized mini-publics have access to several possible intrinsic sources of legitimacy. Normative legitimacy derives from the fairness of the procedure, including a) the representativeness of the randomized assembly; b) the balanced and comprehensive nature of the materials and experts that the citizen deliberators consult; and c) the quality of the deliberation. Normative legitimacy may also derive from the positive effects of citizen participation in these groups on the democracy as a whole. Perceived legitimacy derives both from these sources of underlying fairness and quality in the procedure and from the ways that fairness and quality are made manifest to the public. Over time, perceived legitimacy may also derive from the positive effects on citizens after participating in such deliberations.

On the question of representativeness, Deliberative Polls have relatively high legitimacy among existing randomized mini-publics, primarily because their considerably larger size, from approximately 150 to 500 participants, makes them more representative of heterogeneous populations. Their size also makes comparisons between opinions before the discussion and after the discussion more frequently statistically significant and therefore reasonably more convincing to the administrator or the public taking the participants' advice. In addition to producing an effective size, the

organizers of Deliberative Polls make significant efforts to attract the kinds of participants who might otherwise not attend, by offering honoraria in some cases, holding the event and providing good rooms in an attractive hotel over a weekend, paying travel costs, and making repeated attempts to contact and attract those who initially do not respond before digging deeper into the sample to bolster the representativeness of the eventual group on important political and social dimensions.<sup>3</sup> This large size and these significant efforts, however, have a downside: Deliberative Polls are very expensive—in the United States, about one million dollars for one a single 200-person event. This amount is almost prohibitively expensive for the average academic, nonprofit, or grant-maker. If randomized mini-publics become more empowered and come under attack from opponents, sufficient size and high response rates may begin to pose a far greater challenge to establishing legitimacy than they do now. Particularly if those mini-publics lose their current novelty, generating high response rates is likely to become even more expensive.

On the issue of materials and experts, Deliberative Polls and several other randomized mini-publics have also achieved high standards. Yet these efforts too are expensive. It takes time, contacts, and good mediation to get organizations on different sides of an issue to agree on materials and experts. So too with facilitators: the quality of a facilitator is often important for the ensuing quality of deliberation, and good facilitators are likely to be expensive. Legitimacy costs money.

The quality of deliberation is not easy to measure, despite the existence of a good Deliberative Quality Index originally designed for legislatures.<sup>4</sup> Lack of polarization is one measure of quality. Deliberative Polls do not polarize their participants, in contrast to the pattern Cass Sunstein predicted.<sup>5</sup> Another measure of quality is the equal opportunity to exercise influence. Alice Siu has shown that in Deliberative Polls, although the more educated tend to use more words and give more specific reasons for their judgments, they have no greater effects than others in changing group opinion.<sup>6</sup> Equal influence is not a standard for deliberative legitimacy, but Siu's data do suggest a relatively equal opportunity to exercise influence, which is an important standard for democratic legitimacy.<sup>7</sup> Quality of deliberation can also be judged by the perceptions of participants. In Deliberative Polls, large percentages of participants usually give high ratings to all elements of the process, particularly the small group discussions. In each instance that I have investigated, they always give high marks to the moderators for making sure opposing arguments are covered and for not imposing their

own views. Most importantly, they typically agree in high percentages with the statement, “I learned a lot about people different from me—what they and their lives are like.”<sup>8</sup> This positive perception seems to be shared by participants in most well-structured mini-publics, such as the constituent internet meetings with representatives that Michael Neblo and his collaborators have studied,<sup>9</sup> the small Oregon Citizen Initiative Review group that Katherine Knobloch and John Gastil have studied,<sup>10</sup> and the members of the Citizens Assembly on Brexit that Alan Renwick and his collaborators have studied.<sup>11</sup> In these cases, legitimacy is the product of thoughtful design; cost is not a major factor.

Harder than measuring the quality of deliberation is measuring the effects of deliberation in Deliberative Polls and other randomly selected mini-publics on democracy more broadly. The participants themselves seem to think that these effects will be good. Individually, the typical kinds of changes in participants’ beliefs in their own political efficacy after deliberation are probably good for democracy, because even agreement with a usually false statement such as “public officials care a lot about what people like me think” tends to be correlated with willingness to act politically. Thus overall, it seems likely that participation in Deliberative Polls and other mini-publics will empower individual citizens.<sup>12</sup> Collectively, the effects might be greater. Large polities like the United States cannot achieve the effects of ancient Athens, where approximately one of every three adult citizens served at least once as a randomly chosen member of the agenda-setting and interim governing council.<sup>13</sup> Yet administrations at the federal and state level could conduct something like Deliberative Polls on any number of matters that could benefit from citizen input. Legislators could regularly consult their constituents on important questions of public policy in randomly selected deliberative groups.<sup>14</sup> Groups of randomly chosen citizens could deliberate and gave advice on referenda.<sup>15</sup> With sufficient affluence and sufficient commitment to citizen participation, one could imagine a polity even of the size of the United States in which almost every citizen would in a lifetime have participated at least once and perhaps several times in a Deliberative Poll, a smaller randomly selected mini-public commissioned by an administrative body, or a randomly selected citizen deliberation over the Internet with a legislative representative. Deliberative Polls or their equivalents could also be inserted in the electoral processes of democracy to give advice on referenda or on primary candidates (whom most voters have, or feel they have, little time or capacity to investigate).

Such a polity is not hard to imagine. It is, I believe, an entirely practical goal. The regular use of groups of citizens chosen by lot would very probably improve not only the quality of the decisions but also the quality of citizens' interactions with their democracy. If such procedures were put into practice, and almost every citizen had at some point in their lives the experience of being in a randomly selected group that made decisions or gave advice on issues of import for the way they would be governed, then probably most of these citizens would be changed in a small way, and probably for the better. In the world I describe, each actually or potentially deliberative citizen's family members and friends would also either have served or expect to serve in such a body. People would talk together about their experiences, exchange views about the issues, and perhaps take some responsibility for the decisions. They might learn more about how others think. The process would almost certainly change what citizenship means. Throughout our lives, we as citizens would all know that we and our peers had been and would be deliberating on and making these decisions. Schools would very probably adopt some of the procedures and also some of the topics, running small deliberations in the classroom to prepare their students for the real thing. The media would follow the most important decisions.

If such a transformation were to take place, the major interest groups, political parties, and forces for illicit corruption would also predictably become quickly involved. What would transpire then is unpredictable, although human ingenuity has in the past protected democracy to some degree against various forms of corruption. The point is that as soon as Deliberative Polls and other mini-publics got anything approaching real power on important issues, the larger environment in which they took place would change.<sup>16</sup>

To the degree that Deliberative Polls and other randomized mini-publics were to acquire power over important decisions, their internal dynamics would also change. As Archon Fung has noted, "hot" deliberations on actual decisions that will affect people's lives perceptibly and produce clear winners and losers have dynamics different from those of cool advisory deliberations in which participants can take the distanced position of opinion-givers on matters of public policy.<sup>17</sup> Empowerment is likely to make deliberations hotter. At the moment, we have no data on what differences the change from cool to hot might cause in Deliberative Polls, other randomized mini-publics, or legislatures by lot.<sup>18</sup> Studying such changes should be a priority in the field.

To conclude these considerations on normative legitimacy, it is not clear when, if ever, a randomly selected group of citizens should be fully empowered to make decisions for the citizenry as a whole.<sup>19</sup> The best role for such deliberative groups might be advising the public (as in many Deliberative Polls and the Citizens Initiative Review process in the U.S.), administrators (as in many Deliberative Polls, citizens juries, and consensus conferences), political parties (as in one Deliberative Poll in Greece<sup>20</sup>), or legislators (as in one Deliberative Poll in Rome<sup>21</sup>). Although much participatory theory sees advances toward empowerment as almost automatically positive,<sup>22</sup> empowered randomized mini-publics may be neither better nor more democratic than less empowered ones.

Turning from normative to perceived legitimacy, I have four suggestions for building on the strengths of Deliberative Polling.

The first two focus on teaching the citizenry through experience what a random sample means. Citizens today have some experience with lotteries, both for positive results (e.g., “the lottery”) and for results that some might view negatively (e.g., “the draft”). In both cases, citizens perceive the outcome as fair. Citizens are also familiar with juries, which are initially drawn by lot and then subject to other selection processes in order (in theory) to give the accused a fair trial. But most people, rightly, do not view lottery winners as embodying their communities, or think of juries representing them politically. So too, although many citizens hear about opinion surveys in the media, few have thought through what a random sample is, much less a “representative” sample that supplements randomness in key categories. Because few citizens in any democracy today have any everyday experience with representation through random selection, I would expect the selection process initially to have low perceived legitimacy.

First, therefore, Deliberative Polling needs to develop a stage presence. As legislators, administrators, and others decide to give Deliberative Polls and other mini-publics more power, the organizers must facilitate public understanding of random selection with a good name – perhaps “civic lottery”<sup>23</sup>—and by choosing citizen participants not through a computer-generated random numbers table, which few in the public understand, but by having something like a costumed Uncle Sam draw the equivalent of numbered ping-pong balls out of a transparent urn.<sup>24</sup> The greater the orchestrated drama in the process, the greater the likely publicity. The greater the publicity, the more likely it is that citizens will come to understand the nature of a random sample. The greater the understanding of a random sample, the greater the legitimacy of a Deliberative Poll. Although any

random-selection process would have to make later additions to the sample to replace those who dropped out, those additions could be explained as part of a fair representative procedure.

Second, the public might come to understand randomized representation better if it could be tried out in low-stakes situations. *Democracy When the People Are Thinking* examines much of the considerable experience we now have with relatively empowered one-shot Deliberative Polls. We have no comparable experience with randomized representation in on-going citizens' assemblies, or "legislatures by lot." Perhaps some high schools could experiment by alternating a student government chosen by election in one semester (or year) with a student government chosen by lot in the next semester (or year). If these experiments proved revealing and useful, this process of paired comparison could be extended to other high schools, university faculty senates, and the like. These experiments could borrow extensively from the now well-refined processes of Deliberative Polls.<sup>25</sup>

Third, perceived legitimacy should increase if the public understood better what actually happens in a Deliberative Poll. At the moment, many Deliberative Polls simply collect and compare opinions on issues before and after the deliberation. These numbers form the basis of reports and news releases for the media. After the event scholars can examine the transcripts and videotapes for more qualitative evidence, but such studies exert late and narrow impact on the public domain. To give the public deeper and more engaging insight, organizers could use tablets to collect the answers on the post-event survey, quickly run the data on pre- and post-deliberation opinions on the day of the event to discover which citizens changed their minds on important issues, and then interview those citizens on videotape, *asking for their reasons*. With these videos on television and on social media right after the event, other citizens could see some participants explaining what they thought and why, how they changed their minds and why, spelling out the reasons and experiences that caused them to develop their thinking in unexpected ways. Stories capture attention. So do people. So, with help, do reasons. In today's empirical work on deliberation we have too many numbers and too few reasons.

Fourth and finally, to increase both normative and perceived legitimacy we need consciously to fight the forces that multiply the items on the agenda. Several of the Deliberative Polls on which Fishkin reports have this problem. In the Deliberative Polls in California and Mongolia, for example, the underwriting bodies insisted on thirty-nine and fourteen



items, respectively (81, 94). In one weekend a randomly selected group of people cannot deliberate effectively on this many separate policy questions. If a private or governmental funder has paid a million dollars for one of these deliberations, that funder will understandably—in the absence of counterarguments—want responses on many issues. Yet with so many questions, the quality of deliberation suffers, just as the quality of representation suffers when a smaller number of people deliberate. The ideal is many people and few questions. Expensive and difficult as it may be, practitioners should consciously try to approach that ideal. To the degree that we fail, normative and perceived legitimacy will diminish.

In this short comment, I have stressed that as the power of Deliberative Polls and similar mini-publics increases, so must their legitimacy. As Antoinette Schertz has recently argued, “the more political power an institution exercises, the more demanding the legitimacy standards it needs to fulfil in order to be legitimate.”<sup>26</sup> I have made a similar point about organizations in civil society: “The content and level of the standards required for the democratic legitimacy of these organizations and individuals should vary contingently with the closeness of connection to the state.”<sup>27</sup> The sources of legitimacy are plural. The standards of legitimacy are also aspirational ideals; that is, they cannot usually be fully achieved in the real world. Nevertheless, Fishkin amply demonstrates that the greater use of Deliberative Polling has immense potential to increase the legitimacy of all existing democracies—but only if their own legitimacy keeps pace with their use and impact.

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#### NOTES

1. My title admiringly reflects Bohman’s 1998 classic “Deliberative Democracy Comes of Age.”
2. Averaged over eight Deliberative Polls in Texas, the percentage willing to spend slightly more on monthly utility bills to support renewable energy increased from 52 to 84 percent (Fishkin 2018, 160).
3. Mansbridge 2010.

4. Steenbergen et al. 2003; for updates on measurement see Bächtiger and Parkinson 2019. See also Knobloch et al. 2013; and see Parthasarathy, Rao, and Planiswamy 2019 for, e.g., “dialogic responsiveness.”

5. See Sunstein 2002, 2009, for prediction of group polarization and Luskin et al. 2017 for the lack of evidence that such a dynamic arises in Deliberative Polls. The cases in the present volume show no polarization (Fishkin 2018, 77–78 and *passim*).

6. Siu 2017. *Democracy When the People Are Thinking* also reveals that in the Deliberative Polls in Uganda there are no inequalities of influence by age, gender, or education, in “Europolis” no inequalities of influence by education and only small inequalities of influence by gender, and in the California “What’s Next” Deliberative Poll, no inequalities of influence by gender or education (Fishkin 2018, 110, 121, 84).

7. For the replacement of equal influence and by the better standard of equality of opportunity to influence, see the “second generation” standards in Bächtiger, Dryzek, Mansbridge, and Warren 2018, Table 1.1, p. 4. This table draws on Mansbridge 2015; the opportunity standard draws on Knight and Johnson 1997.

8. Almost all Deliberative Poll evaluations ask these questions. Here I draw from Fishkin et al. 2011, where 88 percent of the participants agreed with this statement, 91 percent agreed that “my group moderator provided the opportunity for everyone to participate in the discussions” and 93 percent disagreed strongly that “my group moderator sometimes tried to influence the group with his or her own views.”

9. Neblo et al., 2018, 105.

10. Knobloch et al., 2013, 113.

11. Renwick et al., 2017, 69.

12. Deliberative Polls and other mini-publics typically produce increases in “external efficacy,” e.g., in Fishkin et al. 2011 an increase on “public officials care a lot about what people like me think” from 25 percent to 37 percent and a decrease on “people like me don’t have any say in what government does” from 42 percent to 33 percent. They also typically produce slight increases in mutual respect, e.g., when asked about people “who disagree strongly with you about issues like those we have been asking you about,” in 2011 the percentage saying “I respect their point of view, even though it is different from mine,” rose from 80 percent to 88 percent after deliberation. See also Knobloch and Gastil, 2014, 192 and Knobloch and Gastil 2020.

13. Fishkin 2018, 54, citing Hansen 2006, 314.

14. See Neblo et al. 2018 for evidence on the deliberations of representatives in the U.S. Congress with groups of randomly drawn constituents.

15. Knobloch and Gastil 2015 and Gastil and Knobloch 2020.

16. Christopher Karpowitz, comments, 2018 APSA Annual Meeting.

17. Fung 2003.

18. See Gastil and Wright 2019.

19. See Lafont 2017 and 2020 for considerations on the legitimacy of empowered randomized mini-publics.

20. Fishkin 2009, 9–13.

21. Fishkin 2009, 150–52

22. E.g., Arnstein 1969, Johnson 2015.

23. See Cronkright and Pek 2019; also “Democracy in Practice,” <https://democracyinpractice.org/>.

24. The Chinese version of the Deliberative Poll (reported in He and Warren 2011) did use ping-pong balls in a transparent receptacle (James Fishkin, personal communication). The ancient Athenians drew beans from a container before they invented the *kleroterion* randomizing machine (Fishkin 2018, 53, citing Sinclair 1988, 18 n666).
25. In Bolivia, “Democracy in Practice” is experimenting with such student governments (<https://democracyinpractice.org/>), but without a matched comparison.
26. Schertz 2019.
27. Mansbridge 2019, 320; for a fuller account, Mansbridge 2017, 24–28, 40–46.

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