

Deliberative Polls and the Systemic Democratization of Democracy

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Abstract

James Fishkin has had a crucial role when linking the literature and experiments based on randomly selected mini-publics with the theory of deliberative democracy. He has been one of the major actors in the first wave of mini-publics, which were top-down one-shot devices, controlled by their inventors, embodying deliberative democracy, advisory and complementary to representative democracy. Fishkin's last book shows part of the evolution towards a second wave, where mini-publics are more open to hybridization, are articulated to direct and participatory democracy and not only to representative government, and begin to be institutionalized. However, it falls short of taking the structural power relations and the importance of social movements seriously, which makes more difficult to link randomly selected mini-publics with a systemic democratization of democracy.

Keywords: *sortition, deliberative democracy, radical democracy, mini-publics, representative democracy, democratic innovation, James Fishkin, Deliberative Poll*

Both scholars and practitioners must recognize the importance of James Fishkin's contribution to democratic innovation. He has invented and defended theoretically one of the first forms of randomly selected

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mini-publics, the Deliberative Poll. This device partly differs from other mini-publics. Compared to citizen juries or consensus conferences, it costs much more and, because it is “only” a sophisticated poll, its coupling with the decision-making process is even weaker—other mini-publics of the first generation produce at least a formal advice to the public authority. However, the Deliberative Poll has two main advantages: its size is much larger than that of citizen juries, and therefore it is more statistically representative of the people; it does not pretend to lead the participants to reach a consensus, recognizing instead that the result of a good deliberation is often a more reasonable dissensus.

In the long run, Fishkin’s main legacy will probably be something else: he has been crucial in linking the theory of deliberative democracy to calls for the return of sortition in politics.¹ The first deliberative democracy theoreticians did not advocate sortition, and those who reclaimed this selection mechanism rarely advocated deliberative democracy. Fishkin’s previous books have been a watershed in this coupling,² while also demonstrating the possibility of articulating political theory designating practical innovations and empirically analyzing their function. Deliberative Polling, specifically, has provided a kind of laboratory in which to test and directly observe democratic deliberation among randomly selected lay citizens. It has shown that when the deliberation is well organized, with briefing material and hearings presenting opposite points of view on the subject, a fair repartition of the speech among participants, and a mix between discussion in small groups and general assembly, citizens can reach reasonable conclusions and propose solutions that are generally more interesting than the ones coming from professional politicians. It has helped to make credible a type of democracy that greatly differs from competitive party democracy. This is precious at a time when representative government is under stress in both old and new democracies. Still, I believe it is Fishkin’s theoretical linkage of deliberation and sortition, rather than the Deliberative Poll, that will best stand the test of time.

Democracy When the People Are Thinking is an effort to overcome several problems with the earlier generation of mini-publics, including early versions of Deliberative Polling. One was that the desire to provide the best possible model of democratic deliberation could lead the inventors to drastically corset within rigid methodologies the flow of democratic imagination. This made it difficult to develop mini-publics on a large scale. Hans-Liudger Dienel, the leading expert on citizen juries in Germany, developed a self-critique on this issue: “I wonder whether the protagonists

of deliberative democracy, with their societal approach, with their academic and ideological culture, might be a major obstacle for mass application of citizen juries and other direct deliberative instruments. Do they, do we, really want to leave the niche and join new coalitions to see mass application of deliberative democratic tools?”³ This critique could include the Deliberative Poll, which was patented by its inventor. Democracy has always relied on hybridization, and the will to freeze it on an ideal model would necessarily be counter-productive.

The second problem of early mini-publics was their limiting of democratic deliberation to confined spaces and their implicit or explicit opposition to the broader public sphere or to participatory democracy.⁴ Ultimately, deliberative mini-publics could even be implicated in a new kind of elitism, which claims that the reasonable involvement of lay citizens in politics can only ever take place within the managed arena of mini-publics, other forms of participation being suspect of bringing emotional and non-reasonable elements.

The third problem was the way that mini-publics bracketed the asymmetrical power relations that structure real existing democracies. To put it sharply: how could one imagine that top-down devices whose existence depends upon the arbitrary will of those who have the power will be able to challenge structural inequalities in politics and society? How could instruments such as the Deliberative Poll become more than a limited complement to representative governments? How could they inspire social movements and citizens who want to radically democratize democracy?

The new wave of experiments based on sortition, which has developed in the twenty-first century, represents a frontal attack on these problems⁵. The multiplicity of devices has increased much beyond the proposals of the first inventors. Rather than being a mere complement to representative democracy, sortition has also been combined with participatory or direct democracy. Instead of being only a top-down instrument, it has been claimed in radical social protests, for example during the yellow jackets movement in France in 2018. Some first attempts to institutionalize political sortition have been made. Last but not least, randomly selected mini-publics have begun to be empowered. Legislature by lot has been proposed as part of what Erick O. Wright and John W. Gastil call a “real utopia” (that is a horizon that one will never reach but toward which one can move) that would radically alter the existing political system.⁶

In Ireland, the 2013 Constitutional Convention, largely focused on gay and lesbian marriage, and the 2016 Citizens’ Assembly, largely focused on

abortion, are among the best examples of this second wave. The Deliberative Polls and James Fishkin's work were important sources of inspiration. However, the Irish experiments followed an original path. Their size (99 citizens) was a mix between the Deliberative Poll and citizen juries. The 2013 Constitutional Convention included politicians in addition to randomly selected citizens in order to increase the legitimacy of this democratic innovation within the political system, and to avoid the kind of elite manipulation campaign that impeded the 2005 proposal of the British Columbia citizens' assembly on electoral reform. The main Irish outputs were neither a poll nor a recommendation, but drafts of constitutional amendments that were transmitted by the elective legislature to the people at large and approved by referendum in May 2015 and May 2018.

Democracy When the People Are Thinking has been published in this new context. The book represents an attempt to enlarge the vision of Fishkin's previous books and to integrate the deliberative pool in a broader scheme. Fishkin reaffirms the core of his previous thesis. His first argument tackles the state of really existing democracies. The Schumpeterian view that understands democracy as minimalist, reduced to the competition of politicians for the vote of the electorate, is presented as a globally correct description of the actual functioning of the Western political system. Nevertheless, Fishkin strongly refutes the idea that this is due to the essential incapacity of lay citizens to develop a reasonable opinion on public affairs. His critique of the way in which public opinion is formed in liberal democracies is devastating: "political and policy elites mostly manipulate public opinion to electoral advantage and then invoke it afterwards as a mandate" (188). He rightly adds: "In my experience, it is not that citizens are incompetent, it is that institutions are not enabling. They are not sufficiently user-friendly that most citizens would think it worth the effort and reward in terms of impact. It is as if we are connecting them with the wrong operating system" (209). The contrast between the status quo and the capacity of lay citizens to engage in a high-quality deliberation in the conditions of the deliberative poll is striking. The opinions offered by a deliberating microcosm are not those found in opinion polls. They "offer considered judgments rather than top-of-the-head impressions. Those judgments should be the result of extensive discussions that are balanced and informative. They are not just an impression of sound bites and headlines. . . . [T]hey may well be different from the opinions of those who have *not* deliberated. They offer a counterfactual representation of what the people *would* think, presumably under good conditions for thinking about the issues discussed" (71).⁷

Fishkin's second and most interesting argument concerns how to pass from the limited spaces of democratic deliberation offered by mini-publics to the fostering of deliberative democracy in the overall political system. Although this question was not completely absent from Fishkin's previous works, it was far from central. Fishkin's most notable previous effort, with Bruce Ackerman, was the proposal of a "Deliberation Day" during which, before each national election, citizens could deliberate in nearly ideal conditions.⁸ The idea was not particularly exiting nor convincing, and if it had not come from two famous American scholars teaching in prestigious universities, it would probably not have been widely noticed. In fact, nobody in the real world outside the academy really cared. Deliberation Days would not solve the problem of agenda setting nor challenge the arbitrary acts of elected politicians—and one could argue that the large sum of money it would cost could be much better spent financing community organizing among the most disadvantaged groups in society, or the counter-expertise of NGOs seeking to counterbalance the power of big corporations and technocratic bodies.

Fishkin defends the Deliberation Day proposal again in *Democracy When the People Are Thinking* (especially in Part IV.9), but now as only one piece in a mosaic of democratic innovations that could lead to a "well ordered deliberative system." This broadening of the picture represents the most original and promising part of the book. It follows a path that other proponents⁹ have taken when advocating a systemic turn in deliberative democracy, but contrary to some—who conclude that the role of randomly selected mini-publics could only be auxiliary¹⁰—Fishkin refuses to cede the centrality of representative sampling. His normative goal is to invent a new political order that would enable a real popular control according to four basic criteria: "Inclusion: all adult citizens should be provided with an equal opportunity to participate. Choice: the alternatives for public decision need to be significantly different and realistically available. Deliberation: the people need to be effectively motivated to think about the reasons for and against competing alternatives in a context where they can get good information about them. Impact: the people's choices need to have an effect on decisions (such as who governs or what policies get enacted)." (14). Fishkin also differentiates four models of democracy, none of which "in actual institutional designs" are "self-sufficient" in terms of meeting the four criteria (23): Schumpeterian competitive democracy; elite deliberation as advocated by Madison, where public opinion is filtered by a "chosen body" of supposedly wise citizens; participatory democracy as proposed by Carole

Pateman, and institutionalized in town meetings, participatory budgeting, or referenda; and deliberative democracy, institutionalized as a representative sample of the people, randomly selected and deliberating on key public issues. Each pure model implies a trade-off among criteria: competitive democracy tends to be inhospitable to deliberation and participation; elite deliberation to political equality and participation; participatory democracy to deliberation and the protection of minorities; deliberative democracy to participation and (curiously enough) to the protection of minorities. The logical conclusion is to couple various forms, for example, allowing a representative sample of the public to deliberate and make recommendations to the whole citizenry, who then decide among them in direct fashion (51).

Here Fishkin's long and deep interest in ancient Athens' mixed government becomes important because the Attic city combined a strong element of direct democracy with the deliberation of randomly selected bodies: the council had the task of preparing the general assembly of the citizenry, and (in the fourth century BC), the *nomothetai* were a kind of constitutional court empowered to revise the decisions directly taken by citizens. In addition, the election of the most important magistrates provided a meritocratic element missing in the other devices. Of course, the main pillar of Fishkin's model, representative sampling, was not scientifically available at the time. Chance had not yet been scientifically "tamed" in the political sphere.¹¹ To this extent, the deliberative poll and other randomly selected mini-publics cannot be simply considered as a "neo-Athenian solution"¹² for modern democracies. They imply a quite different logic than Athenians' self-rule and, as Fishkin now recognizes, must be coupled with institutions of direct and participatory democracy in order to share the normative core of the Athenian system.

For those seeking blueprints for such institutional hybridization, *Democracy When the People Are Thinking* offers mixed results. A large part of the book, (especially Part III and Appendix), is devoted to the analysis of concrete cases of Deliberative Polls organized in recent years. One frustrating example is Europolis, a European-wide Deliberative Poll conducted just before the European Parliamentary elections of 2009 (Part III.5). As an experiment, it was highly interesting because it demonstrated (together with other experiments involving citizen juries rather than Deliberative Polls) that a real deliberation could take place at the EU level among lay citizens speaking different languages. It was therefore a good case for advocating the introduction of mini-publics at the macro level. But it had no influence on the wider public sphere and no formal influence on EU policies. It therefore exemplified the limits of the first generation of mini-publics, a weakness

that the author does not discuss. In stark contrast sits the Mongolian case (Part III.3), where a deliberative poll conducted in the Ulaanbaatar Capital City Region was hybridized in December 2015 with participatory budgeting, one of the most prominent devices of participatory democracy. The local government later announced that the priorities defined by the participants had been included in the Action Plan for the City Master Plan in the order determined by the citizens. The national Parliament then passed a “Law on Deliberative Polling” which took effect March 2017. The law made it compulsory to use deliberative polling in multiple circumstances, most notably as a step in the procedure followed when amending the constitution. Within a month, in April 2017, the Mongolian parliament brought together 669 randomly selected citizens from across the country to Ulaanbaatar for the first-ever national deliberative poll on the future of the Mongolian constitution (Part IV.12). Although negatively affected by a number of procedural defects,¹³ this initiative has helped launch a new era of institutionalization of mini-publics at national levels.

The Mongolian experiment is a good example of the most important idea of the book, the necessity to create a new kind of mixed government. As Fishkin writes: “Modern governance is complex, with many institutions, some of which embody, or emphasize, electoral competition, or direct democracy, or deliberations by elites, at different points in the decision process. Our thrust is to think about credibly adding citizen deliberation, in a representative and thoughtful design, to this mix. To jettison the others just for citizen deliberation would be to throw out many valuable institutions that realize important democratic values” (139). One can add nuances, enlarge the focus to other randomly selected mini-publics and, most notably, take more seriously the experiments of citizens’ assemblies, but this is a programmatic statement worth defending by all scholars and practitioners interested in overcoming the present democracy crisis.

The Oregon Citizens’ initiative review¹⁴ or the Canadian Citizens’ assemblies are well-known examples of such a path,¹⁵ and *Democracy When the People Are Thinking* proposes further experiments and ideas. One is to create mini-publics for seriously assessing candidates during primaries, an innovation that “could do a great deal to reform the so-called ‘invisible primary’ now largely dominated by fundraising and media jockeying in anticipation of the first contests” (159). The idea to craft policies through a mix of elected legislatures, citizen assemblies, and multiple referenda is also worth considering. Overall, one has to agree with Fishkin’s conclusion: “I am not claiming that the deliberative processes depicted here are the best possible

institutions. With experimentation and innovation they can certainly be improved and deepened. They can also be adapted to various contexts and decision problems. But whatever the precise design, the basic idea of citizens deliberating under good conditions when they think their voice will matter needs to be nurtured, evaluated, improved, and expanded in scale. That is the challenge for democratic renewal” (210).

Nevertheless, in order to keep advancing toward this “real utopia,” one should not forget that present political and social systems, including Western kinds, are structured by deeply asymmetrical power relations. Any attempt to make them more democratic will face huge obstacles. Any participatory deliberative device, including the Deliberative Poll, could be instrumental in the strategic legitimation of political domination if not linked with broader change. Top-down mini-publics could fit well into what Colin Crouch calls *post-democracy*, an era in which democratic institutions seem to function but are only a façade behind which real decisions are taken by powerful interest groups, lobbies, transnational corporations, and technocratic bodies. The same is even truer in the case of authoritarian deliberation¹⁶ or authoritarian consultation¹⁷ in countries like China: at the micro-level, the deliberative or participatory process can be of high quality, and often does not really differ qualitatively from what goes on in Western countries, but at the macro-level, the power structure is far remote from the influence of deliberative settings.

The word “social movement” appears only once (216 n85) in *Democracy When the People Are Thinking*. This absence reveals a gap in the analysis. In order to change the political game and its enabling socioeconomic structures, top-down deliberative polls will never be sufficient. Strong social pressure will be necessary. Societies are not flat networks composed of individuals. Real governance implies that some collective actors, very often private or not subject to popular control, have a disproportionate share in the decision-making process. Conversely, real changes will imply bottom-up initiatives. We do need a new kind of mixed government, but the project to create a nearly equal and nearly just society and to articulate deliberative democracy with other forms, most notably direct and participatory democracy, must integrate the sociological fact of power asymmetry if it is to materialize in a foreseeable future. Democracies are in a deep crisis. A new deal—economic, ecological, and political—is required. On this issue, readers may have the feeling that *Democracy When the People Are Thinking* is at best a prologue to a history that people, rather than political theorists, must write.

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NOTES

1. Julien Talpin, "Does Random Selection Make Democracies More Democratic? How Deliberative Democracy Has Depoliticised: A Radical Proposal," in L. Lopez-Rabatel, Yves Sintomer, eds. *Sortition and Democracy: History, Tools, Theories* (Exeter: Imprint Academic, 2020).

2. See among others James S. Fishkin, *Democracy and Deliberation* (New Haven: Yale University Press, 1991); *The Voice of the People: Public Opinion and Democracy* (New Haven: Yale University Press, 1997).

3. Hans-Liudger Dienel "Les jurys citoyens: pourquoi sont-ils encore si rarement utilisés?" in Marie-Hélène Bacqué, Yves Sintomer, eds., *La démocratie participative inachevée* (Paris: Yves Michel, 2010), 105.

4. Simon Chambers, "Rhetoric and the Public Sphere: Has Deliberative Democracy Abandoned Mass Democracy?" *Political Theory* 37, no. 3 (June 2009): 323–50.

5. Yves Sintomer, "From Deliberative to Radical Democracy? Sortition and Politics in the Twenty-First Century," *Politics & Society* 46, no. 3 (2018): 337–57.

6. John Gastil, Erik Olin Wright, eds., *Legislature by Lot: Transformative Designs for Deliberative Governance* (London and New York: Verso, 2019).

7. Fishkin offers a convincing answer to the so-called "law of group polarization" that is supposed to rule deliberation according to Cass Sunstein ("The Law of Group Polarization," *Journal of Political Philosophy* 10, no. 2 (2002), 175–95): empirically, this tendency does not apply in randomly selected mini-publics and is therefore an artifact of Sunstein's experiments in social psychology rather than a universal "law."

8. Bruce Ackerman and James Fishkin, *Deliberation Day* (New Haven: Yale University Press, 2004).

9. John Parkinson and Jane Mansbridge, eds., *Deliberative Systems: Deliberative Democracy at the Large Scale* (Cambridge: Cambridge University Press, 2012).

10. Nicole Curato and Marit Böker, "Linking Mini-publics to the Deliberative System: A Research Agenda," *Policy Sciences* 49, no. 2 (2016): 173–90. For a view more similar to Fishkin's thesis, see Kimmo Grönlund, André Bächtiger, and Maija Setälä, *Deliberative Mini-Publics: Involving Citizens in the Democratic Process* (Colchester: ECPR Press, 2014).

11. Ian Hacking, *The Taming of Chance* (Cambridge: Cambridge University Press, 1990).

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