25. They will be subject to "participatory distortion," a term I take from Verba, Schlozman, and Brady, *Voice and Equality*, p. 15.

26. Is a deliberative referendum possible? See Bruce Ackerman's proposal for instilling an increased opportunity for deliberation, at least by the relevant elites, into a constitutional referendum: a second-term president getting a two-thirds vote of Congress and then requiring two successive referendum votes for passage with a two-year waiting period. We will return to this project of adding deliberation to the referendum, strengthening the mass participation side with Deliberation Day. See Bruce Ackerman, *We the People*, vol. 2 (Cambridge, MA: Harvard University Press, 1998), pp. 410–11. One can only speculate what comparable requirements in the context of the UK political system would have done to Brexit. If there were an automatic requirement to revisit in two years before finalizing, it would likely have improved the debate and the acceptance of the outcome, whatever it would have been.

27. James Bryce, *The American Commonwealth*, vol. 2 (repr.; Indianapolis: The Liberty Fund, 1995), p. 923, emphasis added.

28. Bryce's observations remain cogent today. See chapter 76, "The Nature of Public Opinion," in *The American Commonwealth*. They find ample modern confirmation in John R. Zaller's magisterial *The Nature and Origins of Mass Opinion* (Cambridge: Cambridge University Press, 1992).

29. Bryce, *The American Commonwealth*, p. 925.

30. Bryce, *The American Commonwealth*, p. 921.

31. The case for including an agenda-setting stage in an ideal characterization of what he calls a "full procedural democracy" is made by Robert Dahl in "Procedural Democracy," in Peter Laslett and James Fishkin, eds., *Philosophy, Politics and Society: Fifth Series* (Oxford: Blackwell, 1979), pp. 97–133, especially pp. 106–7.

Part II

Can the People Rule?

1. Four Criteria for Popular Control

In democracies around the world, policy makers routinely invoke "rule by the people," but is this more than symbolic? Leaders win elections and claim "mandates" from the people, but in what sense, or to what degree are the people in control of the policies with which they must live? Or to what degree is it realistic that they should be? A great deal of research supports the picture of a public that is mostly inattentive, not well informed, and only episodically aroused. How can such a public exercise any significant control? Consider further that if leaders manipulate or deceive the public then in what sense is the public exerting control over leaders even when the leaders are doing what the public appears to desire? Or might it be the other way around—leaders exerting control over the public?

Even when voters sincerely and thoughtfully vote for a package of policies, without manipulation, they are often stuck with elements of the package that can be profoundly unpopular, a pattern Dahl once identified as typical of "minorities rule" rather than majority rule.[1] These are only a few of the obvious challenges facing democratic aspirations in the real world of large-scale modern polities. Before we pursue the constructive remedy proposed here—various doses of what we will call deliberative democracy—we need to get a handle on the current infirmities of the system as we live it now.

We begin with some criteria. While each is so obvious that it hardly requires explicit statement, the challenge is to satisfy all four. Our question is: What would it mean for the members of the mass public actually to have a significant role in ruling themselves? Consider these four *criteria for popular control*:

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).

Inclusion. The history of democratic reform, over a long time horizon, is a story of greater inclusion. In ancient Athens and other ancient democracies only adult male citizens could vote.[2] Women, *metics* (resident non-citizens), and, of course, slaves could not. In the US, the boundaries of the franchise have been the subject of great political struggle. Waves of expansion, often following wartime, brought the vote to citizens regardless of property ownership, race, and gender. But the expansion of the franchise to African-Americans in particular drew a fierce reaction: whites re-disenfranchised them under Jim Crow for most of a century, largely through devices such as poll taxes and literacy tests, which purported to promote competent voting and prevent fraud.[3] The question of whether some voters (such as black voters and poor voters) were competent enough to deserve the franchise has been contested—and misused—for most of American history.

John Stuart Mill approached the question from a different angle: he famously argued for wide inclusion, including the equality of women, but also advocated "plural voting" by which more voting power would be given to those who were better qualified.[4] Thus, conceptually, we can separate the baseline question of inclusion from the further question of whether all are included on an equal basis. In the history of democratic reform in the US, one of the most consequential moments was the Supreme Court's intervention in "one person one vote" cases, which struck down schemes by which small rural populations could elect more representatives than far more populous cities. Such "dilution" questions can arise even where everyone enjoys the same baseline right to vote.[5] Here, however, we will assume inclusion is implemented on a basis of equality for all those given membership in the polity. Still, in almost all societies there will be visitors, resident citizens of other countries, children, and others who may not qualify. In the United States, almost all states prevent prisoners from voting, and many also disenfranchise ex-felons long after their sentences are completed. Issues of competence have sometimes been invoked to rationalize exclusion or some scheme of unequal rights. Here we will assume that inclusion means inclusion of all adult citizens on the basis of equality.

All adult citizens where? Of what? For our discussions here we will take the boundaries of the nation state as given. Democratic theory requires a *demos*, a population that is to be included as members in the democracy. Robert Goodin observes "until we have an electorate we cannot have an election.

But that is not just a temporal observation, it is a logical truth."[6] Brian Barry illustrated the difficulty of applying majority rule to try and settle the boundaries of who is to be included by considering the Irish question in the early twentieth century. He inferred likely majorities for conflicting results within the UK as a whole, within Ireland (the whole island), and within the six provinces that became Northern Ireland. The decision as to who is included easily determines the democratic result, not the other way around.[7]

If we consider the boundaries of the polity as settled, what is the mode of inclusion for its members? So far we have talked about *who* is included, but not *how*. We have only said "equally." But equally in what way? The most common form of inclusion by far is the equal right to vote. This form of inclusion ends up employing mass participation as the means for realizing political equality in the mass public. This is encouraging for the realization of two of our three core principles—political equality and participation. But in the large-scale nation state, it is very difficult to effectively motivate or incentivize deliberation for the mass public. Each individual citizen is too often subject to rational ignorance and sheer inattention. If I have one vote in millions, I will often tune out or engage only episodically as my individual views will not make any appreciable difference to the outcome.

Much depends on how we interpret the idea of giving everyone an "equal opportunity to participate." If participation is self-selected, there may be sharp differentials in who takes up the opportunity. In two landmark US studies, Sidney Verba, Kay Schlozman, and Henry Brady found a great deal of "participatory distortion"—those who actually participate are "unrepresentative of the rest of the public with respect to some politically relevant characteristic."[8] Their desideratum is "that what matters is not that the expression of political voice be universal but that it be representative."[9] Their concern is the "distinctively "upper-class accent" of the heavenly chorus which gives voice to the American public.[10] Minorities, the young, and the less advantaged tend to participate distinctly less (the rich and more educated and older voters tend to participate distinctly more). However, depending on the context and the design of political institutions, it is possible that self-selection will have the opposite effect and actually favor the least advantaged. In the "participatory budgeting" pioneered in Porto Alegre, Brazil, and now spread to thousands of cases throughout the world, there is clear evidence that it is the poor who are mobilized to turn out and the middle classes who are not.[11] As with voting, the citizens in participatory budgeting all have "equal opportunity" in theory to participate, but the incentives for doing so must be understood in their social context.

The more general lesson is that self-selected participation is virtually certain to be unrepresentative and hence offer a distorted form of inclusion. The people who feel more strongly or who are more engaged with the issues or who are specifically mobilized to turn out will be the ones who participate.

One might respond to this challenge with compulsory voting requirements to curb the biases from self-selection. In general, this method has its own problems. In Australia, it has greatly increased turnout but it has introduced coercion and has not succeeded in effectively motivating informed voters.[12] Other strategies are also possible. Instead of penalties there might be creative incentives such as payment or a lottery prize for voting. These are great ideas but they are largely untested.[13]

The strategy of inclusion we will initially focus on here is random sampling with appropriate incentives for participation. In theory, if a good random sample is recruited, in which all members have an equal chance to participate, that is another variant of equal opportunity. The literature on equal opportunity has long included the random draw as at least one of its component parts. Equality-of-life chances for valued slots in society is a common criterion for equal opportunity for valued positions. If I have an equal chance there is a sense in which I have an equal opportunity.[14] Most importantly, a good random sample should be free of participatory distortion. It should be representative of the population in its political attitudes and demographics (and the degree to which any given sample achieves this can easily be studied empirically).

How much of a difference does participatory distortion make? While it is an empirical question whether differences in key demographics imply differences in political attitudes (either with, or without, deliberation), it is a key contention of normative theorists that the "politics of presence," especially inclusion in terms of gender, race, and ethnicity, will make a major difference to the viewpoints offered by representatives as well as by voters.[15] On the other hand, Raymond Wolfinger and Steven Rosenstone famously found little difference between voters and non-voters in their policy attitudes despite the evident differences in demographic factors.[16] This has been contested since, especially on economic issues.[17]

From the standpoint of deliberative democracy, the key point would be to probe the hypothetical. Perhaps non-voters offer similar views to those offered by voters even though they are poorer, less educated, and include more minorities. Presumably the non-voters have different interests on many issues because their demographics and hence their positions in the socioeconomic structure are very different. If they were to engage in a serious deliberation about what to do, we cannot assume that they would uniformly come to the same conclusions as their more well-off fellow citizens. If they think and discuss, if they get their questions answered and become more informed, they are likely to change some of their views. For deliberative democracy it becomes a normatively relevant empirical question: What would they think if they were to engage in the best available conditions for thinking about the specific policy issues in question?

In a given case, their views might—or might not—be different from what they actually do think now. We can only know if we start the deliberations with a good microcosm, as representative as possible in both demographics and attitudes. If we avoid participatory distortion in constructing the microcosm, then engage it in the best practical conditions for extensive deliberation,[18] then we can arrive at an inference about a key hypothetical—what the people would think if they were really considering the issue. If we started with a microcosm that was unrepresentative in both demographics and attitudes, perhaps as unrepresentative as many of our elections, we would not have a plausible basis for drawing the hypothetical inference about what the public—all the public—would think. Certain key interests and viewpoints would be left out (e.g. perhaps the poor or minority groups). The dialogue might well have been different if they were included, one could plausibly argue.

Random sampling is a form of inclusion that can be used to gather the whole population, in microcosm, to the deliberations. It is a gathering of all the relevant viewpoints and interests in their appropriate proportions in the population, under conditions where those who have those viewpoints and interests can engage with each other in dialogue. It is consonant with the idea Mill offered for an ideal parliament, a "congress of opinions":

where every person in the country may count upon finding somebody who speaks his mind as well or better than he could speak it himself—not to friends and partisans exclusively, but in the face of opponents, to be tested by adverse controversy; where those whose opinion is over-ruled feel satisfied that it is heard and set aside not by a mere act of will but for what are thought superior reasons.[19]

As a citizen, I am included in that I can see my viewpoints and interests expressed and defended as well or better than I could myself, in a dialogue with all the competing perspectives. Some may view this as a less effective and tangible form of inclusion.[20] But it is also substantive, bringing the issues to life. Further, if the deliberating group is a good sample, it will likely be more representative of all the perspectives and interests in the population than would self-selected voting.[21]

As a citizen, I am included in that I can see my viewpoints and interests

Random sampling is a form of inclusion but it is not a form of consent. Bernard Manin argues that selection by lot lost out to election as a form of representation in the birth of modern representative governments because elections can be seen as requiring a kind of consent from the people every time they vote. They provide a continuing source of perceived legitimacy through the tangible act of voting.[22] While Manin may well be correct in this historical argument, it does not undermine our including random selection as an important, indeed potentially transformative, form of inclusion in the design of deliberative institutions.

Choice. Suppose everyone participates but there is only one choice. Or only one choice that is a realistic possibility, with the other choices only symbolic afterthoughts creating the illusion of choice. Or suppose there are two choices but they are identical in their policy implications for all practical purposes, like the Tweedledum and Tweedledee positions sometimes ascribed to American political parties in the 1950s. People cannot exercise meaningful choice if there are no real differences to choose between.

To explore further, even when there are significantly choices, they may not be realistically on offer.[23] Suppose there is a completely dominant party and it tolerates a token opposition that advocates different policies. But there is no realistic possibility that the policies they advocate are undoubtedly significantly different from those of the dominant party, those alternatives are only symbolically available. No real choice is actually being presented to the public. Hence the need for choices that are both significantly different and realistically available.

Where do the choices come from? First, let us say that so long as the choices are significantly different and realistically available, the choice criterion is satisfied *for the issue at hand*. A and B are widely accepted to be significantly different,[24] and both are realistically on offer so that the people can exercise choice. But why A and B? There will usually be any number of other possibilities that could have been offered and different democratic designs will winnow the choices to a manageable number (not necessarily two) in various ways. Perhaps candidates are running for office and there are primary elections. Or perhaps there is a political convention where party notables in what used to be called "smoke-filled rooms" deliberate and bargain to choose the nominee of their party. Perhaps it is an initiative put on the ballot by petition for an up or down vote by the people. Or perhaps it is a referendum authorized by a vote of parliament or by an American state legislature. These are among the common ways that an agenda for decision can be set.

We have stipulated that ideally, for a "well-ordered deliberative process," there would be a deliberative consultation as part of the agenda-setting process. In Part IV we will explore what that could look like and how it could be experimented with. Such a process would give the public greater and more thoughtful control over the choices they are presented with. Deliberative agenda-setting is an important area for reform. But even without it, when the people are asked to choose between significantly different and realistic alternatives they are exercising choice on the issue posed.

How do they choose? We need to consider both the mode of expression for each individual's preference and the decision rule for aggregating those preferences. We will not attempt to stipulate the general solutions to these problems here. But it is worth noting some elements that seem useful for

satisfying the values we will discuss—especially those of deliberative democracy. First, the mode of expression. Secret ballot or other forms of confidential expression? Or public voting by which individuals take public responsibility for their positions? John Stuart Mill argued for public voting, common at the time, so that people would take responsibility and have to think about how to justify their votes to others.[25] His father, the philosopher James Mill, argued that the secret ballot was necessary to protect voters from coercion, particularly poor voters in a vulnerable position who could be told by their landlords or their employers how to vote.[26] There is some power to both arguments. However, we see the advantages of secret ballots, or, in some deliberative democracy contexts, confidential questionnaires, to help ensure that the expressions of individual judgment are free of social pressure. We want to facilitate the expression of what people really believe, not what they are pressured to express.

Instead of aggregating individual expressions of preference, a group or institution could act on the basis of rough consensus or acclamation: "If there are no objections we all agree to X." But with such a method the individual dissenter must speak up against the social pressures of the majority. That person will likely feel subject to the "spiral of silence" and not object, and a distorted sense of the public view will result.[27]

Hence there are advantages to the individual expression of preferences in confidential ballots or questionnaires rather than in publicly voicing your vote.[28] How should these preferences or judgments be aggregated? What can we say about the appropriate decision rules for democratic choice?

In a democratic context, the idea is to see which policies or which options the people most support. Once the boundaries of the community have been established, the argument for majority rule has been canonical since John Locke, who argued that the majority was the "greater force."[29] By definition, more people support the majority view than support the minority one.

But for some questions there is also a long tradition of requiring super majorities rather than simple majorities. Jean-Jacques Rousseau held that "the more grave and important the questions discussed, the nearer should the opinion that is to prevail approach unanimity."[30] However, super majorities privilege the status quo over change. Unanimity, the strongest possible super-majority rule, would give everyone a veto and make new policies nearly impossible.[31] While many theories of deliberative democracy prize consensus and seek to achieve "rationally motivated agreement,"[32] they typically leave room for voting by majority where consensus or unanimity is not achieved.

Ultimately, we are interested in which proposed policies or candidates are supported by the preponderance of opinion and what are the reasons the people have for their conclusions. The decision rule for actual decisions (on the continuum from majoritarian to super majoritarian) as well as the voting system to measure it, are matters of institutional design which get entrenched

in a given political order and constitutional system. Deliberative democrats are concerned with the representative and thoughtful measurement and expression of the public's considered judgments. How large a majority should be required for a given kind of decision may vary by constitutional and institutional design for different kinds of issues. There is more of an argument for super-majority requirements in constitutional change in order to stimulate additional rounds of deliberation. Policy changes might be more suitable to the majority principle.

A cautionary point is the well-established argument that majority rule can produce voting cycles,[33] opening up democracy to inconsistency and manipulation. While we can only pause momentarily to acknowledge this enormous literature, it is worth noting, first, that the cases of actual voting cycles are, arguably, vanishingly rare.[34] Second, there is reason to think that any thoroughgoing application of *deliberative* democracy will be even less vulnerable to voting cycles than would non-deliberative democracy. Voting cycles are ruled out if there is an underlying dimension along which the voters can array the alternatives. The dimension might be left to right in the familiar political space. Or it could be some other dimension.[35] People do not need to agree on what should be done, but such an ordering clarifies what they are agreeing, or disagreeing, about. Duncan Black, in a classic study, named this property "single-peakedness."[36] When this applies, voting cycles are impossible. In a study of deliberation in different contexts and on different issues (with Deliberative Polls) we found that deliberation increased proximity to single-peakedness, creating the (largely) shared dimension that would effectively rule out cycles.[37] This empirical finding is in the spirit of a hypothesis of William Riker, the most influential proponent of the near intractability of the problem in modern democracies. Riker concluded:

> If, by reason of discussion, debate, civic education and political socialization, voters have a common view of the political dimension (as evidenced by single-peakedness), then a transitive outcome is guaranteed.[38]

If a microcosm deliberates, the confusion and collective inconsistency of the voting cycles can be largely avoided. And if we were to achieve a deliberative society, the problem could likely be avoided for the macro scale.

Deliberation. The past two decades have witnessed a "deliberative turn in democratic theory."[39] There has been a surge of interest in "deliberative democracy" in both political theory and empirical work.[40] What does deliberation add to democracy? What does it add to the evaluation and possible reform of democratic practices? Obviously the performance of democratic institutions could be enhanced in ways that have nothing to do with deliberation. What is the advantage of the deliberative approach? It foregrounds issues that were always a part of democratic theory, but which bring into

view the problem of *public-will formation.* Our premise is that democracies ought to make decisions that have some connection to "the will of the people." But what is the condition of our public will when the public often has low levels of information,[41] limited attention spans, and is the target of so many millions spent by the persuasion industry—on campaigns, elections, and issue advocacy?[42] How different would public opinion—and voting—be if people weighed competing arguments on the basis of good information about the alternatives? If they considered competing candidates, competing parties, competing ballot propositions, or competing policies, all under good conditions for really thinking about the tradeoffs posed by those choices?

The root of deliberation is *weighing.*[43] And the root idea of deliberative democracy—admittedly a very simple and commonsense notion—is that the people should weigh the arguments, the competing reasons, offered by their fellow citizens under good conditions for expressing and listening to them and considering them on the merits. A democracy designed without successful attention to this kind of public-will formation could easily be reduced to a democracy of manipulated sound bites and misled opinions. Even if the elections for candidates, parties, or ballot measures are competitive and procedurally fair, and even if the people are presented with a choice between significantly different options, it may be no more thoughtful or authentic a choice than one between brands of soap or cigarettes.

The deliberative character of any discussion may be construed as a variable—a property that any given communicative interaction possesses to a greater or lesser degree.[44] At the far end of this continuum lies a situation in which every argument offered is answered by anyone with a different viewpoint and those arguments are answered in turn with participants weighing all the reasons offered by everyone on the merits. Such an ideal cannot be fully realized in practice because it presumes virtually unlimited discussion. But it suggests a continuum in terms of the completeness or incompleteness with which the arguments offered are responded to.[45] Such a situation is reminiscent of the famous "ideal speech situation," a "methodological fiction" Habermas applies not just to politics but to all validity claims.[46] Habermas's proposal is a "thought experiment," but there are, he believes, conditions for actual decision procedures that can be realized. Key conditions include exchanges of "inclusive, public" arguments free of external coercion and "free of any internal coercion that could detract from [the participants'] equality. Each [participant] has an equal opportunity to be heard, to introduce topics, to make a contribution, to suggest and criticize proposals." Without distorting factors such as external or internal coercion, the conclusions would ideally be motivated by the "unforced force of the better argument."[47] While Habermas, building on work by Joshua Cohen, sketches some criteria that

should be satisfied by actual decision processes, his institutional proposals have been criticized, even by sympathetic proponents, for seeming to leave our current liberal democratic institutions of representative democracy largely in place.[48] He

refuse[s] to elaborate institutional venues of deliberation … he would insist that a theory of deliberative politics cannot determine the details of institutions because these must fit the context, be discussed, shaped, and adopted by a particular group of people with a particular cultural and political history.[49]

So how are we to achieve a deliberative politics of public opinion and will formation?[50] How are we to move from thought experiments to real experiments? We will pursue these questions in the case studies in Part III and, more generally, in Part IV.

On this continuum of increasing deliberative quality from mere conversation about public issues to an imaginary structured dialogue of near-unlimited duration, we can place "everyday talk" in the deliberative system" near the lower, more informal end, and actual dialogues in a structured process meant to engage the public in reasoning under good conditions (the deliberative microcosm or mini-public strategy) somewhat nearer the high end—but, of course, still far away from purely imaginary dialogues in perfected thought experiments such as might be envisioned in the "ideal speech situation." Jane Mansbridge insists that "everyday talk" should be judged by the same deliberative standards as highly structured deliberative processes,[51] admitting that they will likely not do as well in fulfilling those expectations.[52]

Impact. Thus far we have discussed criteria for including everyone, for their having substantive choices that are realistically available, and for their being able to deliberate about those choices. A final criterion for popular control is that their choices should actually make a difference. The people's choices need to have an effect on what policies are adopted or over who gets chosen for political office. Otherwise there is no effective democratic control.

Are we only interested in a formal connection between the judgments of the public and the policies adopted or the candidates chosen? Habermas emphasizes that the informal processes of public opinion formation can have a major effect on the formal processes of actual decisions (public-will formation). His observations are much in the spirit of what we saw from Bryce about "government by public opinion." Many effects of public opinion will operate informally as policy makers adjust and react to their perceptions and interpretations of the public will. Of course, some of what they do will be attempting to lead or manipulate. Leaders who appear to be following opinion may in fact be creating it.[53] Whether or not one considers this leadership or

manipulation, it undermines claims to popular control.[54] If leaders appear to be controlled by opinions which they, to at least a degree, are manipulating, then the appearance of public control is to that degree, a facade. Popular control requires impact for the non-manipulated views of the people. Finding and facilitating public spaces where that is possible will be part of the quest of this book. The channels for influence will often be some combination of formal and informal connection.

2. Four Forms of Democracy

There are many notions of democracy, but in my view they boil down to a few competing democratic principles and how they combine to form what we will call *four forms of democracy*, four conceptions of democratic practice. Our plan is to take the criteria for democratic control specified in Section 1 and apply them to each of these forms of democracy. In actual institutional designs none of these forms of democracy are self-sufficient. They coexist and connect with other institutions, usually exemplifying other forms of democratic practice (as well as other modes of decision making such as judicial decisions or administrative processes). But we will focus here on explicitly democratic elements, and on how these four forms of democracy can work alone or in combination to provide a satisfactory picture of rule by the people.

There are so many kinds of democracy, how can we get a handle on their variety?[55] It is useful to think of some core component principles—political equality, (mass) participation, deliberation, and avoiding tyranny of the majority (which I will call non-tyranny). Three of these principles are internal to the design of democratic institutions and one (non-tyranny) is about the effects of democratic decision, effects that have long worried critics of democracy. If we consider these four principles essential components of a democratic theory, then the variations in commitment to them provide a kind of rudimentary grammar that allows us to specify the range of alternative normative theories of democratic practice. In other words, we can get a handle on different forms of democracy according to whether or not they accept or reject these component principles.

By political equality I mean, roughly, the equal consideration of one's views as these would be counted in an index of voting power. Does the design of a decision process give each person a theoretically equal chance of being the decisive voter? Or, to take an obvious example, do voters in Rhode Island have far more voting power than voters in New York in selecting members of the Senate? By participation I mean actions by voters or ordinary citizens intended to influence politics or policy or to influence the dialogue about them. By deliberation, I mean, roughly, the weighing of reasons under good

Table 2.2.1 Forms of Democracy

Principles	Competitive Democracy	Elite Deliberation	Participatory Democracy	Deliberative Democracy
Political equality	+	?	+	+
Participation	?	?	+	?
Deliberation	?	+	?	+
Non-tyranny	+	+	?	?

conditions in shared discussion about what should be done. The good conditions specify access to reasonably good information and to balanced discussions with others who are willing to participate conscientiously. This summary is a simplification but should be for now. By non-tyranny, I mean the avoidance of a policy that would impose severe deprivations when an alternative policy could have been chosen that would not have imposed severe deprivations on anyone.[56] Obviously there are many interesting complexities about the definition of severe deprivations, but the basic idea is that a democratic decision should not impose very severe losses on some when an alternative policy would not have imposed such losses on anyone. The idea is to rule out only some of the most egregious policy choices and leave the rest for democratic decision (see Table 2.2.1).

Each of these four forms of democracy embraces a commitment to two of the principles mentioned. The position is usually agnostic about the other two. While there are obviously sixteen possible positions defined by acceptance or rejection of the four principles, I have argued elsewhere that the useful positions reduce to these four.[57] Variations that aspire to more than the four are either unworkable or merely utopian or empty (such as the rejection of all four principles). Those that aspire to fewer include elements of one of these four, but are less ambitious than necessary.

The four positions have all been influential. In some cases, I modify a familiar position to make it more defensible, in order to get the strongest version of each position.

By *Competitive Democracy* I mean the notion of democracy via electoral competition. Most influentially, this approach was championed by Joseph Schumpeter and more recently by Richard Posner and others.[58] This approach to democracy is in fact the one that is most widely accepted around the world.

On this view, democracy is not about collective will formation but just a "competitive struggle for the people's vote," to use Schumpeter's famous phrase. Legal guarantees, particularly constitutional ones, are designed to protect against the tyranny of the majority. Within that constraint, the key desideratum is competitive elections. On Schumpeter's view, it is a mythology left

over from ill-defined "classical theories" of democracy to expect the will of the people to be meaningful. Electoral competition, *without* any constraints on whether candidates or parties can mislead or bamboozle the voters to win, is what matters on this view. While Schumpeter did not even specify political equality in competitive elections,[59] I have included it here, on the grounds that it makes the position more defensible than would a position that embraced competitive elections in rotten boroughs (the constituencies that overrepresented small populations in nineteenth-century Britain). The question marks in the figure signal agnosticism about the other two principles. Some variants of this position avoid prizing participation, viewing it as a threat to stability or to elite decision-making. Better not to arouse the masses, on this argument, as their passions might be dangerous and motivate factions adverse to the rights of others, threatening the position's commitment to protect against tyranny of the majority. Because of collective action problems and incentives for "rational ignorance" (to use Anthony Downs' famous phrase), little can be expected of ordinary citizens. This position makes that minimalism a virtue.[60]

Schumpeter argues that we should not expect a "genuine" public will, but rather "a manufactured will." "The will of the people is the product and not the motive power of the political process." Further, "the ways in which issues and the popular will are being manufactured is [sic] exactly analogous to the ways of commercial advertising." In fact, he believes that competing parties and interest groups have "infinitely more scope" on public issues than in commercial competition to manufacture the opinions they hope to satisfy.[61] Competitive democracy, at least on Schumpeterian terms, sees little likelihood and little need for deliberation by the people.

Turning to the second column in Figure 2.2.1, by *Elite Deliberation* I mean the notion of indirect filtration championed by Madison in his design for the US constitution. The Constitutional Convention, the ratifying conventions, the US Senate were all supposed to be small, elite bodies that would consider the competing arguments. They would "refine and enlarge the public views by passing them through the medium of a chosen body of citizens," as Madison said in "Federalist No. 10," in discussing the role of representatives. Madison held that the public views of such a deliberative body "might better serve justice and the public good than would the views of the people themselves if convened for the purpose." This position, like the last one, avoids embracing mass participation as a value. The passions or interests that might motivate factions are best left unaroused. The founders after all, had lived through Shays' Rebellion, an uprising of farmers in Western Massachusetts that dramatized the dangers of the mob. They had an image of unfiltered mass opinion as dangerous. If only the Athenians had had a Senate, they might not have killed Socrates.[62]

By *Participatory Democracy*, I mean an emphasis on mass participation combined with equal counting. While many proponents of participatory democracy would also like deliberation, the essential components of the position discussed require participation, perhaps prized partly for its educative function (as Carole Pateman argued[63]) and equality in considering the views offered or expressed in that participation (even if that expression is by secret ballot). Supporters of participatory democracy might also advocate voter handbooks,[64] as did the Progressives, or perhaps new technology for voter information, but the foremost priority is that people should participate, whether or not they become informed or discuss the issues.[65] Part of the problem with this position is that it is sometimes advocated based on a picture of small-scale decision-making, such as the New England town meeting, in which discussion is facilitated, but then the position is implemented in the social context of mass democracy—the California process of ballot initiatives, for example, where plebiscitary processes involving millions of voters are employed to change the laws or the constitution.

A fourth position, which I call *Deliberative Democracy*, attempts to combine deliberation by the people themselves with an equal consideration of the views that result. One method for implementing this twofold aspiration is the deliberative microcosm chosen by lot, a model whose essential idea, as we will see, goes back to ancient Athens for institutions such as the Council of 500, the *nomothetai* (legislative commissions), the *graphe paranomon*, and the citizens' jury. Modern instances of something like this idea include the Citizens' Assemblies in British Columbia and Ontario and the Deliberative Poll. A second possible method for implementing deliberative democracy by the people themselves would involve some scaled-up institution of mass deliberation under good conditions. We will return to this possibility in Part IV.

Deliberative democracy by the people themselves is often invoked but rarely tried. However, there may be unusual intense periods amounting to a "constitutional moment" when the people as well as political elites are actively engaged in considering competing arguments for what will amount to constitutional changes. Notably, Bruce Ackerman argues that the American founding, Reconstruction and the New Deal, and, most recently, the Civil Rights Movement, constituted such unusual periods in American history when there really was a widespread and substantive national debate forging revisions in our constitutional self-understanding.[66] On his view, outside such extraordinary periods we have only "normal politics," combining a relatively more disengaged public with elite competition. Within "normal politics" there is not much room for mass deliberation.

Lastly, a word about the more general category "politics." Our argument will be that politics can be invigorated through deliberation by the public. We can treat "politics" as the exercise of power for the solution of public problems. But

The power can be institutionalized through some process of decision or it can be informal through the exercise of persuasion. Only some politics are democratic. We will restrict our discussion of democracy to the four forms discussed here. Any of these four forms of democratic practice can be considered an exercise of democratic politics. As we will see in our discussion of authoritarian deliberation, even non-democratic forms of politics can be invigorated by citizen deliberation. However, in this book our main focus will be democratic politics and its potential for the use of deliberation by the people themselves. Connecting politics to public deliberation can increase legitimacy and improve governance by providing a route to impact for the public's considered judgments about what should be done. It allows the public to take ownership of the policies they must live with and hence achieve a form of collective self-rule. That is the ideal. We will encounter many complications in practice.

3. Popular Control in Competitive Democracies

We have outlined four criteria for popular control and four forms of democracy. Recall that our criteria for popular control are: *inclusion, choice, deliberation,* and *impact*. If everyone is included, if they weigh the reasons for and against alternatives that are significantly different, if they make a choice among those alternatives and their choice has impact, then they have exercised popular control on the question posed. Can any of the four forms of democracy fulfill all four of these criteria?[67] What challenges do they face?

We begin with competitive democracy. Providing a form of politics that will allow the public to exercise popular control is the great aspiration of modern democracy. As Willmore Kendall noted, John Locke's influential argument for majority rule in the seventeenth century left it almost entirely unspecified *how* the majority would work its will, apart from the right of revolution.[68] In the modern era, Austin Ranney pointed out that it has been left to political parties (and the competition between them) to fill this gap. The challenge is to find the best "conduit or sluice by which the waters of social thought and discussion are brought to the wheels of political machinery and set to turn those wheels."[69]

Must it be competition between *parties?* In a classic exposition, E. E. Schattschneider claimed that "democracy is unthinkable save in terms of parties." John Aldrich amended this to say "democracy is *unworkable* except in terms of parties." He elaborated: "The political party as a collective enterprise, organizing competition for the full range of offices, provides the only means for holding elected officials responsible for what they do collectively."[70] There are competitive elections, particularly at the municipal level, or for candidate selection at the state level, that are officially non-partisan. But

these seem to stimulate the informal recreation of party-like coalitions and the experiments have been met with mixed success.[71] For the moment we will assume competition between parties. In Part IV we will look at other forms of democracy that are "thinkable" without parties.[72]

If there are two parties and everyone votes, the spatial model of politics, made famous by Anthony Downs, tells us that the two parties should take very similar positions converging on the median voter.[73] The original insight was developed by the economist Harry Hotelling in 1929, who applied it to firms competing on the basis of location and converging toward similar positions. He also applied it to politics:

The competition for votes between the Republican and Democratic parties does not lead to a clear drawing of issues, an adoption of two strongly contrasted positions between which the voter may choose. Instead, each party strives to make its platform as much like the other's as possible.[74]

Think of it as a spatial dimension from left to right. Just as firms seeking business from the public will choose a median location geographically (grocery stores or gas stations locating near each other on a street to attract customers, one hoping to get all the business coming from one direction, and the other all the business from the other), political parties competing with each other will rationally locate near the position of the median voter in the left-right space. The party very slightly on the left will hope to get all the left-to-center voters, the one very slightly on the right will hope to get all the right-to-center voters. If there are no abstentions and the voters select the parties according to their location in the space, it is rational for the parties to behave in this way. However, if there are abstentions, if voters on the extremes fail to turn out because the differences between the parties near the center are not significant enough from their perspective, then the parties will converge less. They will distinguish their positions in order to get some of those voters who might abstain. And if the population polarizes and not everyone is sure to vote, then there will be further pressures for the parties to differentiate themselves.[75]

For our purposes, the first thing to note is that by our criteria for popular control, if the parties are offering essentially the same positions, then the choice criterion is violated. If the people do not have a substantive choice to make, then they cannot exercise popular control by expressing their preference between two (or more) such alternatives.

Reacting to an environment of ideologically similar and undisciplined political parties, reform efforts in the mid-twentieth century focused on fostering the model of "responsible parties." The idea was to develop two cohesive and disciplined political parties to offer the public a definite choice and allow that choice to determine policy via the implementation of a clearly articulated party program.

A landmark report of the American Political Science Association advocated "first that the parties are able to bring forth programs to which they commit themselves and second that the parties possess sufficient internal cohesion to carry out these programs." In addition, the report emphasized "the need for an effective opposition party . . . in which the opposition party acts as the critic of the party in power, developing, defining and presenting the policy alternatives which are necessary for a true choice in reaching public decisions."[76]

For the issues posed, this model would satisfy our criteria of *choice, impact,* and *inclusion* (assuming widespread opportunity to vote). If there were a strategy for achieving public *deliberation*, it could realize a coherent vision of popular control. It would seem to have potential for satisfying our four criteria. However, the deliberation criterion will be key. It is an antidote to manipulation and other concerns that the people are not actually in control of their choices and, hence, not in control of the outcomes. But set that aside for the moment.

At least the responsible party doctrine specifies a *mechanism* by which the people can choose in a way that will have consequences. It is one solution to the "sluices" problem. But choose between what? Riker criticized the proposal as "morally wrong from a liberal democratic view, because to get binary choice one must *enforce* some method of reducing options." We cannot get "a coherent program" just "by weaving together individual judgments."[77]

The packages presented by the parties to the public are undoubtedly the result of bargaining and log-rolling of various kinds. The result may well be individual proposals that only have minority support but which together amount to a package with majority support. Dahl offered a clarifying hypothetical to illustrate what he called "minorities rule"—packages of policies constructed to piece together intense minorities supporting unpopular policies but adding up to a majority. Suppose one quarter of the voters strongly support a *foreign policy* opposed by 75 percent, one quarter support a *farm policy* opposed by 75 percent, and one quarter support *fiscal policy* supported by 75 percent. This package of unpopular policies, a party platform if you will, can get 75 percent support based on the intense views of those who get what they want most, even though each part of it is opposed by 75 percent. Dahl did not portray "minorities rule" as an unusual occurrence, but instead viewed it as a frequent pattern in American politics and, indeed, other democracies.[78] Clearly a full solution to the problem of popular control needs to deal with agenda setting, a topic to which we will return in Part IV.

The possibility of what Dahl called "minorities rule" was further buttressed by later work by Philip Converse, Jon Krosnick, and others on "issue publics."[79] The intuition is that we don't all focus on all the issues but a few of us focus on an issue of real importance *to us*, and others focus on other issues, and

so on. There is a kind of division of labor. The farmers focus on farm policy and other groups focus on their issues. Many distinct subgroups view various issues as important and those few may become highly informed about those issues and probably less open to change on their issues of highest importance. So, to elaborate on Dahl's example of "minorities rule": if a distinct minority attaches importance to farm policy (perhaps the farmers and agriculture sector) and a distinct minority to a foreign policy issue (say those Jewish voters who feel strongly about supporting settlements on the West Bank), and a distinct minority to fiscal policy (say the deficit hawks on the budget) we can easily imagine intense-issue minorities pushing their parts of a package that has majority support overall—but within which each component is extremely unpopular. Perhaps Dahl's example of 75 percent against each component is an extreme case, but both the logical possibility and empirical vulnerability are evident.

But even with these limitations, there is no denying that if there is majority support at the end of the day for a given package or platform, and if the public chooses it, and if it is implemented, then there is a kind of control being exercised by the majority—even if its elements are all, taken separately, unpopular. Note that the intense-issue minorities are precisely the voters who are least likely to change their views or even be open to opposing points of view. In natural settings, they are least likely to be open to deliberation. So the decision is likely to be a consequence of issue mobilization of intense minorities to achieve their views in the platform or policy package. It is popular influence by intense minorities, not popular control by a deliberating populace.

Yet even if all these conditions are satisfied, it is a blunt form of popular influence. As Schattschneider famously remarked: "The people are a sovereign whose vocabulary is limited to two words, 'Yes' and 'No.' This sovereign moreover can speak only when spoken to."[80]

More nuanced and policy-specific input from the public could be facilitated if there were more than two major parties. If there were multiple parties with a real chance for office, then citizens could more easily connect their policy preferences to their representatives. They would not be forced to choose one of only two predetermined packages, perhaps neither representing their preferred views. However, the prospects for viable multiparty systems depend, crucially, on the electoral system. The American style of plurality elections (whoever gets the most votes within a district wins) provides strong incentives for two parties rather than multiple parties. Voters hesitate to "waste" their votes on third or fourth parties with no realistic chance.[81] Of course, with multiple parties there can be third parties with negligible showings in the geographical districts there can be third parties with negligible showings in some regions but strong prospects in others. But the logic of the situation for mainly two parties in any geographical area plays out nevertheless.[82]

A different voting system, such as ranked-choice voting (also termed instant-runoff voting), allowing voter preferences for multiple parties to count without wasted votes, could allow for more viable third parties.[83]

Even if multiple parties were viable, would this facilitate better popular control? If the question for *impact* is which government is in power, then the answer is probably no. In a major study Arend Lijphart studied multiple countries and classified them on various criteria from *majoritarian* (mostly or entirely two-party systems) to *consensual* (relying on multiparty coalitions). For the consensual multiparty systems, there are vanishingly few actual turnovers in government even over a very long period. The various parties get elected and then governments get reshuffled or renegotiated, enabling a variant of the same government to retain power. Lijphart is studying stable, well-established, party competition-based democracies:

Of the 20 countries with the longest democratic history . . . all of which are undoubtedly stable and consolidated democratic systems, no fewer than three—Luxemborg, the Netherlands and Switzerland—fail even the one-turnover test during the more than sixty years from the last 1940s to 2010, that is, they experienced many cabinet changes but never a complete turnover, and six—the same three countries plus Belgium, Finland and Germany—fail the two turnover test.[84]

While Lijphart makes a case for better policy consequences (by his lights) in the consensual (multiparty) democracies, there does *not* seem to be a case for better *popular control* of who governs or what they do. Six of the twenty countries did not have even two turnovers over a sixty-year period. The intermediate stage of coalition formation and reshuffling makes the construction of governments and their policy priorities a matter of elite negotiation.[85] The people have an effect on who the players are,[86] but their effect on the results is greatly muted by this intervening stage.[87]

4. Is There Democracy for "Realists"?

Perhaps it is too much to expect policy-specific input from the public to provide democratic control in competitive party systems. Christopher Achen and Larry Bartels, in their comprehensive assessment of whether elections can produce responsive government, offer a sustained critique of two remaining mechanisms—spatial theory and retrospective voting.[88] These could offer less specific mechanisms for popular control, either by connecting voters to the general ideological position of the parties or by empowering the electorate to "just say no" when they disapprove of what has been done.

We have already encountered spatial theory in our discussion of political parties. Without denying the elegance of the spatial theory formulation, it depends first on whether real voters and candidates locate themselves in the space (whether left to right or some other space). Second, it depends on whether candidates (or parties) compete in the space by locating themselves to attract voters who evaluate them based on their positions in the space. While there do seem to be connections between the issue positions of candidates and voters, do they play a causal role? Do voters evaluate candidates depending on how close they are to the voters' already determined policy positions? Or rather, do voters simply adjust their policy positions to fit the candidates they happen to prefer for whatever reason? Such a possibility would undermine the scenario for democratic control because voters would be conforming to the candidate positions rather than the other way around.

The spatial distance or "issue proximities" of candidates' positions to voters' positions do seem connected to voter support. But is this connection causal? Achen and Bartels build a skeptical case, relying on the work of Gabriel Lenz, who summarizes:

Voters, having decided they like a particular politician for reasons having little or nothing to do with policy, may simply adopt that politician's policy views. In this view, democracy is a farce. Politicians lead, citizens follow … Voters don't choose between politicians based on policy stances; rather, voters appear to adopt the policies that their favorite politicians prefer.[89]

Lenz does, however, find more evidence that voters reward candidates for performance, at least on the economy.[90] However, this is past performance, and hence a variant of "retrospective voting." This is the one area where Achen and Bartels find a modest basis for accountability to voters, but it is, as Morris Fiorina, its most well-known proponent, puts it, "rough justice."

Retrospective voting is a response to the information demands of voting. It is a way for voters to draw inferences about the future based on the past. Fiorina asks a "deceptively simple question":

What is an election? In principle, two or more groups of like-minded people put forth alternative visions of future societies. After carefully weighing the alternatives, the citizenry entrusts one of the competing parties with the mantle of leadership. In practice, however, an incumbent party attempts to convince an appropriate proportion of the electorate that it lives in the best of all possible worlds, while an opposition rails at the incumbents and advances a collection of unrealistic promises.[91]

Nothing in this statement would have surprised the proponents of "a responsible two-party system." The problem is the information demands for "weighing

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the alternatives." Only a small proportion of voters satisfy the demands of political issue voting. In their magisterial study of *The American Voter*, Campbell and colleagues cited these necessary conditions (also invoked by Fiorina):

1. The citizen must express an opinion on an issue ("cognize" the issue).

2. The citizen must have knowledge of current government policy on the issue.

3. The citizen must have knowledge of the policy alternatives offered by the competing parties.

4. The citizen must feel sufficiently strongly about the issue to make use of the aforementioned knowledge in casting his vote.[92]

Clearly, this is a lot for voters to know and to think about. *The American Voter* found that maybe a fifth of the electorate approached this ideal. Empirical assessments and reassessments have followed but the basic picture remains. Only a small minority live up to such requirements.

Retrospective voting has far lower information requirements:

In order to ascertain whether the incumbents have performed poorly or well, *citizens need only calculate the changes in their own welfare.* If jobs have been lost in a recession, something is wrong. If sons have died in foreign rice paddies, something is wrong. If polluters foul food, water or air, something is wrong. And to the extent that citizens vote on the basis of such judgments, elections do not signal the direction in which society should move so much as they convey an evaluation of where society has been.[93]

That evaluation of where society has been seems to be a cost-effective way for citizens to draw an inference about where it is likely to go. Building on Downs, Fiorina offers "retrospective voting as a cost-cutting element in a citizen's voting decision." Provided that parties are "consistent in the policies they implement and advocate,"[94] past performance seems to provide a basis for choice and a measure of accountability.

But does it? Voters who have fared poorly may hanker for "change," whether they are Obama voters or Trump voters, or both.[95] But the direction for change is underspecified. It could be no more tangible an improvement than the change in their pockets.

It is accountability with a very blunt instrument: "if jobs have been lost in a recession something is wrong, but is it the president's fault? If it is not, then voting on the basis of economic conditions may be no more sensible than kicking the dog after a hard day at work."[96] Attributions of responsibility and evaluations of the facts applying to contested policies will often be distorted by partisanship. Voters may simply *rationalize* their vote intentions by adjusting their evaluations to fit their partisan inclinations.[97]

The central idea is that voters have the best basis for determining "their own welfare." But many of the issues to which the theory is applied are about general conditions of the country—war and peace, the environment, the economy. My individual welfare may or may not be a good indicator of these macro developments. As a normative matter, do we want voters just to consider their own welfare, their own pocketbooks, or do we expect them to respond to the state of the broader community, or the country? There is in fact plausibility for the latter in some research, but then the clear advantage of retrospective voting in the availability of evidence—needing to know only one's own welfare—evaporates. It is no longer just my welfare but the complex issues about the state of the country that I need to know and evaluate to understand whether things are going well.[98]

Still, with all these limitations, retrospective voting supplies some rough basis for choice, but, as Achen and Bartels note, it is like driving while you look through the rearview mirror. It is a way of simplifying the demands for information and thought required of voters. Achen and Bartels conclude:

> The conventional account of retrospective voting, minimalist as it is, fundamentally underestimates the limitations of democratic citizens, and as a result, the limitations of democratic accountability.[99]

In Part III, we will question whether it is the "limitations of democratic citizens" or the limitations of the democratic designs within which they are asked to perform their role. We find that with a different design for institutions, ordinary citizens are perfectly capable of exercising a much more demanding role. It is not a question of competence but of design.

Achen and Bartels conclude their comprehensive assessment of democratic methods for responsive government with a different theory:

> Voters, even the most informed voters, typically make choices not on the basis of policy preferences or ideology, but on the basis of who they are—their social identities. In turn those social identities shape how they think, what they think, and where they belong in the party system. But if voting behavior primarily reflects and reinforces voter's social loyalties, *it is a mistake to suppose that elections result in popular control of public policy*.[100]

In other words, their book culminates with a bleak picture for democratic aspirations. They offer a theory, but it is not a theory of popular control or democratic accountability. Instead, it is a theory of competitive tribalism in which allegedly democratic practices make little difference to governance. Having posed the challenge of popular control for democracy, they treat it as lacking any possible credible answer. Their democracy lacks popular control and lacks any meaningful impact for the public will, if indeed there is any public will to be formed. They argue "it feels like we're thinking" but that

feeling is just an illusion rationalizing our coming to conclusions determined by partisanship and tribalism.[101] Such a democracy is more open to challenge by other forms of governance, particularly benevolent authoritarianism, perhaps on the Singapore model. A democracy where "the will of the people" is meaningless or irrelevant is more vulnerable to non-democratic competitors. Why have such a democracy? There might still be instrumental arguments that it facilitates other valued rights and liberties. But that would depend on a contested empirical case. The Achen and Bartels argument in *Democracy for Realists* undermines the normative case for democracy itself. Or, put differently, it undermines the case for *non-deliberative* democracy as we know it. Our challenge is to treat deliberative democracy as an immensely useful stimulus to the political imagination—to see if, when it is added to the mix, the resulting designs can do any better.

5. Manipulation

Before we leave the topic of popular control via competitive elections, we should pause to consider an additional problem—manipulation.[102] If elites or other political actors manipulate public opinion or mass political behavior, then even if the public appears to be exercising popular control, it is not. It is not in control of itself. Someone is pulling the strings.

Further, if manipulation works, then there will be incentives for political actors to engage in it, whether they are candidates, parties, or political operatives with partisan or interest group leanings. After all, the incentives within competitive democracy are all about winning, and not much about truth telling.

Consider some famous examples of political manipulation. I begin with examples from countries other than the US and earlier times to give us the perspective of distance. Since manipulation is a negative and contentious term, it is worth stepping back from current partisan divisions in order to clarify the phenomenon.

In Britain, the 1924 Labour government of Ramsay Macdonald loses the election in part because of the publication of a fake letter from the Soviet head of the Comintern, Grigory Zinoviev.[103] The Conservatives win with a red scare drumbeat of fear that Labour is in league with the Soviets, who were in fact preaching continuous world revolution.

In 1999, a British parliamentary inquiry opened up the historical issues, concluding that officials in the Foreign Office knew the letter was fake but were happy to see the Labour government discredited right before the election.

In the Australian election of 2001, Prime Minister John Howard and his government falsely claimed that a boatload of immigrants had thrown their

children overboard in order to try and seek asylum in Australia. Howard used this alleged incident to whip up anti-immigrant sentiment and pull ahead of Labour in the polls just before the election. A later Senate inquiry in Australia determined that the Howard government knew that the allegations were false.

In Taiwan in March 2004, President Chen Shui-bian and Vice-President Annette Lu were apparently the target of an assassination attempt on the eve of the election. A sympathy vote allowed them to pull ahead by 29,000 votes. Later it seemed that the assassination might have been faked. If so, this would be another case of political manipulation.

Add to these the more familiar cases of the "Willie Horton" ads deployed against Michael Dukakis in 1988 and the "Swift Boat Veterans for Truth" ads deployed against John Kerry in 2004.

Some of the Willie Horton ads and all the Swift Boat ads reflect the fact that campaign warfare is increasingly "asymmetrical." Just as states now face non-state actors where deterrence breaks down because the attack has no clear return address (no one knows who the terrorists are or how to find them), so political campaigns face attacks from third parties who also have no clear return address. The beneficiaries can keep their hands clean, avoiding public responsibility for the attacks. And if a campaign dialogue is hijacked by foregrounding a new issue, the result is literally *MAD*, what I would call *mutually assured distraction*.

Consider a policy example outside the context of elections. Interest groups has repeatedly mounted campaigns on behalf of tax subsidies for so-called "clean coal." The ads describe how much cleaner and how much better for the environment clean coal is, never making it clear that the tax subsidies could divert energy use away from much cleaner sources. Clean coal may be cleaner than dirty coal, but it is much dirtier than natural gas or renewable energy. Note, in this case, the use of strategically incomplete rather than false information.[104] One successful wave of these efforts led to the Energy Policy Act of 2005, which included large tax subsidies for clean coal which the Bush administration implemented.

Now let us turn to some more recent examples. A study of hyper-partisan web sites during one week in the 2016 presidential election found a proliferation of false or highly misleading news on both right- and left-wing sites: "three big right-wing Facebook pages published false or misleading information 38 percent of the time during the period analyzed, and three large left-wing pages did so in nearly 20 percent of posts."[105] So the phenomenon applied to both parties. In one dramatic case, separately investigated by the *New York Times*, a Republican political operative completely fabricated the story of "tens of thousands" of fraudulent Hillary Clinton ballots "found" in the swing state of Ohio, intended to help rig the election. The photo with

the ballots was actually from a British election showing legitimate ballots, with a renamed British election worker. This fake story was eventually shared with 6 million people.[106]

We live in a society that values freedom of expression and association—as a matter of right. The system of freedom of expression presumes that many forms of advocacy take place. What is the dividing line between mere advocacy and something that is presumably objectionable (even if lawful) that might be termed manipulation? Stephen Ansolabehere and Shanto Iyengar suggest a definition in the course of their important study of negative advertising: "Manipulation involves leading voters to select politicians who ultimately do not represent the individual's interests and preferences."[107] The usefulness of this definition will depend on the definition of an individual's preferences and interests. John Zaller offers a related definition of what he calls "domination," which benchmarks it to a counterfactual:[108] "I define elite domination as a situation in which elites induce citizens to hold opinions that they would not hold if aware of the best available information and analysis."[109]

In this spirit we can define manipulation:

A person has been *manipulated* by a communication when she has been exposed to a message intended to affect her views or behavior in a way she would not accept if she were to think about it on the basis of good conditions—and her views are in fact affected in the manner that was intended.

So if she is fooled by misinformation and changes her views in the intended way on that basis, then she has been manipulated. On the view proposed here, we can use deliberation to define the hypothetical—what she would have thought on the basis of good information.

In the Zinoviev case, it is likely that the voters who were changed were not Labour voters, since there was widespread sympathy for the Soviet Union among Labour voters in the early years of the Soviet Union. Rather, it was most likely independent voters who were switched and Conservative voters who might not have voted at all who were mobilized.

In the Australian case where the Howard campaign claimed that the immigrants threw their children overboard in order to gain admission to the country, there was no problem of mobilization since Australia has compulsory voting. But the sensational incident primed immigration as the key issue in the election when it had not been a top issue at all before then. It changed the basis for voting. If voters had known that the sensational charges were false and known to be false, this hijacking of an election shortly before the vote through priming would not have succeeded. As one press report after the Senate inquiry summarized it, the Howard government "exploited voters' fears of a wave of illegal immigrants by demonising asylum-seekers."[110]

In the case of Willie Horton, the combustible focus group-tested ads primed crime and Dukakis' judgment as issues for decision, based on a misleading account of a single incident. In the case of the Swift boats, false allegations primed Kerry's character as the issue. The "Swift Boat" campaign may well have swung the election, given how close it was.

In the case of the "clean coal" ads, if citizens had the facts about the competing energy choices, they would be unlikely to support incentives for coal compared to natural gas and renewable energy. The apparent facts are strategically incomplete, laying out the advantages of so-called clean over dirty coal, but not compared to the other alternatives.

In the case of negative ads against Dukakis or Kerry, the targets for manipulation could be undecided voters, Republicans who might not have otherwise turned out, and Democrats who might be induced to switch or stay home. Given the false and misleading character of those ads, we can probably infer that voters in all three categories could have been influenced. In the case of the fake news ad about Hillary Clinton trying to rig the election with fake ballots in Ohio, we can imagine it influencing partisans who might not otherwise have been mobilized to vote, Independents who might be persuaded to change their vote, and Clinton supporters who might be demoralized and demobilized. In all these cases, the benchmark of deliberation offers a useful comparison point to judge possible cases of manipulation.

By hypothesizing what people would think under good conditions as a point of comparison, we are not asserting that whenever people are not deliberating they are then being manipulated. Others must actually *intend* to manipulate opinion or behavior in a given direction. And the good conditions defined by deliberation are just a benchmark for comparison—a way of clarifying what is short-circuited by manipulation. Perhaps manipulators want me to think X. Perhaps I would in fact think X if I deliberated about the issue, (particularly if I considered the competing arguments and had good information about them). On the definition offered here, I have not been manipulated if that is the case and I do think X.[111]

We can think of deliberation and manipulation as poles on a continuum. At one end we have good conditions and at the other end we have severely distorted conditions intentionally created in order to influence behavior. The good conditions include balanced messages with reasonably accurate information. Balance means that arguments offered are answered in a substantive way by arguments reflecting a competing side and those arguments are answered in turn and so on. And the information employed in these messages is factual and accurate. When arguments are offered and then answered substantively in turn, strategically incomplete arguments are defused of their power to mislead. For example, a clean coal advocate could talk about how much better clean coal is than dirty coal, but the case for adopting clean coal would have to

face criticism from the advocates of other cleaner sources. At the other end of the continuum we have unbalanced and inaccurate messages. Arguments offered are not answered. And the lack of substantive balance and the inaccuracies are intended to move opinion in a given direction.

What is the difference between manipulation and persuasion? In a society valuing free speech, we fill the airwaves with persuasion. Clearly there will be areas on the continuum where it is hard to distinguish. But the end points make it clear. The messages in deliberation are intended to persuade, but in a dialogue or debate in which accurate information is available and in which it is expected that the other side will have its say. Hence, clear misinformation or strategically incomplete arguments that would collapse if the other side were voiced, would be avoided in a well-conducted deliberative process. At the other pole, the knowing use of such misinformation or misleading information is the point of the message. Perhaps you have an overwhelming ad buy or perhaps you know the charges are so sensational they will receive a massive hearing, drowning out any response. Perhaps you concoct a fake story and spread it virally as widely as possible.

Deliberation can empower popular control if combined with fulfillment of our other criteria. Manipulation destroys popular control by putting the manipulators in charge. One of the main challenges for competitive democracy is the obvious incentives it offers for political actors to attempt to manipulate. Our quest is for institutional designs that will incentivize deliberation, both by political actors and by the people themselves.

6. Elite Deliberation and Popular Control: Madison's Filter

The American Republic was initially conceived as a form of "popular government" quite different from competitive democracy. It was a vision of a self-governing republic almost unrecognizable to a modern audience. Some of the institutions of that initial design, such as the Senate and the Electoral College, live on in the modern era, but operate in a manner disconnected from the original theory.

Before the invention of modern political parties, James Madison theorized deliberation by representatives as a form of popular control. To a modern audience it is not immediately clear how such an approach would constitute rule by the people. Let's return to Madison's argument in *The Federalist*. For Madison, deliberation by representatives was the institutional expression of the public voice solving the major challenge to any form of popular government—what Madison called the problem of faction:

[B]y a faction I understand some number of citizens, whether amounting to a majority or minority of the whole, who are united and actuated by

some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent interests of the community.[112]

The threat of mob rule had been dramatized by Shays' Rebellion. The people had killed Socrates.[113] Could a form of popular government avoid destroying rights and liberties, even when, or especially when, supported by a majority? There were few precedents of any form of popular rule to learn from. Small-scale direct democracies in antiquity seemed to exemplify the problem. Americans could also reflect on their own experience in the Continental Congress and in the colonial and state assemblies as well as the British experience.[114]

Madison made extensive studies in preparation for the task ahead in the Constitutional Convention, even asking his friend Jefferson to ship a large library of books from France.[115] He arrived at a distinctive solution to the mechanics of representation. As he said in his notes on the Constitutional Convention, he became "An advocate for the strategy of refining the popular appointments by successive filtrations."[116]

Madison was inspired, according to Douglas Adair, by his reading of the Scottish philosopher David Hume's "Idea of a Perfect Commonwealth," a proposal for an ideal government in which each level of government selects a higher one. Hume proposed artificially dividing the country (Great Britain and Ireland or any large country) into 10,000 parishes which would each elect one representative.[117] Those representatives would meet on a countywide basis in one hundred counties. Those one hundred counties would, in turn, elect one hundred senators.[118] The filtrations from each level of government to the next would work well at the large scale, for what Madison was to call the "extended republic." As Hume described the scheme:

In a large government . . . there is compass and room enough to refine the democracy, from the lower people, who may be admitted into the first elections or first concoction of the commonwealth, to the higher magistrates, who direct all the movements. At the same time, the parts are so distant and remote, that it is very difficult, either by intrigue, prejudice or passion, to hurry them into any measures against the public interest.[119]

Madison saw no need to artificially create new divisions in an America with already existing state and local governments, but he embraced the idea of "filtrations" in which successive levels of election would produce representatives at the national level. As he said in his notes at the Constitutional Convention (referring to himself in the third person), the filtration should begin with the people and it should leave room for one popular branch elected by the people (what became the House of Representatives):

He wished the expedient to be resorted to only in the appointment of the second branch of the Legislature and in the Executive and Judiciary

branches of the government. He thought too that the great fabric to be raised would be more stable and durable if it should rest on the solid foundation of the people themselves, than if it should stand merely on the pillars of the legislatures.[120]

The filtration would be twofold: a refinement in the *selection process* of representatives and a refinement of the *views* of the public by the representatives through their deliberations. How would this solve the problem of faction? How would it work?

Let's return to the problem and why it seemed nearly intractable. To cure the mischiefs of faction, he argued, we need to either control its causes or control its effects. As for causes, "Liberty is to faction what air is to fire." Destroying our liberties would destroy that which is "essential to political life." And: "as long as the reason of man continues to be fallible, and he is at liberty to exercise it, different opinions will be formed." Differences will develop through the exercise of liberty, including differences in property and differences in interest. Madison concluded: "the latent causes of faction are thus sown in the nature of man."

Hence, Madison argued, we need to control the effects rather than the causes of faction. He asks us to consider two cases. First: "If a faction consists of less than a majority, relief is supplied by the republican principle, which enables the majority to defeat its sinister views by regular vote." While a minority faction "may clog the administration, it may convulse the society," it cannot "execute and mask its violence under the forms of the Constitution." The problem comes with the prospect of a majority faction:

To secure the public good and private rights against the danger of such a faction and at the same time to preserve the spirit and form of popular government is then the great object to which our inquiries are directed . . . it is the great desideratum by which alone this form of government can be rescued from the opprobrium under which it has so long lingered.[121]

In what Madison calls a "pure democracy," such as the direct democracy of ancient Athens,[122] there is "no cure for the mischiefs of faction." But in what he calls a "republic . . . in which the scheme of representation takes place" there is "a different prospect." It "promises the cure for which we are seeking." Famously, its effect is:

To refine and enlarge the public views by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of their country and whose patriotism and love of justice will be least likely to sacrifice it to temporary or partial considerations.

The "public views" are "passed through the medium of this chosen body." The refinement or filtering is not just of *who* is chosen but of the *views* of the public

which the representatives consider and express. As Joseph Bessette notes, "properly designed representative institutions," on Madison's view, *"do not displace public attitudes with the personal views of elected officials,"* but rather "refine and enlarge the public views."[123] The public views, thus deliberated, may well come to be different from those of the rest of the public:

It may well happen that the public voice, pronounced by the representatives of the people, will be more consonant to the public good than if pronounced by the people themselves, convened for the purpose.[124]

The response to the "great desideratum" is that the refined and enlarged views will not be the sort of opinions that could motivate factions adverse to the rights of others or the permanent and aggregate interests of the community. When representatives filter the public's views, they will arrive at what Madison calls "the cool and deliberate sense of the community."[125] A reason-based deliberation is incompatible with the passions and interests that could motivate a majority faction.

It is not completely clear why the representatives can be expected to deliberate in this way. In fact he admits they may not: "Men of factious tempers, of local prejudices, or of sinister designs may, by intrigue, by corruption...first obtain the suffrages and then betray the interests of the people."

But there are favorable structural factors. Consider two: the size of the population from which each legislator is to be drawn and the size of the legislature itself. The larger the former the more it improves the filter for the people in the selection process, ensuring a higher quality of representative. The smaller the latter (within limits), the more it improves the filtering of the public views, that is, deliberation. For the first mechanism, the elections to a small legislature drawn from a large population will tend to be those "whose enlightened views and virtuous sentiments render them superior to local prejudices and to schemes of injustice." They will have the standing to compete in a large population. For the mechanism for the second, the size of the legislature for deliberation, it needs to fall within a certain range. It must be large enough "to secure the benefits of free consultation and discussion and to guard against too easy a combination for improper purposes." But it must not be too large to "avoid the confusion and intemperance of a multitude." "Sixty or seventy" is better than "six or seven." But in larger assemblies "passion never fails to wrest the scepter from reason." He concludes: "had every Athenian citizen been a Socrates, every Athenian assembly would still have been a mob."[126]

There is also a third structural factor in the design—its use of time. The Senate in particular was designed to provide a basis for further reflection and to slow down unwise proposals. It was what one recent commentator called "a speed bump...rather than a roadblock."[127] As Madison argued in his essay "Federalist No. 63," it was a "temperate and respectable body of citizens" that

could "suspend the blow mediated by the people against themselves until reason, justice and truth can regain their authority over the public mind." Such a safeguard might have prevented the conviction of Socrates:

What bitter anguish would not the people of Athens have often escaped if their government had contained so provident a safeguard against the tyranny of their own passions? Popular liberty might then have escaped the indelible reproach of decreeing to the same citizens the hemlock on one day and statues on the next.[128]

The six-year terms on a staggered basis would allow the Senate to resist popular passions. The filtration in the selection of its members and its relatively small size would allow for discussion and reflection.

Filtration was key to the design not only of the Senate but also of the Electoral College:

As the select assemblies for choosing the President as well as the State legislatures who appoint the senators, will in general be composed of the most enlightened and respectable citizens, there is reason to presume that the attention and their votes will be directed to those men only who have become the most distinguished by their abilities and virtue, and in whom the people perceive just grounds for confidence.[129]

The electors were to deliberate on a state-by-state basis, partly for practical reasons and partly to prevent intrigue.[130] They were to choose the most qualified person. As Hamilton concluded, "there will be a constant probability of seeing the station filled by characters pre-eminent for ability and virtue."[131]

In addition, the very idea of a convention (whether at the national level for proposing the new constitution or at the state level for its ratification), embodies this same conception of deliberation by representatives. The convention is a kind of defective parliament that filters the public views and speaks for the people. It is defective in the sense that it was constituted outside of the normal legal processes. The American Constitutional Convention was not authorized by the Articles of Confederation to produce a new constitution. It was irregular in a manner parallel to the convention that authorized the Glorious Revolution in Britain in 1688, which brought William and Mary to the throne. One difference was that in the British case, the provisions passed by the convention were later affirmed by the normal parliament. But in the American case, the convention was thought to express a kind of higher or constitutional law-making superseding the Articles of Confederation, provided that its conclusions were ratified by the people. But here once again, the conventions in each state were taken to speak for the people, indeed to constitute speech by the people themselves, filtered in the appropriate way.[132]

In "Federalist No. 40," Madison asks the reader to recall that *conventions were elected in the several States* for establishing the constitutions under which they are now governed" and that the current plan will be "submitted *to the people themselves*". Madison treats submitting the proposed constitution to the ratifying conventions as equivalent to submitting to "the people themselves."[133] A convention is a way for the people to speak, having properly considered all the arguments and through a body that has been appropriately filtered.

Madison was consistent in advocating the "strategy of successive filtrations." But the particular designs that came out of the convention were not necessarily his first choice. He did not initially favor having the state legislatures elect the Senate. At first he thought it better to have the House elect the Senate. And the initial proposal for the Electoral College was not his, although he eventually embraced it. Nevertheless, there is an obvious sense in which the designs these institutions embodied, along with that for the convention itself (as well as the ratifying conventions, as opposed to state legislatures or popular votes for ratification), all embodied, to some degree, his initial theory of filtration.

He was clearly aware that the filtered public views could be at variance with those of the broader public. They might differ from those offered by "the people themselves if convened for the purpose." But if the representatives, no matter how virtuous and no matter how reason-based their deliberations, are too far at variance from the public, the system may not long persist. We will see this problem recurring at various points, whether it is the gap between elites who deliberate and the broader public who do not, or deliberative mini-publics (samples of the people themselves who deliberate) and the broader public who do not. Some interpretations argue that Madison saw this problem and highly prized deliberation so far as possible by the broader public as a remedy.

Larry Kramer's discussion of Madison connects the deliberation by representatives to the formation of opinion among the broader public on an ongoing basis:

Madison's objective was *not* to select an elite that would deliberate for the public (emphasis added); nor was it to place this elite at such a remove from the people that it could work free from their interference. Rather, Madison wanted "the ablest Statesmen & soundest Republicans" to seek positions of leadership so they could teach and inform the public, elevating the discussion, fending off local prejudices, and improving the citizens' minds and morals.[134]

But the "educative function" of leadership and the role of newspapers and public discussion leave the elements of a more deliberative society underspecified.

Madison did not solve this problem and neither have the practices of liberal democracy over the two and a quarter centuries following.[135] We will return to this problem in Part IV to offer some thoughts on connecting deliberation in select groups with deliberation in the broader society.

We have focused on Madison's theory of elite deliberation because it is both the most influential and the most developed version.[136] How does elite deliberation satisfy our criteria for popular control? If the theory were to work as put forth by Madison, the representatives would filter the public views in arriving at decisions in the Congress. The president would be selected by a parallel filtration process. Separation of powers and multiple decision points would function to provide due reflection. The process satisfies inclusion via the public views. Indeed, the spread of suffrage to include more and more people in the base of the filtration process helps make this plausible.[137] The representatives would be making choices based on their refinement of the public views and those choices would be part of the broader public debate. The process, if it worked as intended, would be deliberative and, in at least a limited sense, inclusive. It would end in refined majority decisions.

However, the system of filtration did not provide incentives for political behavior that could withstand the development of parties and a party competition-based democracy. The system, if it ever worked as intended, soon collapsed. In fact, Madison joined with Jefferson to cofound the Democratic-Republican Party. If elite deliberation lives on, it does so as a design for other institutions—commissions,[138] the Federal Reserve,[139] and the Supreme Court, at least in some idealizations.[140] In addition, as Cass Sunstein has argued, the Executive Branch itself makes ample room for elite deliberation in interagency processes focused on the substance of specific policy issues.[141]

7. Participatory Democracy and Democratic Control: From Town Meetings to Referenda

The elite deliberations of the Constitutional Convention were soon challenged by a competing form of democratic practice—participatory democracy. Direct participation of the people in self-rule already had a long tradition at the local level, especially in New England where "town meeting" democracy was common. Not only was it key to local governance, but it also provided the basis for some statewide constitutional decisions, both in Rhode Island (as provided by its constitution of 1641) and in Massachusetts (which had voted down a proposed constitution statewide in town meetings and approved one by the same method two years later).[142]

Tiny Rhode Island bristled at the mode of approval, the ratifying convention, specified in the proposed constitution. They thought it more natural to give all the eligible voters an opportunity to decide—a mode of direct consultation that has found long-term resonance not only in America, but around the world.[143] They did not subscribe to the theory offered in "Federalist No. 40," quoted in Section 6, that asking a convention would be equivalent to asking the people themselves.

In the Rhode Island Assembly the proponents of the referendum held that "submitting it to every Individual Freeholder of the State was the only Mode by which the *true* Sentiments of the People could be collected" (emphasis in original). They asserted that in other states "two thirds of the Inhabitants" were actually opposed to the constitution even though they had been "decoyed into an Adoption of the Constitution" by a convention. Since "the people were called upon to surrender a part of their Liberties" they "were the best Judges what Part they ought to give up."

The defenders of the proposed state convention countered with the two aspects of the filtration theory. First, it filtered the selection "by Meeting in Convention the Sentiments of the best Men in the State would be collected."[144] Further, it would be a deliberative discussion in which representatives from different parts of the state would learn from and reason with each other:

Representing all parts of the community, with all the different interests, trades and professions, and having the collected sense and wisdom of a free people, could reason, confer with and convince each other that finally they might judge and determine what was best for the whole.[145]

By contrast, the referendum did not provide the opportunity for this sort of collective judgment: "It gave opportunities for misrepresentations to be made." Some towns would be generally in favor and some opposed and there would be no means "by argumentation and neighborly conference of persuading each other into an harmonious concurrence."[146]

The clash of political interests in the procedure for ratification sparked an articulation of opposing visions of democracy. As things turned out, the Federalists boycotted the referendum and the constitution was voted down. Eventually Rhode Island, under great pressure from its neighbors, Massachusetts and Connecticut, held the required state convention and approved the constitution. Advocates of direct democracy lost the battle but they may have triumphed in the long term in competition with the model of elite deliberation. Populists and then Progressives took up the idea of direct voting by the people and eventually spread institutions such as the initiative and referendum to nearly half the states.[147]

But the institution that spread was direct voting *without* the social infrastructure of the town meeting that we found in the early cases in Massachusetts

and Rhode Island. As Frank Bryan noted in his systematic study of the New England town meeting, "New Englanders failed to implant their democracy in the new lands they did so much to settle and fashion. The New England democratic perspective may have had an influence but the *institution* didn't take."[148]

The New England town meeting is a fabled form of participatory democracy, most suitable, as its students have noted, to the very small scale. Jane Mansbridge picked a town of 350 in Vermont for her landmark study.[149] Bryan found a systematic inverse relationship between size of community and attendance at the town meeting in a study of nearly 1,400 town meetings in Vermont. Both Mansbridge and Bryan found considerable inequality, between speakers and non-speakers, between men and women, and within differences in social class. There is a considerable gap between the idealization of the town meeting as a form of self-rule and stubborn facts such as that "only 19 percent of eligible voters attend town meeting and only 7 percent participate verbally even once."[150]

Direct democracy with decentralized group discussion is an idea we will encounter again. It is key to the proposal for Deliberation Day, which we will explore in Section 9, Part IV, and it can be found in practices of "participatory budgeting." For the moment, consider the most influential form of participatory democracy at the large scale—direct democracy in the initiative and referendum.

Twenty-four American states have instituted the initiative (ballot measures initiated by the people through signature collection). Many states and indeed countries use the referendum (ballot measures authorized by legislatures) for important issues, especially for constitutional changes. Populists and progressives offered a vision of rule by the people that spread throughout the western states. Swiss experience also provided an important precedent. As with the town meeting-based referenda, there has long been a version, the Landsgemeinde, in which the people gather together to discuss in a large meeting, sometimes compared to the Assembly in Athens. But almost all the cantons in Switzerland have grown too large for this form of democracy and the Landsgemeinde only persists in two cantons.[151] Direct democracy continues to play a prominent role at local (cantonal) level, but in the form of referenda without the meeting gathering everyone together. Public voting has been disconnected from an organized institution of discussion, just as with the American cases. Scale and the pace of modern life have proven challenges. Perhaps there are ways to reinstitute organized discussion as part of the infrastructure of direct democracy (a topic we return to in Sections 9–11, Part IV).

When participatory democracy is applied within larger populations, each person has a smaller share in the process. As Bryan concluded from his systematic study of town meetings,

smaller towns will have higher attendance at their meetings because the people who live in these places know they are more powerful decision makers than people in larger towns. It fits either the rational self-interest model ("I will use this power to promote my own interests") or the rational community-interest model ("I will use this power to try to accomplish what I think the community needs.").[152]

The same intuition can be found in Jean-Jacques Rousseau's *Social Contract*, where it was part of his argument for why meaningful self-rule was only possible in small states. He offered some calculations:

Suppose the State is composed of ten thousand citizens...each member of the State has as his share only a ten-thousandth part of the sovereign authority, although he is wholly under its control. If the people numbers a hundred thousand,... (then each individual) has ten times less influence.[153]

Rousseau's conclusion: "the larger the state, the less the liberty," in the sense of the capacity for citizens to give the laws to themselves.

We can think of this "share" in terms of the power of one's vote, as Rousseau appears to.[154] We can also think of the share one can have in the discussion. If there is one shared process of dialogue in an Assembly, Dahl calculated:

if the length of the assembly meeting remains at five hours and the number of citizens goes up to no more than a hundred, then each citizen has three minutes. At three hundred members you approach the vanishing point of one minute...with just twenty thousand, if time were allocated equally in a five-hour meeting each citizen would have less than one second in which to participate![155]

Such calculations assume one shared assembly meeting for the whole population. But suppose the population is disaggregated into many small group meetings. In some ways this strategy was the one followed in the early New England town meetings, which were linked together for referenda. It is also the strategy followed in Deliberative Polling and in participatory budgeting, in different ways (Sections 1 and 3, Part III). By disaggregating a larger population into many small groups, some of the characteristics of face to democracy in small groups can be preserved but still applied to the larger population.

We have already mentioned the incentives for what Downs called "rational ignorance" in voting in large populations. Why invest in making my vote more informed when my individual vote or my individual opinion will not make any appreciable difference in a large population. As several have noted, my likelihood of having my vote be decisive in a large-scale election is about the same as my likelihood of dying in a car crash on the way to the polls.[156] If my vote is motivated by the probability that my vote will affect the outcome

times the value of the outcome minus the cost and inconvenience of voting, it is hard to balance that equation to make it rational to vote. Perhaps sheer satisfaction with the ethics of voting will do it.[157] Or perhaps I want to minimize my regret if I were to fail to vote and the wrong side, by my lights, were to win.[158]

In any case, my tiny share in affecting the outcome has long been taken, as Anthony Downs argued, to provide a reason for not expending the time and effort necessary to become an informed voter—hence the reasonableness of "rational ignorance." This argument applies to voting in general at the large scale, but it is even more appropriate for ballot propositions, many of which will be complicated and will lack the simplifying element of party as a cue to help guide voters. Instead of just choosing between competing teams to govern, as in the party competition model, the voter is being asked in effect to approve new laws or constitutional amendments. The citizen, distracted by all the concerns of ordinary life, is asked to be a part-time legislator on issues to which he or she may not have given even a moment's thought. In addition, strategic behavior on the part of proponents and opponents of the ballot propositions may confuse the issue or manipulate the preferences of voters, or simply discourage them from approving something that might actually be in their interests, if they were to take the time to think about the contents.

In a famous case study of voting on car insurance propositions in California, Arthur Lupia offered a strategy to rescue a reasoned basis for voting decisions on ballot propositions. Lupia was "curious about the extent to which relatively uninformed voters could use information shortcuts to cast the same votes they would have cast if they were better informed." Empirically, he identified voters who "used an information shortcut to emulate the behavior of well-informed voters."[159]

The basic idea is that voters do not have the time or attention to invest in "encyclopedic" knowledge about a ballot proposition and its effects. However, they can see who supports it and who opposes it and draw inferences that the recommenders they find most congenial have done the work for them. Cues based on trusted intermediaries provide the missing link. Voters can approximate the way they would have voted if they had done all the work of investing in becoming really informed, but it would be irrational for them to do so when they can get the same result from following the cues. Even if it is rational to be ignorant, it can be rational to use the shortcuts. By doing so they can emulate the behavior of more well-informed voters. They can follow the cues and thus engage in self-rule simply by approving (or voting down) the proposals according to what would be equivalent to their informed judgments.

In principle this is an appealing argument. But it encounters problems. Knowing the cues is not a substitute for information, it is a kind of information and one that is highly correlated with other information about the ballot

propositions. Knowing that Ralph Nader is for or against or that the insurance industry is for or against a car insurance proposal, is a key type of information. As one critic, Robert Luskin, pointed out, "someone who knows a lot about a referendum generally is unlikely not to know where the major players stand on the question, and those who know at least the latter are likely to know a great deal more about the former than those who do not." So the idea that many people knew the cues but not the other information and could just use the cues is misleading. In fact, "the percentages possessed of interest group cues are still not impressively large ... simple cues may arguably make voters more likely to reach the 'right' vote, but not that many people typically know the cues."[160]

Of course, how many people know cues or can use the heuristics of who is for and against will vary with a given ballot proposition and the nature of the campaign. Jeffrey Karp argues that an elite endorsement from Speaker of the House Tom Foley was key to the defeat of a statewide proposition proposing term limits in Washington State in 1991.[161] Assuredly, there are such cases, especially when elite endorsers agree. But the information has to be effectively spread and it must be trusted. Reliance on endorsers empowers "a new class of mediators who are unaccountable if something goes wrong."[162] While Ralph Nader may not be corruptible, others may be and the public would not know at the time in a low-information environment.

Can cues substitute for deliberation? If information were the only goal of deliberation then perhaps. But deliberation requires weighing competing arguments. It requires processing the information, which usually proceeds best through discussion with diverse others in a civil environment.[163] Approximating the position of voters who have more information during the campaign for a ballot proposition is not a full substitute. Even if the heuristics argument worked well in a given case, it would only allow voters who lack information but can get the cues to approximate the positions of those who have more information. But in a campaign environment, even the voters who have the cues as well as other relevant information are unlikely to have deliberated in any depth. They may be aware, but how much discussion, how much processing of the information, how much consideration of the competing arguments will they have engaged in? The same incentives we discussed for rational ignorance and inattention apply to the comparatively more informed members of the mass public in an initiative campaign environment. They may know a bit but they may also never have discussed the issue or considered competing arguments on the other side.

Can we do more to empower voters to think and discuss the issues in preparation for an initiative or referendum? We can prepare voter handbooks and voter advice applications online. Voter handbooks make the issues more accessible. Voter advice applications offer heuristics, recommendations from experts or from voters like oneself.[164]

One final strategy that may offer more promise from the standpoint of deliberation is to 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. For the presidential primaries, this was the original context for what I call Deliberative Polling.[165] A national sample would deliberate in depth about the merits of the candidates before the start of the presidential caucuses and primaries. National television would spread their conclusions.[166] For ballot propositions, John Gastil has proposed putting the recommendations of a deliberating group directly on the ballot.[167] 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.

But even in the best case, this popular control would still be limited to the questions posed. Initiatives face a significant agenda-setting problem in that the groups that can afford the signature-collecting get to set the agenda. Moneyed interests propose ballot propositions that will serve their interests, either to get new laws approved or to confuse the issue with voters by having competing propositions appear on the same ballot.[168] Because of the complexity of some propositions, it often takes expert judgment to decode the real interests at stake. For referenda, the agenda is usually set by the legislature through the standard political process. Hence, control by the people for the agenda is at, at best, at one remove.

Despite these limitations, direct democracy, when supplemented by deliberative designs, offers a possible strategy for satisfying our criteria for popular control. We return to these questions in Part III.

8. Reflections on the Athenian Case

We had to look in some detail to clarify the political theory of elite deliberation. Two centuries of party competition have obscured the original Madisonian rationale for institutions such as the US Senate and the Electoral College—institutions that now operate by a different logic. Madisonian filtration has mostly given way to party competition.

We now turn to the fourth of our democratic approaches: deliberative democracy by the people themselves. We need to go on an even more distant journey. Deliberative democracy is an enormously popular concept these days, but its practical requirements are routinely underspecified.[169] To get a picture of how it might operate as part of an ongoing political system we need to go back, not more than two centuries, but more than two millennia.

The "first democracy" in ancient Athens is often pictured primarily in terms of the Assembly where the people made authoritative decisions.[170] In sight of the Acropolis, about 6,000 citizens could fit on a hill called the Pnyx, discuss proposed laws, and vote on them by show of hands. However, the citizenry of Athens ranged between 30,000 and 60,000 males during the periods of democracy. Women, slaves, and *metics* (legal resident aliens such as Aristotle) could not vote. Hence, most of the population, indeed, most of the eligible citizenry, could not vote at any given meeting of the Assembly. Nevertheless, this first democracy set an example for direct rule that has reverberated through the ages.

The picture of Athens as a direct democracy is the one that was familiar to the American founders. Indeed, it was the dangers of such a system that helped inspire their ideas of indirect filtration. Madison described the dangers of direct democracy in building the case for institutions such as the Senate to control the mischiefs of faction:

[A] pure democracy, by which I mean a society consisting of a small number of citizens, who assemble and administer the government in person, can admit of no cure for the mischiefs of faction. A common passion or interest will, in almost every case, be felt by a majority of the whole;...there is nothing to check the inducements to sacrifice the weaker party or an obnoxious individual.[171]

However, after the disasters of the Peloponnesian War with Sparta, the Athenians briefly lost their democracy. When they managed to reinstate it (in 402–401 BC) they devised a number of reforms which emphasized what we are calling deliberative democracy. Some of these institutions claimed earlier vintage, but they were put together in a systematic way with the reforms. It is the redesigned Athenian democracy of the fourth century that we want to examine to get a glimpse of deliberative democracy institutionalized.

Hansen sees a clear motive for the redesign: "The tendency of the reforms is clear: the Athenians wanted to obviate a return to the political crises and military catastrophes of the Peloponnesian War."[172] The orators could goad the Assembly into hasty or unwise actions, including disastrous wars. The Athenians had learned that "a skilful demagogue could win the citizens to his project irrespective of whether it was really in their interest."[173]

In the new system, a decree passed by the Assembly could not become a law unless it was approved by the *nomothetai*, a randomly selected sample of citizens who would deliberate for a day, hearing the arguments for and against the proposal. Only if the proposal got majority support by this body could it become a law. Harrison suggests that they had "deliberately invented a perfectly democratic brake to slow down the machine." It was designed to maintain "the restored order against the possible ill effects of snap votes in the

ekklesia" (the Assembly).[174] "A perfectly democratic brake" suggests that instead of restricting their democracy, they had introduced another kind of democratic institution, one that was also democratic but in a different way.

The system now had deliberating microcosms chosen by lot before the Assembly, during the Assembly, and after the Assembly. Before the Assembly, only proposals approved by the randomly selected Council of 500 could be considered in the Assembly. During the Assembly, orators had to be mindful that they were subject to a special court, the *graphe paranomon*, which could prosecute an illegal or unwise proposal made in the Assembly. The purview of this special court, which also had 500 or more randomly selected members, was broad (and sometimes misused).[175] But the intention was clearly to provide incentives against irresponsible demagogues turning the Assembly to their will. After the Assembly, there was now a clear distinction between mere decrees, which the Assembly could pass, and laws which had to be approved by the *nomothetai*.[176] This provided a multistage process before, during, and after the meetings of the Assembly, so that the direct democracy was fused with deliberative institutions representing all the people through random sampling.

As George Grote, a noted historian of ancient Greece from Victorian times, concluded, "there can be no doubt that the Nomothetae afforded much greater security than the public assembly for a proper decision." The revised system "hedged about the making, annulling, or amending of nomoi (laws) with an elaborate process in which the Nomothetai played an important role."[177]

The reforms were designed to "hedge about" the Assembly with deliberative groups chosen randomly who could ensure more responsible decisions. The samples were not precisely what modern experts would call random samples, but they seem to have been regarded as such.[178] People had to put themselves on the list from which the random sample would be drawn. But the sense of public duty was widespread among those privileged enough to be male citizens, presumably motivating participation. Participation in all aspects of Athenian self-governance was extraordinary.[179] And the sampling process was taken seriously. In early times the method was to draw beans from a container.[180] But the Athenians perfected the process with an allotment machine, the *kleroterion*, which yielded random samples of those who put themselves on the list. The sampling was conducted in public ceremonies. Some argue that random sampling was an embodiment of equality. Some argue that it was a guarantee against corruption and a method of dispute resolution. Both rationales are relevant for our purposes.

There were no property qualifications for serving in the Assembly or in the courts and the various randomly selected institutions. There was, however, an age requirement of at least thirty years for the Council of 500 and the *nomothetai*. Some have thought this was an effort to ensure more sober

judgment in these institutions. Still, on balance, the whole process, within the limitations of who was considered a citizen, was remarkably democratic.

In viewing the system as a whole, there was also another key point: rotation. There were so many opportunities to be selected randomly and so many meetings of the Assembly, that people could take turns "to rule and be ruled by turns" as Aristotle noted in *Politics*.[181] Hansen calculates that "something like every third citizen served at least once as a member of the Council" and three quarters of all members had to serve as the rotating head of government for a day. "Simple calculation leads to this astounding result: Every fourth adult male Athenian citizen could say, 'I have been 24 hours President of Athens.'"[182]

Fourth-century Athens did not rely entirely on deliberative democracy any more than fifth-century Athens before it had relied entirely on direct democracy. The reformed design was clearly a mixed system, albeit with a very prominent element of direct democracy. But this system gives the first sustained picture of deliberation playing a key role in popular control of the laws. The people deliberated, they had impact, they made choices. The Athenian system has often been dismissed, like the democracy of the modern town meeting, as something only suitable for small polities. But that limit is most clearly posed by the Assembly. There are only so many thousand who can gather together in a face-to-face meeting. But the deliberative elements of Athenian democracy do not face the same limitation. The random samples that deliberated could, in theory, scale to much larger populations. It may seem counterintuitive but we now know from modern statistics that one does not need a larger sample to accurately represent a larger population. The statistical precision with which a random sample can represent a population varies primarily with the size of the sample, not the size of the population. Hence, these deliberating microcosms can be applied with credibility to much larger populations than the Athenian demos. The rotation aspect is also in principle replicable, but it would take a design offering numerous opportunities at various levels of government. One might imagine local, state, and national deliberations occurring frequently as inputs to government for various kinds of issues. We will return to such questions in Part IV but first look at modern applications of what is essentially an Athenian idea in Part III.

The cases in Part III are drawn from previous work. They give details (and the Appendixes in the book give more detail) of the goals of the different DP efforts, their particular problems, and the lessons that can be learned from each one. There is inevitably some repetition of the findings as the cases are mostly congruent with each other. But this Part allows the reader to dig deeper into each case to understand the wide-ranging potential of the DPs in actual applications.

Notes

1. Robert A. Dahl, *A Preface to Democratic Theory* (Chicago: University of Chicago Press, 1956), p. 132.

2. See Mogens Herman Hansen, *Polis: An Introduction to the Ancient Greek City State* (Oxford: Oxford University Press, 2006) for an account of what is known about the nearly 1,500 other ancient city states.

3. See Alexander Keyssar, *The Right to Vote: A Contested History of Democracy in the United States* (rev. ed.; New York: Basic Books, 2009).

4. John Stuart Mill, *Considerations on Representative Government*, ch. 8 (repr. Amherst, NY: Prometheus Books, 1991; first published 1861).

5. In the US Constitution, the Senate entrenches these disparities, with many implications for policy-making. See Frances E. Lee and Bruce I. Oppenheimer, *Sizing up the Senate: The Unequal Consequences of Equal Representation* (Chicago: University of Chicago Press, 1999).

6. Robert Goodin, *Innovating Democracy* (Oxford: Oxford University Press, 2008), p. 129.

7. Brian Barry, "Is Democracy Special?" in Peter Laslett and James Fishkin, eds., *Philosophy, Politics and Society: Fifth Series* (Oxford: Blackwell, 1979), pp. 155–96, especially p. 169. For more of these conundrums see Allen Buchanan, *Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law* (Oxford: Oxford University Press, 2003).

8. Sidney Verba, Kay Lehman Schlozman, and Henry Brady, *Voice and Equality: Civic Voluntarism in American Politics* (Cambridge, MA: Harvard University Press, 1995), p. 15. The politically relevant characteristics can be "preferences on issues, needs for government assistance, demographic attributes or participatory priorities" (p. 15). For a systematic update see Kay Lehman Schlozman, Sidney Verba, and Henry Brady, *The Unheavenly Chorus: Unequal Political Voice and the Broken Promise of American Democracy* (Princeton, NJ: Princeton University Press, 2012).

9. Schlozman, Verba, and Brady, *Unheavenly Chorus*, p. 7.

10. The metaphor of the chorus is from E. E. Schattschneider, *The Semisovereign People: A Realist's View of Democracy in America* (New York: Holt, Rinehart & Winston, 1960), p. 35.

11. World Bank, *Enhancing the Social and Economic Sustainability of Participatory Budgeting in Porto Alegre, Brazil. Final Report.* World Bank. 2008. Brazil: Toward a More Inclusive and Effective Participatory Budget in Porto Alegre, vol. 1. Main Report. Washington, DC. © World Bank. https://openknowledge.worldbank.org/handle/10986/8042.

12. See, for example, Ian McAllister, "Civic Education and Political Knowledge in Australia," *Australian Journal of Political Science*, vol. 33, no. 1, 1998, pp. 7–23, especially pp. 17–18.

13. Arizona Voter Reward Proposition 200 in 2006 proposed a 1 million dollar prize to be awarded each election to a randomly chosen voter. See: https://ballotpedia.org/Arizona_Voter_Reward_Proposition_200_(2006).

Part III: Making Deliberation Practical

to these more proximate ones. See page 16–17 of Fishkin et al., "Europolis," for first-difference analysis of the magnitude of this effect.

116. Support for the Greens went from 11.18% at Time 1 to 15.4% on arrival at Time 2, to 20.4% at the end of the deliberations at Time 3, to 19.3% after the election at Time 4.

117. See Fishkin et al., "Europolis," pp. 18–19.

118. B. Page, "The Theory of Political Ambiguity," *American Political Science Review*, vol. 70, no. 3 (1976), pp. 742–52.

119. See Moravscik, "What Can We Learn from the Collapse of the European Constitutional Project," who admits this possibility.

120. I discuss this further in "Options for Liberal Theory," in James Fishkin, *Justice, Equal Opportunity and the Family* (New Haven, CT, and London: Yale University Press, 1983), pp. 192–3.

Part IV

Reimagining Democratic Possibilities

1. Designs for Deliberation: Where and How?

Think about the four forms of democracy with which we began this book.[1] First, *competitive democracy*. We have a system of campaigns and elections in which the incentives and opportunities for citizen deliberation are minimized. Our campaigns harness mobilization (the "ground game") and the persuasion industry's production of attack ads, impression management, and sound bites pre-tested in focus groups. We have the entire apparatus that was developed to sell products applied to selling candidates, parties, and policies. As Schumpeter, the most influential theorist of competitive democracy, observed, we can expect a "manufactured" political will, rather than an "authentic" one, a result only to be expected from techniques developed for selling merchandise.

In the American republic we have undergone an immense journey from the original vision of representatives "refining and enlarging the public views" to an adversarial vision of "say anything to win". This situation is not "American exceptionalism" but characteristic of competitive democratic systems around the world, characteristic of parliamentary as well as presidential systems in most countries with competitive elections. American-style campaigning is a successful export, with US campaign consultants doing well in foreign lands in the gaps between American elections.

Second, America's system of *participatory democracy*, in places where it is practiced, is hardly more deliberative—at least at the large scale. While there are still corners of life where New England-style town meetings persist, most voters are far more familiar with the practice of congressional "town halls." These self-selected meetings, usually ignored by most voters, are subject to episodic eruptions of mass protest. While these might usefully signal some elements of public concern, they cannot be taken as expressions of "we the people" as they are inevitably the voice of the people who feel strongly, when there are people attending at all. Direct democracy, when practiced at scale

with ballot propositions, has all the deformations of campaigns with party competition, but without the immensely useful cue of a party label to help orient voters.

Third, the US Republic was born in a vision of *elite deliberation* via what Madison called his "strategy of successive filtrations" of public opinion. Political parties were not foreseen at the time of the American founding. Party competition in elections and party discipline among representatives have systematically undermined the incentives and opportunities for deliberation by representatives. Elites worry about getting re-elected far more than they worry about reaching correct decisions on the merits of each issue. Elite deliberation can be found on occasion, perhaps in the recesses of the administrative state, in commissions, or, as noted in Section 6 Part II in institutions such as the Federal Reserve. But not commonly among elected representatives.

Considering our four forms of democracy—competitive democracy, elite deliberation, participatory democracy, and what we are calling deliberative democracy by the people themselves, the first three forms are either non-deliberative or vanishingly rare. The fourth, deliberative democracy by the people themselves, requires, like all forms of democracy, an institutional design that is embedded in some actual social practices. Now, in light of empirical efforts to pilot this new—and very old—approach to democracy, can we reimagine democratic possibilities where it has a consequential role? Can we envision ways in which the values of deliberative democracy can be better inserted into our democratic practices?

To do so, we need to think about *entry points* and *scaling* as well as about the range of *informal* versus *formal* forms of institutionalization. By entry points, I mean points of institutional leverage where the deliberations of the people can have impact on the broader political process. In what ways can we specifically envision that a practice or institution of deliberative democracy by the people themselves would have a point of impact on one of the other forms of democracy? How could it affect competitive elections? How could it affect party-based government once in office? How could it affect elite deliberations? How could it affect direct or participatory democracy? Further, might it be inserted in selected areas of the governance, even of authoritarian regimes, so as to facilitate reform or transition toward the realization of democratic values? Or would such an effort backfire or be counterproductive? Where possible, we will extrapolate from actual projects in various countries to discuss these possibilities.

These entry points may be informal or formal. Sometimes just voicing a recommendation can have an effect on policy, on candidate selection, or on public opinion. In other contexts there are great advantages in having institutional mechanisms whereby the people are convened to deliberate and produce considered judgments that must be considered. Even the formal

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convenings may be for one time only (perhaps on a specific urgent issue) or for a pattern of continuing practice. So questions of duration and continuity also need to be considered.

Until now we have been discussing deliberations by the people themselves within a microcosm, usually a random sample convened for the purpose. Can the same experience be scaled? Our answer will be yes, but it is a matter of cost, institutional will, and organization. There are no technical or other impediments to the institutional design that would effectively incentivize the entire electorate to deliberate in a manner comparable to the microcosm. And it is possible that an online version could even cut the costs and facilitate the process. The proposal that Bruce Ackerman and I call "Deliberation Day" is on our agenda for further piloting in localities or states. We will consider what it would accomplish if mass organized deliberation were conducted at various points in a political or constitutional process.

Whether we are discussing microcosms or large-scale deliberation, we need to keep in mind our criteria for popular control. With the right entry point, will the people's deliberations be inclusive? Will they facilitate a choice among realistically available alternatives? Will they have an impact? Will this design contribute to the public exercising collective self-rule for the policies and laws (and constitutions?) with which they must live? That is the final desideratum for this exercise.

Replace or Supplement?

One might ask, if deliberative democracy by the people themselves responds to the key problems in competitive and direct democracy, why not just replace these institutions rather than supplement them at specific entry points? Why have all the messy electoral competition of campaigns and elections, and/or ballot propositions?

When we surveyed four fundamental forms of democracy, we noted, first, that each serves a distinct combination of values. Second, that most known systems, and probably all those we could credibly envisage, realize some *combination* of these four forms of democracy. 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. In particular, large-scale participation in elections embodies an important form of mass consent. It involves the whole public, who must live with the results, in the process. Bernard Manin speculates that ultimately this was the reason that

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