

# Can Democracy be Deliberative & Participatory? The Democratic Case for Political Uses of Mini-Publics

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*Abstract:* This essay focuses on recent proposals to confer decisional status upon deliberative mini-publics such as citizens' juries, Deliberative Polls, and citizens' assemblies. Against such proposals, I argue that inserting deliberative mini-publics into political decision-making processes would diminish the democratic legitimacy of the political system as a whole. This negative conclusion invites a question: which political uses of mini-publics would yield genuinely democratic improvements? Drawing from a participatory conception of deliberative democracy, I propose several uses of mini-publics that could enhance the democratic legitimacy of political decision-making in current societies.

There is a difference between a sample of several hundred speaking for the nation and the entire citizenry actually speaking for itself.<sup>1</sup>

– James Fishkin, *The Voice of the People*

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In recent decades, deliberative democracy has become increasingly popular.<sup>2</sup> One of the reasons for its popularity is that it offers an attractive interpretation of the democratic ideal of self-government. According to the ideal of deliberative democracy, citizens must justify to one another – based on reasons that everyone can reasonably accept – the coercive policies with which they must comply. To the extent that citizens can mutually justify the political coercion they exercise over one another, they can see themselves as legislators or political equals in precisely the way the democratic ideal of self-government requires.<sup>3</sup> The essential contribution of public deliberation to democratic legitimacy is that it enables citizens to endorse the laws and policies to

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which they are subject as their own. In the absence of a commitment to mutual justification, citizens cannot meaningfully see themselves as participants in collective self-rule, but instead come to see themselves as coerced into compliance by others. Indeed, by adding a requirement of public justification, the deliberative model provides a way in which citizens might prevent political domination by consolidated majorities. They can engage in public deliberation in order to show that their proposals are supported by better reasons and hold out hope that the force of the better argument may move other citizens to change their political preferences.<sup>4</sup> The claim that better reasons (and not just a higher number of votes) lend legitimacy to the outcomes of democratic decisions is crucial to the idea of mutual justification as a criterion of democratic legitimacy, distinguishing deliberative democracy from other conceptions of democracy.

The idea of mutual justification helps in understanding the internal connection between the different political values essential to deliberative democracy. On the one hand, given that the epistemic quality of political deliberation has a direct impact on the legitimacy of its outcomes, improving the quality of deliberation is a nonnegotiable aim for the realization of deliberative democracy. The more informed, impartial, mutually respectful, and open to counterarguments participants are in deliberation, the more likely it is that they will reach substantively better political decisions, such as those supported by the better reasons. On the other hand, since the justification of political decisions to those subject to them has a direct impact on their democratic legitimacy as well, it is not sufficient that political decisions be substantively good according to someone or other. They must be endorsed by those who will be bound by them: that is, the citizenry in question.<sup>5</sup> The point of *democratic* deliberation is not

only reaching better outcomes but, above all, convincing those who will be bound by them that this is indeed the case by providing mutually acceptable reasons. Therefore, improving the quality of deliberation in the processes of opinion and will formation in which citizens participate is an equally non-negotiable aim for the realization of deliberative democracy. Institutional proposals for realizing deliberative democracy must be assessed by their promise to enhance the democratic legitimacy of the political system in which they will be implemented from both the deliberative and the participatory perspective.<sup>6</sup>

Taking this double criterion as a guide can be helpful in examining proposals for democratic innovation that focus on political uses of deliberative mini-publics, including citizens' juries, consensus conferences, Deliberative Polls, and citizens' assemblies.<sup>7</sup> Many deliberative democrats enthusiastically endorse the proliferation of mini-publics as a way to lead current democratic societies closer to the ideal of a deliberative democracy.<sup>8</sup> Some authors are more daring than others: among current proposals there is a split between those who endorse conferring decisional status on mini-publics directly, so that their recommendations would be taken up by the relevant political authorities without any need to ask for ratification by the citizenry (such as through elections or a referendum) and those who hesitate to go as far as to hand over actual political power (like of legislation or constitutional interpretation) to mini-publics.<sup>9</sup> It is easy to see what drives the push toward the most ambitious option. A key reason to favor the institutionalization of deliberative mini-publics is that their recommendations are of better deliberative quality and thus would lead to better outcomes. They reflect the deliberative transformation of raw, uniformed public opinion into considered public opinion. However, if the citizenry must ultimately

accept or reject the mini-publics' recommendations, and (as may often be the case) they are not aware of the mini-publics' deliberations or reasons, then the decision will in fact be based on their raw, unformed opinions, canceling out the potential gains of using mini-publics. If giving mini-publics some decisional status is normatively desirable at all, then they should be allowed to make the decisions in question. There does not seem to be a lot of space for hesitation at that point.

In light of the general enthusiasm among deliberative democrats about the potential benefits of inserting mini-publics in the political process, it is becoming increasingly harder to see the motivations of those who hesitate. In what follows, I would like to contribute to this debate by offering some arguments from the other side. First, adopting a participatory perspective, I argue that, whatever the benefits of conferring decisional status on mini-publics may be, they are unrelated to democratization. Whether or not they would increase the deliberative quality of the political system as a whole, they would diminish their democratic legitimacy.<sup>10</sup> However, the point of the argument is not to reject the use of mini-publics altogether or to claim that they cannot genuinely contribute to democratization. To the contrary, showing that conferring decisional status on mini-publics would not be a democratic improvement is only a first step in addressing the question of when and how mini-publics could be used to lead to such improvement. I address this question in a second step by exploring different uses of mini-publics that could improve the democratic legitimacy of current societies.

Among the many political innovations developed in recent decades, deliberative mini-publics are particularly attractive to deliberative democrats. The reasons have to do with two features of mini-publics that are of special significance to the ideal of a

deliberative democracy: namely, their high deliberative quality and their democratic representativeness. Deliberative mini-publics provide a space for high-quality face-to-face deliberation in which participants receive balanced information on some important political issue, are exposed to a variety of relevant social perspectives, and have the opportunity to weigh the pro and con arguments in order to reach a considered judgment. Participants are randomly selected among ordinary citizens and, as a consequence, their initial raw opinions on the issues in question can be quite uninformed, perhaps even biased or manipulated. However, the filter provided by the deliberative experience enables them to reach considered judgments on the issues in question. In fact, their views are often significantly transformed. Thus, it is plausible to assume that inserting mini-publics into the political process would lead to substantively better outcomes. Still, quality deliberation has nothing to do with democracy per se. It is the representativeness of mini-publics that makes them democratically significant, as compared with other deliberative forums. Participants in mini-publics are randomly selected among ordinary citizens precisely with the purpose of getting a representative sample of the population. Although different types of mini-publics reach that goal to different degrees, I will focus on Deliberative Polls, since it is generally considered the gold standard in terms of achieving representativeness.<sup>11</sup>

As with all other types of mini-publics, the idea behind Deliberative Polling is to take a relatively small group, which everyone had an equal chance to be a part of, and provide it with good conditions for deliberating over some relatively short period of time.<sup>12</sup> The techniques of stratified random sampling used in Deliberative Polling offer scientific support for the claim that the ordinary citizens who participate in the deliberative experience are an accurate mirror

of the population as a whole; consequently, their views, interests, and values reflect those of the people. What is so interesting in recreating a microcosm of the people is that precisely to the same extent that their initial judgments reflect the raw and uninformed public opinion that can be captured by regular polls, it is plausible to claim that their judgments after the deliberative experience reflect what the public would think if they were informed and had the opportunity to deliberate about the matter. As James Fishkin has put it, “deliberative polling has a strong basis for representing the considered judgments of the people.”<sup>13</sup>

This explains why mini-publics are so fascinating for deliberative democrats, for they offer precisely the combination of deliberative filter and democratic mirror that the ideal of a deliberative democracy requires. In endorsing this political innovation, deliberative democrats can avoid having to choose one or the other as alternative conceptions of democracy do. Elite conceptions of democracy choose the filter over the mirror. They promise better political outcomes, but at the price of taking decision-making away from the people and placing it in the hands of experts and political elites. By contrast, pluralist conceptions of democracy choose the mirror over the filter. They promise to leave decision-making in the hands of the people, but at the price of endorsing majoritarian procedures that are insensitive to the quality of citizens’ preferences and can therefore lead to unreasonable outcomes (whenever those preferences are uninformed, self-interested, biased, manipulated, and so on). The contrast to these unattractive alternatives explains the motivation behind proposals to confer decision-making authority to mini-publics. Since mini-publics combine the deliberative filter with the democratic mirror, conferring decisional status on them seems to offer a unique opportunity to simultaneously improve the

epistemic and the democratic quality of political outcomes.

Unfortunately, I think that this impression is an illusion. Here is the argument in a nutshell. Proposals to confer decisional status on mini-publics can be justified by epistemic considerations concerning the better quality of their outcomes. However, this line of argument, which is based on the filter claim, offers no basis for justifying the mirror claim. Alternatively, proposals to confer decisional status on mini-publics can be justified by democratic considerations concerning their representativeness. However, this line of argument, which is based on the mirror claim, offers no basis for justifying the filter claim. Since defending the ideal of deliberative democracy requires justifying both claims, neither of these lines of argument is viable for vindicating deliberative democracy. If one follows the first line of argument, the proposal collapses into a special version of elite conceptions of democracy (that is, a more egalitarian version of blind deference to experts than the standard variety), whereas if one follows the second line of argument, the proposal collapses into a special version of pluralist democracy (that is, a stronger version of procedural majoritarianism than the standard variety).

The first of two possible defenses of empowered mini-publics is the *epistemic defense*. Following this line of defense, proposals to confer decisional status on mini-publics must justify the choice of this particular institution vis-à-vis other alternatives on epistemic grounds. Whether mini-publics in particular are preferable to potential alternatives depends on whether their peculiar feature of “mirroring the people” has some superior epistemic value over other features of alternative institutions that, precisely because they do not have to mirror the people, may yield higher epistemic payoffs. It is always possible that, by offering high-

er levels of expertise, diversity, or impartiality (whichever features matter most in each case from a substantive point of view), alternative institutions could lead to even better outcomes. On complex political issues, it would seem that actual experts with deep knowledge about the issues in question would be a better option than a random group of laypeople who had a few days' worth of training to form their opinions. Almost any other group of experts would often have stronger epistemic credentials. At the very least, it would seem to be an open, empirical question which group of experts would be best in each particular case, depending on the issue at hand. But setting aside technocratic alternatives, let us focus on possible variations in the configuration of mini-publics.

If what matters is the epistemic quality of their outcomes, why limit the pool of participants to citizens of the polity in question? Why not add epistemic diversity to the sample by including some foreigners (whether laypeople or experts) if that would lead to better outcomes?<sup>14</sup> Or why not increase impartiality by excluding from the sample any citizens likely to be biased with regard to the political issue at hand? This is the normal procedure in jury selection, for instance, where no attempt is made to "mirror the people" precisely in order to reach better outcomes (more impartial decisions). There are endless variations for improving the quality of the deliberative filter. The point is simply that it would be extraordinarily serendipitous if "mirroring the people" would invariably be the superior option among all possible alternatives from the strictly epistemic point of view of the quality of outcomes.

Proving this claim seems like a tall order. But even assuming for the sake of argument that the challenge could be met and that mini-publics would always turn out to be epistemically superior to other alternatives, this line of argument should still be

worrisome to democrats. For if decisional status should be conferred to mini-publics in virtue of the better epistemic quality of their considered judgments when compared with the raw opinions of the actual people, then it is not clear how one follows the argument up to precisely that point of better epistemic quality and then avoids drawing the full consequences that seem to follow. Whether or not deliberative mini-publics deserve a special hearing in the political system, the biggest concern with this line of argument is the obvious implication that the raw voice of the actual people "is not a voice that by itself deserves any special hearing."<sup>15</sup> If this is the case, then one wonders what justifies democratic elections, which give the strongest possible hearing to that voice by letting the actual people make crucial political decisions with no deliberative filter whatsoever (by secret ballot). If the voice of the actual people does not deserve any special hearing, why let them vote? Indeed, it is upon the basis of precisely this line of argument that defenders of elite conceptions of democracy conclude that the actual people should never be allowed to make substantive political decisions; they should only be allowed to elect officials among the competing political elites and keep them accountable through the threat of removing them from office.<sup>16</sup> Taking this line of argument seriously would suggest more ambitious proposals for reform. Why not use deliberative mini-publics to make all political decisions that are currently made by the actual people in democratic societies (such as general elections, referenda, and popular initiatives)? If institutionalizing mini-publics for making some political decisions is a net improvement in the deliberative quality of the political system as a whole, then it would seem to follow that the more decisions made by mini-publics and the fewer by the actual people, the more the political system would improve.

Now, for those who might find these consequences worrisome, the alternative line of defense, the *democratic defense*, may seem more promising. Instead of focusing on the filter claim and thereby jeopardizing the ability to hold on to the mirror claim, from a democratic point of view, it is more appealing to focus on the mirror claim and see whether the filter claim can be retained as well. Proposals to confer decisional status on mini-publics could be defended on the basis of democratic considerations of representativeness while also getting the extra boost that their deliberative quality provides for free, so to speak. It could be argued that, even if some alternative institutions could offer a better deliberative filter and thus lead to better outcomes, since they will be less democratically representative than mini-publics, the latter win by default simply by virtue of the democratic value expressed by the mirror claim. But even if conferring decisional status on mini-publics is not the highest epistemic improvement possible, so the argument goes, whichever modest improvement over the status quo their deliberative filter offers is an additional benefit that also counts in their favor. To show why this line of argument does not work, we need to examine the mirror claim in depth.

As mentioned, one of the most interesting features of mini-publics is their statistical representativeness. In particular, Deliberative Polls seem most able to avoid the problems of self-selection that plague other types of mini-publics. Many authors therefore consider them to be strongest in representativeness. This is not to deny that from an empirical perspective the actual accuracy of the stratified random selection techniques used in Deliberative Polling can be called into question in specific cases.<sup>17</sup> But for the purposes of my argument, let's assume that methodological improvements could satisfactorily solve these problems and we can grant Fish-

kin's mirror claim. After all, for all their deficiencies, no one questions that participants in mini-publics are more representative of the people as a whole than participants of other political institutions (including judges, experts, political elites, and bureaucrats). This is why many authors assume that conferring decisional status on mini-publics would be a net democratic improvement for the political system, at least compared with the alternative of limiting that status to less representative institutions.<sup>18</sup>

These considerations point to the second line of argument mentioned above. The case for conferring decisional status on mini-publics can be based on democratic considerations of representativeness. It can be argued that citizens should trust mini-publics' decisions, but not because their participants would always be the most reliable group to make the best decision – a claim most likely to be false. Rather, citizens should trust mini-publics' decisions because their participants are like them.<sup>19</sup> They should trust mini-publics precisely because they are a mirror of the people. Therefore, their considered opinion is likely to reflect what they themselves would have concluded had they participated. This view is often associated with a selection model of representation in contrast to a sanction model.<sup>20</sup> Within the sanction model, representatives are expected to accurately track the attitudes and views of their constituents or face the sanction of not being reelected, whereas in the selection model, constituents choose representatives with views and objectives largely aligned with their own, giving representatives self-motivated, exogenous reasons to do what their constituents want. As political scientists Warren Miller and Donald Stokes put it, they choose representatives who “so share their views that in following their own convictions they do their constituent's will.”<sup>21</sup>

Let's examine the mirror claim in detail. As just mentioned, the argument supporting the mirror claim is that we should confer decisional status on mini-publics because their participants are like us. There are several claims involved in this argument. Participants in mini-publics are like us in the sense that they are ordinary citizens and thus, in contrast to politicians, lobbyists, and other political actors, are unlikely to have hidden agendas or conflicts of interest in their deliberations about the public interest. We can trust them as our representatives in the sense that we do not need to monitor them or threaten them with sanctions because they are independently motivated to figure out what is best for the polity. But, in line with the selection model of representation, participants in mini-publics are supposedly like us in a stronger sense: namely, they share our interests, values, and policy objectives.<sup>22</sup> This is why we are supposed to trust them. Not only do we not need to threaten them with sanctions to keep them accountable, but we can also assume that their recommendations coincide with what we would have thought if we had participated. For that reason, we should endorse their recommendations as our own, for example, when we decide how to vote on referenda.<sup>23</sup>

Now, whereas the first mirror claim seems plausible, the second seems problematic. Given how much ethical and political disagreement there is among citizens in pluralistic societies, the stronger mirror claim can hardly be true of a genuinely representative sample of the population. The more diverse evaluative perspectives (concerning need interpretations, value orientations, comprehensive views, and so on) are included in the sample, as they should be, the less sense it makes for nonparticipant citizens to assume that their interests, values, and political objectives will invariably coincide with those of the majority of the sample regardless of the issue. Nonpartic-

ipants cannot assume that the conclusions reached by the mini-public reflect what they would have thought if they had participated. For, in principle, the opposite is equally possible. After all, the participants in the minority have reviewed the same information and deliberated as much as the others while reaching the opposite conclusion. Even if citizens can trust that all participants were genuinely interested in figuring out what is best for the polity, they know that in pluralistic democracies there is ongoing contestation over a variety of social, moral, ethical, religious, and economic views and values, which bears significantly on political questions and policy objectives.

The selection model of representation seems plausible at a smaller scale. Citizens can trust some political party, civil society organization, or individuals who share their interests, values, and policy objectives. But for that same reason, it would not make sense for them to also trust those political parties, organizations, and individuals that defend the contrary views, values, and policy objectives. If I trust Oxfam's recommendations on poverty relief, I cannot also trust the opposite recommendations of, say, the Chamber of Commerce. If I trust Planned Parenthood's recommendations on women's reproductive health, I cannot also trust the opposite recommendations of the Pro-Life Action League. Since I cannot simultaneously trust the conflicting views, values, and policy objectives of all these different actors, I cannot trust the recommendations of the majority of the sample without first knowing whether they have taken the side in the political spectrum that I would have taken if I had participated.

Of course, if the materials and deliberations are made public, citizens can always find out whether this is the case. But once they do, they will no longer be trusting the mini-public. They will be trusting themselves. More important, many of them will find out that the majority of the sam-

ple is *not* like them, since they actually oppose their views, values, and policy objectives on the issue in question. At this point, the line of argument based on the mirror claim predictably collapses. For the fact that the random sample is a microcosm of the people taken collectively means that, for contested issues, there will be a majority defending one view and a minority defending the opposite view, and therefore it cannot be true of all people taken individually that the majority of the sample is like them. But if they are not, in which sense are they their representatives? If the majority of the sample is neither like them nor accountable to them, why should those citizens trust them? It seems that the argument is not that citizens should trust the majority of the sample because they are like them, but because they are like the majority of the people.<sup>24</sup> But are they? At this point, it becomes clear why this line of argument cannot get the filter claim for free. In fact, the filter claim undermines the mirror claim.

The key question here is whether the *counterfactual* or the *actual people* should rule. One of the main attractions behind the proposal of conferring decisional status on mini-publics is precisely that their considered opinions are often different (and presumably better) than the raw opinions of the actual people. If they were not, there would not be much of a point in conducting Deliberative Polls instead of regular polls. As Fishkin has argued:

The thoughtful and informed views created in the experiment [of Deliberative Polling] are not widely shared because the bulk of the public is still, in all likelihood, disengaged and inattentive precisely because it is subject to all of the limitations...that routinely apply to the opinions of citizens in the large-scale nation-state. Deliberative Polling overcomes those conditions, at least for a time, for a microcosm, but leaves the rest of the population largely untouched.<sup>25</sup>

This is precisely the problem: the disconnect between the views of the mini-public and those of the actual people, induced by the effective intervention of the deliberative filter, undermines the mirror claim at the post-deliberative stage. As political scholar John Parkinson points out, by becoming better informed and having reasoned about the issues in question, participants in the mini-public have become more like experts on those issues than ordinary citizens.<sup>26</sup>

Before the deliberative experience, the mirror claim could plausibly be granted. Assuming the selection process were successfully conducted, it seems trivially true to claim that participants in the mini-public were like the people in the sense that the views of the random sample would accurately reflect the views of the population as a whole. This is why regular polls can be used (more or less reliably) to track the views of the people despite the fact that only a handful of randomly selected citizens are actually interviewed. However, once the deliberative filter is added, which is the very purpose of organizing deliberative mini-publics, the views of participants undergo significant, at times drastic, transformations. But, precisely for that reason, it would be a clear case of usurpation to claim that the voice of the mini-publics' participants is the voice of the people at the post-deliberative stage, especially in those cases when they are on record as dissenting from the people. The populist temptation to speak for the people is common among political actors of all kinds, but the dissimilarity between them and the people in reality helps to undermine such claims. By contrast, the similarity between mini-publics' participants and the people at the initial stage makes their dissimilarity at the empowered stage harder to spot. As such, they could become the ultimate usurpers!<sup>27</sup>

Deliberative democrats simply cannot have it both ways. If the voice of the mini-



publics deserves a special hearing, it is precisely because it is *not* the voice of the actual people. But because it is not, proposals to confer decisional status on them cannot be justified on grounds of democratic representativeness. Democracies are stuck with the people they have, so political improvements can count as democratic only if they take the people along instead of trying to bypass them by appealing to some favored proxy. Political innovations can count as democratic only if they aim to transform the interests, views, and policy objectives of the actual people, so that the people can continue to identify with the policies to which they are subject and endorse them as their own, instead of being simply coerced into compliance. This is what the democratic ideal of self-rule requires. But before I analyze possible democratic contributions of mini-publics in that participatory sense, let me add some argumentative support to the participatory case against empowered mini-publics with the help of an example.

In his paper “Depoliticizing Democracy,” political theorist Phillip Pettit discusses an interesting example in support of one of his proposals for institutionalizing mini-publics.<sup>28</sup> We are asked to imagine a polity in which a relatively mild sentencing regime is working so well that imprisonment is not often imposed. But it could happen that some convicted offender who received a light sentence (like community service) commits some horrific crime that would not have happened if the offender had been put in prison. In that context, politicians looking for reelection can take advantage of the passions of the citizenry and ask for tougher sentencing in order to make their political opponents look weak and not sufficiently concerned, even if tougher sentencing would not serve the common good at all (it might increase rather than diminish the crime rate or be too expensive). Pettit explains:

We can easily see why such a politician or a party, particularly one out of government, can have political advantage to make from denouncing the existing, relatively lenient pattern of sentencing, calling for heavier sentences, even perhaps for capital punishment. They can activate a politics of passion in which they appear as the only individual or the only group really concerned about the sort of horrible crime in question. They can call into existence what Montesquieu called a tyranny of the avengers, letting loose a rule of kneejerk emotional politics that works systematically against the common good. How might this sort of affront to deliberative democracy be rectified? Once again, the only hope would seem to lie in depolitization. It would require parliament to appoint a commission representative of relevant bodies of expertise and opinion, as well as of the people as a whole, to oversee criminal sentencing.<sup>29</sup>

In the example, Pettit assumes that access to information about the adverse consequences of higher sentencing would move participants in the mini-public to reject manipulative proposals of politicians, whereas nonparticipants would be easily manipulated to embrace higher sentences, even to endorse capital punishment. This is why he proposes the shortcut of mini-publics as the best solution to the problem. Instead of taking the long road of providing the information to the citizenry so that they eventually make up their minds on whether to oppose higher sentences, he proposes institutionalizing a mini-public as part of a commission in charge of overseeing criminal sentencing. It seems to me that the example is plausible only if one assumes that there is no such thing as settled political views in a polity. Whereas it is easy to see how the example would work in a country like the United States, where the death penalty is not a settled issue, it is hard to imagine that it would work in a European country. To the extent that rejection of the death penalty is

a settled political view for an overwhelming majority of European citizens, it seems that no amount of political manipulation exercised upon an allegedly inattentive citizenry would succeed in bringing it back.<sup>30</sup> If we compare these two hypothetical cases, it seems to me that, contrary to Pettit's conclusion, informing the citizenry about the political issue in question so that it becomes settled is the only way a polity can successfully shield itself from political manipulation. By contrast, taking the shortcut of informing the members of a mini-public while bypassing the citizenry as a whole would only delay the settling of the issue and thereby leave an open flank for political manipulation, backlash, and resentment. In sum, the shortcut to better outcomes is the long (participatory) road.

Now, in order to take this participatory perspective for evaluating proposals to institutionalize mini-publics seriously, we have to enlarge the scope of analysis in both the temporal and spatial dimensions. We need to adopt a diachronic perspective in order to assess their potential effects, not just at the particular moment in which a policy decision is made but over time as well. And we need to adopt a holistic perspective that takes into account the effects of using mini-publics in the deliberative system as a whole.<sup>31</sup> However, since the participatory perspective is citizen-centered, not system-centered, the potential effects in the ongoing public debate among the citizenry are of special normative significance to the analysis.<sup>32</sup>

As we have seen, the mirror claim is an essential element in democratic defenses of proposals to institutionalize mini-publics. However, in order to avoid the problematic ambiguities we analyzed in the previous section, it is important to avoid identifying mini-public participants with "the people."<sup>33</sup> Speaking of "the people" in the singular is always problematic, but particularly

in pluralistic democracies. The collectivist use of the expression suggests a kind of homogeneity among the citizenry that neither exists nor is desirable in democratic societies committed to the maintenance of free institutions. Mini-publics are no exception. Their members tend to disagree in their considered opinions. Thus, even at their best, what the outcomes of mini-publics reflect is not the considered opinion of the people, but the considered opinion of the majority of the people. This is particularly clear in the case of Deliberative Polls. Since participants are under no pressure to come to an agreement on some collective opinion or recommendation, Deliberative Polling reflects the real-world composition of majority and minority opinions on the political issue in question. But even if one recognizes that mini-publics' outcomes only reflect the considered opinion of the majority of the people, it is still easy to see what is special about them. They reflect what the majority of the citizenry would think if they were informed and had the opportunity to form a considered opinion on the political issue in question.

If we adopt a participatory perspective, what possible use could this information have for the citizenry? There are two aspects of this information that are democratically significant: namely, that these are "considered judgments" and not just raw preferences or uninformed opinions, and that they are the considered judgments of "the majority of the population." But before I analyze these features of mini-publics, let me mention that in order to be of any use to the citizenry, citizens would need to be familiarized with the mini-publics' workings, so that they would understand the political significance they reveal. Different types of deliberative mini-publics have different characteristics, but for simplicity of exposition, I will take Deliberative Polls as the paradigmatic example. My analysis of possible functions that mini-publics could

perform in the political system does not assume that citizens would need to know all the details about the workings of different types of mini-publics, but it does assume that citizens would have become sufficiently familiar with them as to be aware of at least the following features:

1) The techniques of stratified random sampling help ensure diversity and inclusion (that is, presence and voice of marginalized social groups). This gives a higher level of representativeness to mini-publics than almost any other political forum in which the presence and voice of powerful social groups tend to predominate.

2) The random selection of participants among ordinary citizens prevents co-optation by politicians or capture by organized interest groups. It helps ensure the political independence and impartiality of participants and increases the chances that their deliberations are oriented toward the public interest.

3) The provision of information helps secure balanced briefing materials as well as the inclusion of all relevant social perspectives. The presence of trained moderators facilitates mutual deliberation, helps weigh the pros and cons of different proposals, and prevents collective deliberation from being hijacked. This allows participants to reach considered judgments on the political issues in question.

This special combination of features justifies the claim that the conclusions of mini-publics reflect the considered judgments of the majority of the population. Now, citizens do not need to believe that the considered judgments of the majority are always right in order to appreciate the political significance of the majority opinion in democratic societies. For any political issue that can be legitimately decided by majority rule, the opinion of the decisional majority determines the policies to which all citizens are subject. Since majority opinion and actual policies are supposed to be

aligned, the stakes could not be higher in political struggles for shaping what counts as the majority opinion in a political community. It is in the context of this struggle that the information provided by mini-publics acquires its political significance.

The alignment or misalignment between majority opinion, public policies, and mini-publics' recommendations offers a way of organizing the potential political uses of the latter so that their benefits or drawbacks can be better assessed. I distinguish the following four general categories under which the many potential uses of mini-publics can be subsumed: contestatory, vigilant, anticipatory, and empowered. My brief analysis, however, does not aim to cover the innumerable applications of mini-publics currently under discussion in the vast empirical literature on applied deliberative democracy or to answer empirical questions of institutional design for each type of mini-public use.<sup>34</sup> My aims are more modest: I analyze some possible political uses of mini-publics from the perspective of a participatory conception of deliberative democracy in order to identify the specific democratic values that could be served in each case, while offering a few examples of how the relevant political actors could best engage them.

First is the *contestatory* use of mini-publics. One reason to insert mini-publics into the political process is the expectation that the majority opinion reached after deliberation by the mini-public will differ from the majority opinion of the population on the political issue at hand. Discussions of this type of mismatch tend to focus on the difference in the deliberative quality of the outcome. However, in my view, the fact that the difference concerns the majority opinion has even greater significance. To the extent that the political decisions in question are supposed to be made by majority rule, showing that considered majority opinion differs

from current majority opinion gives minorities a powerful tool to challenge consolidated majorities in their own terrain. It is one thing for a minority to simply claim that they are right and the majority is wrong. It is quite another to provide some independent evidence indicating that the majority of a representative sample of the population came to endorse their view after having been properly informed. The fact that the minority view became a majority view under these circumstances can be a powerful political tool. In the context of a political struggle on the contested political issue in question, the independent evidence provided by mini-publics could help minorities challenge consolidated majorities and hold them to account. The use of mini-publics for political and legal contestation can thereby serve the important function of protecting the democratic value of “non-tyranny,” to use Fishkin’s expression.<sup>35</sup>

As mentioned above, a distinctive and valuable feature of mini-publics is the better ability to secure effective inclusion of marginalized voices and social perspectives. By virtue of achieving higher statistical representativeness, mini-publics offer a mirror of the people that is unmatched by mirrors offered by other institutions in the political system (from the judiciary to the legislature, the media, and the public sphere, among others), which tend to be highly exclusionary and therefore reflect back a distorted image of the people. Even in democratic societies, it is hard to ensure effective inclusion in public political debate or in voting, given the disenfranchisement of marginalized groups and the difficulties of providing a proper hearing to their interests and views.<sup>36</sup> Even if new venues for citizen participation are created, self-selection, which tends to favor the wealthy and educated, can worsen rather than improve the underrepresentation of the powerless and marginalized.<sup>37</sup> Thus, even democratic political systems lack venues for finding

out what would happen if the general public or the powerful groups that define the majority culture could actually listen to the needs, views, and arguments of minorities and marginalized groups.

Assuming the general public is aware of the unique features of the venue that mini-publics provide, mini-publics could be used by organized social groups in their political struggles to contest the views of consolidated majorities on specific political issues. The more the mini-publics’ opinions differ from actual majority opinion, the more this should signal to the public the need to examine the available information and the relevant perspectives so as to scrutinize their soundness and their potential need for revision. This could lead to more nuanced positions on polarizing issues or it could prompt a general reconsideration of popular but unjust views held by consolidated majorities. However, this is not to suggest that the public should take the evidence provided by the mini-publics’ opinions as decisive or authoritative. The function of mini-publics should not be to shut down political debate but, to the contrary, to reignite and facilitate the ongoing public debate on contested political issues.<sup>38</sup> Mini-publics can enrich those wider debates by enhancing the voices of silenced or marginalized groups and perspectives in the public sphere. Precisely because the recommendations of the mini-public differ from actual public opinion, the distinction signals the need to transform public opinion accordingly. This means that political actors must address the mini-publics’ recommendations to both officials and the public with the aim of shaping ongoing political debate in the public sphere.

Mini-publics could be inserted in the political process not only for the purposes of political but also legal contestation. Of the many possibilities here, let me mention two. Civil society groups could include the recommendations of mini-publics when fil-

ing *amicus curiae* briefs to the Supreme Court as independent evidence for challenging the assumption that raw public opinion actually reflects views “deeply rooted in the country’s history and traditions.”<sup>39</sup> The evidence in question should not be taken as authoritatively settling the issue. Still, the special features of mini-publics (their independence, impartiality, representativeness) confer on their recommendations a status of independent evidence that no other evidence that parties may provide from like-minded sources (interested groups or organizations) can match. If mini-publics are working as intended, outside parties can do nothing to influence the outcome.

Stronger forms of institutionalization could also be beneficial. For example, it could become standard practice that, in cases involving suspect classifications of groups with a history of discrimination, which trigger a higher level of scrutiny, some form of mini-public is routinely convened to provide the Supreme Court with additional information on what the considered majority opinion of the country may be at a given time. Again, there is no need to claim that this information should be authoritative about the right way to interpret constitutional rights. The considered opinion of the majority may still be unduly hostile toward protecting the rights of unpopular minorities. But the information may nonetheless be valuable as an indication of how far the considered judgment of the majority is moving in a particular direction.<sup>40</sup> Precisely because mini-publics would not have decisional status, the political contestation that is likely to surround the interpretation of their opinions by different political groups would not be detrimental, especially if it manages to spark a broader debate in the public sphere as well, which important Supreme Court cases tend to do.

I now turn to the *vigilant* uses of mini-publics. The analysis of contestatory uses of

mini-publics was based on cases when the mini-publics’ recommendations differed from the actual majority opinion on some political issue. The driving idea was that the more mini-publics’ recommendations differ from actual public opinion, the more this should signal to the public the need to re-examine the available information and re-consider the soundness of the views and arguments supported by the majority culture on the issue in question. But perhaps even more significant are cases when the mini-public’s recommendations coincide with the majority opinion but *differ* from existing policy. This mismatch should signal to the public the need to scrutinize the political system. The more mini-publics’ recommendations are aligned with public opinion, but differ from the actually enacted policies, the more this signals to the public that the political system is not properly responsive to their views, interests, and policy objectives. The evidence provided by mini-publics could draw additional support from the general public toward social and political groups mobilized against whichever forces are impeding the proper flow of influence between the enacted policies and the processes of citizen opinion and will formation in which citizens participate. By enhancing the responsiveness of the political system to the interests, views, and policy objectives of the citizenry, such critical or vigilant uses of mini-publics would serve the important political function of enhancing democratic control. Whereas the contestatory uses would strengthen political equality in the horizontal dimension (between socially powerful citizens and less powerful or marginalized citizens), the vigilant uses of mini-publics would strengthen political equality in the vertical dimension (between ordinary citizens and political officials).

One could also use mini-publics to enhance the agenda-setting power of ordinary citizens, giving them more effective

influence in the selection of policy objectives to which the political system must respond. Citizens could be regularly polled to rank important political issues that need to be tackled, and then mini-publics could be convened to make recommendations concerning the top-ranked issues. This process would provide public visibility to the issues in question, and this would be particularly helpful concerning political issues that elected officials may see as intractable or not worth confronting.<sup>41</sup> Because officials have little incentive to tackle such issues, they are therefore likely to remain forever unresolved, even if the overwhelming majority of citizens agree on what the right political solution would be. Think of the policy proposals for enforcing background checks on gun sales in the United States, which are supported by 85 percent of the population, but cannot make it through the legislature.

Situations of political gridlock or the capture of political institutions by powerful interest groups provide one of the key motivations behind proposals to confer decisional status on mini-publics: they can get done what the legislature (perhaps even the judiciary) is demonstrably unable to do. In the context of his proposal to create a popular branch of government modeled on mini-publics, law scholar Ethan Leib has argued that empowered mini-publics could make an essential contribution in situations when citizens are frustrated by the legislature's unwillingness to take action or when legislatures find themselves unable to reach a reasonable compromise.<sup>42</sup> Mini-publics without decisional status would seem to make no contribution at all. If the citizenry already overwhelmingly endorses some political solution, organizing a mini-public is likely only to reinforce the opinion the citizenry already holds, and thus would seem to fulfill no function at all.

However, the fact that the mini-public offers a considered majority opinion can be

extremely powerful to the citizenry. It can effectively counteract arguments to the effect that the majority's support for some popular policy is due to the citizenry's lack of information or familiarity with the complexity of the problems involved; or that it is due to irresponsible wishful thinking that fails to take into account the potential consequences, legal constraints, or any other relevant dimensions that only experts (but not ordinary citizens) can fully grasp. Popularity for self-defeating policy objectives is not unheard of, as when citizens favor both expanding public services and lowering taxes at the same time. When this is the case, following the political will of the majority could be extremely harmful. In such public political debates, the contribution of a mini-public could be invaluable to the citizenry. It would force the political system to provide the needed information so that participants in the mini-public could engage in an independent examination of the soundness of the arguments in question. Whatever the mini-publics' conclusions may be, the public availability of these arguments would be a great improvement over the status quo. Indeed, for ordinary citizens, it would be a win-win situation. If the arguments were right, they would have independent evidence that might lead them to change their political opinions accordingly instead of having to blindly trust the bare assertions of potentially self-interested parties. If the arguments were wrong, this would strengthen the ability of ordinary citizens to pressure the relevant political actors into action by removing their demonstrably unsupported excuses for inaction.

Let's turn to anticipatory uses of mini-publics. So far I have considered two different forms of misalignment between majority opinion, public policies, and mini-publics' opinions. But another form of misalignment can be even more worrisome from a democratic perspective: when the

public has no opinion at all about the political issues in question. This type of disconnect does not have to be problematic. For low-stakes issues that are technical in nature or serve merely an administrative purpose, there may be no need at all for citizens even to form an opinion on the policies in question. But it is worrisome when the public does not know anything about policies or legal developments that can negatively impact their well-being or their fundamental rights.

Such public ignorance can have various roots. The policies in question may concern technological innovations with unpredictable consequences, with the public unaware of what may be at stake. For example, think of new gene editing technologies such as CRISPR, which may permanently alter the human genome.<sup>43</sup> Or the public may be ignorant because the political decisions in question are migrating beyond national borders. International trade agreements are a paradigmatic example. Although they can have a tremendous impact on the domestic economy of a country and its ability to protect the fundamental rights of its citizens, they are negotiated beyond national borders, often by the executive branch of government, without strong oversight by the legislature, under the unilateral influence of powerful lobbies, and surrounded by secrecy. In the absence of public political debate and proper media coverage, most citizens do not even know that they *should* know about the political decisions in question, given what is at stake. Disguised as remote foreign relations matters, transnational agreements are not perceived by the citizenry as affecting domestic policy, with potentially severely harmful consequences that would be quite hard to reverse, given the number of countries involved. Transnational negotiations lack the visibility in the domestic public sphere needed to generate a political debate in which citizens could either endorse or reject such policies.<sup>44</sup>

Under current conditions of globalization, inserting *anticipatory* mini-publics into transnational political processes could have, in my opinion, the highest democratizing impact.<sup>45</sup> From a participatory perspective, the function of mini-publics would not be to directly shape the policies in question, but instead to enhance the visibility of what is at stake so as to enable public debate among citizens. Their primary role would not be to recommend some policies over others, but rather to acquire sufficient information so as to be able to identify, among the various policies under consideration, those whose potential impact on citizens' well-being, fundamental rights, and interests is so high that the public needs to know about them in order to collectively determine in public debate which priorities, interests, and values should guide the political decisions in question. By anticipating what citizens would think if they knew more about what is at stake in political decisions that, for a variety of reasons, fall under the radar of the public sphere – and by providing public visibility to those decisions in which the stakes are so high that the citizenry should not remain ignorant – mini-publics would fulfill the crucial political function of enhancing democratic control.<sup>46</sup> Instead of becoming another shortcut for bypassing the citizenry, mini-publics could be deployed against many of the existing shortcuts in order to force the political system to take the long road of properly involving the citizenry.

Finally, let me briefly address whether a participatory conception of deliberative democracy can ever endorse the use of *empowered* mini-publics. This is a complex issue that I cannot properly take on here. But to avoid possible misunderstandings, let me clarify that I do not take my argument to the conclusion that all uses of empowered mini-publics would necessarily be democratically suspect or illegitimate. Empow-

ering mini-publics in connection with or in the form of an institution, like Bruce Ackerman and James Fishkin's Deliberation Day, could be highly desirable from a participatory perspective.<sup>47</sup> I also do not rule out the possibility of legitimate uses of empowered mini-publics that may not be directly tied to referenda or some other form of citizen ratification. Indeed, empowered mini-publics could be inserted in the political process to share power with other polit-

ical institutions that, for good reasons, are not themselves tied to direct forms of citizen ratification (such as the judiciary). In such a case, although the inclusion of empowered mini-publics may not increase the democratic quality of the political system as a whole, it may not decrease it either.<sup>48</sup> And if their use were recommended on other grounds, then for all I have argued here, there may be no reason to oppose them.

#### ENDNOTES

- <sup>1</sup> James S. Fishkin, *The Voice of the People* (New Haven, Conn.: Yale University Press, 1997), 44.
- <sup>2</sup> For surveys, see James Bohman, "Survey Article: The Coming of Age of Deliberative Democracy," *Journal of Political Philosophy* 6 (4) (1998): 400–425; and Simone Chambers, "Deliberative Democratic Theory," *Annual Review of Political Science* 6 (2003): 307–326. For recent collections that include different theoretical approaches, see Seyla Benhabib, ed., *Democracy and Difference* (Princeton, N.J.: Princeton University Press, 1996); Samantha Besson and José Luis Martí, eds., *Deliberative Democracy and its Discontents* (Aldershot, United Kingdom: Ashgate, 2006); James Bohman and William Rehg, eds., *Deliberative Democracy* (Cambridge, Mass.: The MIT Press, 1999); Jon Elster, *Deliberative Democracy* (Cambridge: Cambridge University Press, 1998); James S. Fishkin and Peter Laslett, eds., *Debating Deliberative Democracy* (Oxford: Blackwell, 2003); and Stephen Macedo, ed., *Deliberative Politics* (Princeton, N.J.: Princeton University Press, 1999).
- <sup>3</sup> As Amy Gutmann puts it, "the legitimate exercise of political authority requires *justification to those people who are bound by it*, and decision making by deliberation among free and equal citizens is the most defensible justification anyone has to offer for provisionally settling controversial issues." See Amy Gutmann, "Democracy, Philosophy, and Justification," in *Democracy and Difference*, ed. Benhabib, 344. For similar renderings of this basic idea by other deliberative democrats, see Joshua Cohen, "Deliberation and Democratic Legitimacy," in *The Good Polity*, ed. Alan Hamlin and Philip Pettit (Oxford: Blackwell, 1989), 17–34; Joshua Cohen, "Reflections on Deliberative Democracy," in *Philosophy, Politics, Democracy*, ed. Joshua Cohen (Cambridge, Mass.: Harvard University Press, 2009), 330; Jürgen Habermas, *Between Facts and Norms*, trans. William Rehg (Cambridge, Mass.: The MIT Press, 1996), 110; John Rawls, *A Theory of Justice* (Cambridge, Mass.: Harvard University Press, 1971), 227; John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), 137; and Philip Pettit, *Republicanism* (Oxford: Oxford University Press, 1997), 184. I analyze the intricacies of the commitment to mutual justification at the center of the ideal of deliberative democracy in Cristina Lafont, "Is the Ideal of Deliberative Democracy Coherent?" in *Deliberative Democracy and its Discontents*, ed. Besson and Martí, 3–26.
- <sup>4</sup> See Cohen, "Deliberation and Democratic Legitimacy"; Jon Elster, "The Market and the Forum," in *The Foundations of Social Choice Theory*, ed. Jon Elster and Aanund Hylland (Cambridge: Cambridge University Press, 1986), 103–132; Bernard Manin, "On Legitimacy and Political Deliberation," *Political Theory* 15 (3) (1987): 338–368; David Miller, "Deliberative Democracy and Social Choice," *Political Studies* 40 (1) (1992): 54–67; Cass Sunstein, "Preferences and Politics," *Philosophy and Public Affairs* 20 (1) (1991): 3–34; and John S. Dryzek, *Deliberative Democracy and Beyond* (Oxford: Oxford University Press, 2000).
- <sup>5</sup> As Dryzek puts it, political "outcomes are legitimate to the extent they receive reflective assent through participation in authentic deliberation by all those subject to the decision in question." John S. Dryzek, *Foundations and Frontiers of Deliberative Governance* (Oxford: Oxford Uni-



versity Press, 2010), 23. See also Habermas, *Between Facts and Norms*, 110; and James S. Fishkin, *When the People Speak* (Oxford: Oxford University Press, 2009), 46. Cristina Lafont

<sup>6</sup> Proposals must be democratically legitimate from both the participatory and the deliberative perspective. This does not mean that they must always improve the political system in both dimensions, only that they cannot threaten one dimension of legitimacy for the sake of enhancing the other. I analyze the tensions between deliberation and participation in different conceptions of deliberative democracy in Cristina Lafont, "Deliberation, Participation, and Democratic Legitimacy: Should Mini-Publics Shape Public Policy?" *Journal of Political Philosophy* 23 (1) (2015): 40–63.

<sup>7</sup> On citizens' juries, see Anna Coote and Jo Lenaghan, eds., *Citizens' Juries: Theory into Practice* (London: Institute for Public Policy Research, 1997); Ned Crosby and Doug Nethercut, "Citizens Juries: Creating a Trustworthy Voice of the People," in *The Deliberative Democracy Handbook*, ed. John Gastil and Peter Levine (San Francisco: Jossey-Bass, 2005), 111–119; and Graham Smith and Corinne Wales, "Citizens' Juries and Deliberative Democracy," *Political Studies* 48 (1) (2000): 51–65. On consensus conferences, see Peter Dienel, *Die Planungszelle. Der Bürger als Chance* (Wiesbaden, Germany: Westdeutscher Verlag, 2002); and Simon Joss and John Durant, eds., *Public Participation in Science: The Role of Consensus Conferences in Europe* (London: Science Museum, 1995). On deliberative polls, see James S. Fishkin, *Democracy and Deliberation* (New Haven, Conn.: Yale University Press, 1991); Fishkin, *The Voice of the People*; and Fishkin, *When the People Speak*. For a detailed catalog of the different institutional innovations currently available, see Gastil and Levine, eds., *The Deliberative Democracy Handbook*. For an analysis of different types of mini-publics, see Matthew Ryan and Graham Smith, "Defining Mini-Publics," in *Deliberative Mini-Publics: Involving Citizens in the Democratic Process*, ed. Kimmo Grönlund, André Bächtiger, and Mija Setälä (Colchester, United Kingdom: ECPR Press, 2014), 9–26.

<sup>8</sup> The view is too popular to provide an exhaustive list, but for a few examples, see endnote nine below. For some critical voices, see Simone Chambers, "Rhetoric and the Public Sphere: Has Deliberative Democracy Abandoned Mass Democracy?" *Political Theory* 37 (3) (2009): 323–350; Lafont, "Deliberation, Participation, and Democratic Legitimacy"; Carole Pateman, "Participatory Democracy Revisited," *Perspectives on Politics* 10 (1) (2012): 7–19; and John Parkinson, *Deliberating in the Real World* (Oxford: Oxford University Press, 2006).

<sup>9</sup> For examples of the first kind, see Hubertus Buchstein, "Reviving Randomness for Political Rationality: Elements of a Theory of Aleatory Democracy," *Constellations* 17 (3) (2010): 435–454; James S. Fishkin and Robert C. Luskin, "Broadcasts of Deliberative Polls: Aspirations and Effects," *British Journal of Political Science* 36 (1) (2006): 184–188; Archon Fung, "Minipublics: Deliberative Designs and Their Consequences," in *Deliberation, Participation, and Democracy*, ed. Shawn W. Rosenberg (New York: Palgrave Macmillan, 2007), 161, 165; Eric Ghosh, "Deliberative Democracy and the Countermajoritarian Difficulty: Considering Constitutional Juries," *Oxford Journal of Legal Studies* 30 (2) (2010): 327–359; Robert E. Goodin and John S. Dryzek, "Deliberative Impacts: The Macro-Political Uptake of Mini-Publics," *Politics and Society* 34 (2) (2006): 225; Ethan Leib, *Deliberative Democracy in America: A Proposal for a Popular Branch of Government* (University Park: Penn State University Press, 2004); Sanford Levinson, "Democracy and the Extended Republic: Reflections on the Fishkian Project," *The Good Society* 19 (1) (2010): 66; Philip Pettit, "Depoliticizing Democracy," in *Deliberative Democracy and its Discontents*, ed. Besson and Martí, 93–106; Philip Pettit, *On the People's Terms* (Cambridge: Cambridge University Press, 2013); and William Talbott, *Human Rights and Human Well-Being* (Oxford: Oxford University Press, 2010). For examples of the second kind, see James S. Fishkin, "Deliberation by the People Themselves: Entry Points for the Public Voice," *Election Law Journal* 12 (4) (2013): 496–507; and Christopher Zurn, *Deliberative Democracy and the Institutions of Judicial Review* (Cambridge: Cambridge University Press, 2007). For an intermediate option that would leave it up to citizens whether to blindly trust the mini-publics' recommendations, see Michael MacKenzie and Mark Warren, "Two Trust-Based Uses of Minipublics in Democratic Systems," in *Deliberative Systems*, ed. Jane Mansbridge and John Parkinson (Cambridge: Cambridge University Press, 2012), 95–124. For the sake of simplicity, I will refer to mini-publics with the power to make binding political decisions as "empowered mini-publics."

- <sup>10</sup> My argument here focuses on democratic representation and builds on a more general analysis of democratic legitimacy that I offer in Lafont, “Deliberation, Participation, and Democratic Legitimacy,” but cannot reproduce here.
- <sup>11</sup> See Jane Mansbridge, “Deliberative Polling as the Gold Standard,” *The Good Society* 19 (1) (2010): 55–62.
- <sup>12</sup> See Fishkin, *Democracy and Deliberation*; Fishkin, *The Voice of the People*; and Fishkin, *When the People Speak*.
- <sup>13</sup> Fishkin, *When the People Speak*, 28.
- <sup>14</sup> For instrumental justifications of democracy based on the value of epistemic diversity, see, for example, Hélène Landemore, *Democratic Reason: Politics, Collective Intelligence, and the Rule of the Many* (Princeton, N.J.: Princeton University Press, 2013).
- <sup>15</sup> Fishkin, “Deliberation by the People Themselves,” 504.
- <sup>16</sup> For classic defenses of this view, see Joseph A. Schumpeter, *Capitalism, Socialism, and Democracy* (New York: Harper & Row, 1942); and William H. Riker, *Liberalism Against Populism* (Long Grove, Ill.: Waveland Press, 1982). For a recent defense, see Richard A. Posner, *Law, Pragmatism, and Democracy* (Cambridge, Mass.: Harvard University Press, 2003).
- <sup>17</sup> I discuss this issue in Lafont, “Deliberation, Participation, and Democratic Legitimacy” 49.
- <sup>18</sup> This assumption is particularly visible in proposals to institutionalize mini-publics for constitutional review. For example, see Ghosh, “Deliberative Democracy and the Counter-majoritarian Difficulty”; Horacio Spector, “Judicial Review, Rights, and Democracy,” *Law and Philosophy* 22 (3) (2003): 285–334; Horacio Spector, “The Right to a Constitutional Jury,” *Legisprudence* 3 (1) (2009): 111–123; and Christopher Zurn, “Judicial Review, Constitutional Juries, and Civic Constitutional Fora: Rights, Democracy and Law,” *Theoria: A Journal of Social and Political Theory* 58 (127) (2011): 63–94. Not to mention proposals for creating a “popular” branch of government modeled on mini-publics; see Leib, *Deliberative Democracy in America*.
- <sup>19</sup> It is important to notice that this line of argument does not fit well with the epistemic strategy that focuses on outcome considerations. From a strictly epistemic point of view, there is no reason to assume that “the people” are always or even often likely to reach the substantively best decisions. Think of all the important decisions, including the judicial, medical, economic, and scientific, that no one would propose being made by democratic referendum. So even if mini-publics reliably indicate the considered opinion of the majority of the population (and assuming they do), that still says nothing about whether those opinions are likely to be substantively correct. Indeed, given the drastic differences in considered public opinion on contested political issues among all countries of the world, they cannot all be right. If we take into account the temporal dimension, it is even more obvious how much considered public opinion on contested political issues has changed over time in all countries. Adopting this expanded perspective makes it entirely clear that the justification of the mirror claim depends on democratic, not epistemic, considerations. It assumes that the citizenry as a whole in each country is the constituent power: that is, has the legitimate authority to make the decisions in question regardless of whether it makes the right or wrong decisions. Under the democratic assumption of the right to self-government, the question then becomes whether the people should defer their decisional authority to mini-publics in some cases and, if so, why.
- <sup>20</sup> For an in-depth analysis of the selection model of representation, see Jane Mansbridge, “A ‘Selection Model’ of Political Representation,” *Journal of Political Philosophy* 17 (4) (2009): 369–398. For the contrast between the selection and sanction models regarding mini-publics such as Deliberative Polls, see Mansbridge, “Deliberative Polling as the Gold Standard.” For an analysis of the contrast between these two models of representation under the rubrics “responsive” and “indicative,” see Philip Pettit, “Representation, Responsive and Indicative,” *Constellations* 17 (3) (2010): 426–434.

- <sup>21</sup> Warren E. Miller and Donald E. Stokes, "Constituency Influence in Congress," *American Political Science Review* 57 (1) (1963), as quoted in Mansbridge, "A 'Selection Model' of Political Representation," 371. Cristina Lafont
- <sup>22</sup> As Mansbridge indicates concerning the alignment of objectives between agent and principal according to the selection model, "the alignment of objectives can take place not only on the high ground of similar understandings of what is best for the nation as a whole but also on what is best for particular individuals or communities such as farmers, miners, or inner city residents." See Mansbridge, "A 'Selection Model' of Political Representation," 380.
- <sup>23</sup> For a defense of such trust-based uses of mini-publics, see MacKenzie and Warren, "Two Trust-Based Uses of Minipublics in Democratic Systems."
- <sup>24</sup> I cannot think of any interpretation of the selection model of representation in which it would be plausible to claim that citizens should trust the considered opinion of a majority of random others. I analyze the difficulties of this claim in Lafont, "Deliberation, Participation, and Democratic Legitimacy," 54–57. But whether or not this view of representation could be considered plausible, the problem in our context is that the modified mirror claim on which it is based is false.
- <sup>25</sup> Fishkin, *When the People Speak*, 28. The emphasis is mine.
- <sup>26</sup> See Parkinson, *Deliberating in the Real World*, 82.
- <sup>27</sup> See David Owen and Graham Smith, "Deliberation, Democracy and the Systemic Turn," *Journal of Political Philosophy* 23 (2) (2015): 213–234.
- <sup>28</sup> See Pettit, "Depoliticizing Democracy," 54–55. Pettit's proposal leaves open whether to confer decisional status on mini-publics or to leave the ultimate control over them to Parliament. Either way, the innovation would bypass the citizenry, which is my focus here.
- <sup>29</sup> *Ibid.*
- <sup>30</sup> Since nothing turns on the specific example of a settled political issue, those with doubts about how settled the death penalty is in European countries can substitute it with any other example they consider settled, like burning offenders at the stake.
- <sup>31</sup> For an overview of different versions of the deliberative system approach, see Mansbridge and Parkinson, *Deliberative Systems*.
- <sup>32</sup> For an analysis of the differences between a system-centered and a citizen-centered interpretation of the deliberative systems approach, see Owen and Smith, "Deliberation, Democracy and the Systemic Turn," 213–234.
- <sup>33</sup> This tendency is particularly visible in Leib's proposal for a popular branch of government modeled on mini-publics, in which the voice and will of "a group of stratified random samples of laymen" is routinely identified with the voice and will of "the people." See Leib, *Deliberative Democracy in America*, 72, 66.
- <sup>34</sup> For overviews of empirical applications of mini-publics, see Grönlund, Bächtiger, and Setälä, eds., *Deliberative Mini-Publics*; and Graham Smith, *Democratic Innovations: Designing Institutions for Citizen Participation* (Cambridge: Cambridge University Press, 2009), 72–110. For a comparative empirical analysis of the potential impacts of mini-publics in different kinds of states, see Dryzek, *Foundations and Frontiers of Deliberative Democracy*, 155–176.
- <sup>35</sup> See Fishkin, *When the People Speak*, 60–64.
- <sup>36</sup> See Iris Young, *Inclusion and Democracy* (Oxford: Oxford University Press, 2000).
- <sup>37</sup> See Jane Mansbridge, *Beyond Adversary Democracy* (Chicago: Chicago University Press, 1980).
- <sup>38</sup> For a defense of this claim in the context of an interesting analysis of different uses of mini-publics, see Nicole Curato and Marit Böker, "Linking Mini-Publics to the Deliberative System: A Research Agenda," *Policy Sciences* 49 (2) (2016).

- <sup>39</sup> I am using here the formulation of the “deep roots test” that the U.S. Supreme Court uses as its substantive due process standard. For a critical analysis of that standard, see John C. Toro, “The Charade of Tradition-Based Substantive Due Process,” *New York University Journal of Law & Liberty* 4 (2) (2009): 172 – 208.
- <sup>40</sup> The level of empowerment of mini-publics in this context could be increased. For example, it could be required that the Supreme Court takes up their recommendations in the legal reasoning justifying its decisions and offers an explicit, reasoned justification whenever it rules against them. I mention this intermediate possibility not as a proposal I endorse, but simply to indicate that political empowerment comes in degrees; so for any possible use of mini-publics, the level of empowerment can range from the weakest option of conferring upon them a merely nonbinding and advisory role to the strongest possible option of conferring upon them the binding power to make final decisions unchecked by the citizenry or by any other political institution. Opposing the strongest form of empowerment, as I do, does not require endorsing the weakest form as the only legitimate option.
- <sup>41</sup> The latter include political issues in which elected officials have a clear conflict of interest, such as choosing among electoral systems or drawing electoral boundaries. Regarding these kinds of questions, vigilant uses of mini-publics would strengthen popular oversight of public officials especially if they were empowered to require public officials to appear before them to testify. See Goodin and Dryzek, “Deliberative Impacts: The Macro-Political Uptake of Mini-Publics,” 235 – 236; Dryzek, *Foundations and Frontiers of Deliberative Democracy*, 169; and John Ferenjohn, “Conclusion: The Citizens’ Assembly Model,” in *Designing Deliberative Democracy*, ed. Mark E. Warren and Hilary Pearse (Cambridge: Cambridge University Press, 2008), 192 – 213.
- <sup>42</sup> See Leib, *Deliberative Democracy in America*, 62.
- <sup>43</sup> See, for example, Jeffrey Perker, “CRISPR/CAS Faces the Bioethics Spotlight,” *BioTechniques* 58 (5) (2015): 223 – 227.
- <sup>44</sup> Visibility should not be confused with transparency. Even when the information in question is publicly available, this may still be useless to the citizenry if its importance is not visible in the public sphere so that it can generate public awareness and political debate. On the crucial difference between transparency and visibility, and the special importance of the latter, see Stefan Rummens, “Staging Deliberation: The Role of Representative Institutions in the Deliberative Democratic Process,” *Journal of Political Philosophy* 20 (1) (2012): 29 – 41.
- <sup>45</sup> Many different institutional processes could accomplish these ends. One would require legislative standing committees overseeing major transnational agreements to convene some form of mini-public in advance of important binding decisions. Their empowerment could vary from merely indicating whether or not public debate is needed to setting the agenda on the specific issues in need of public debate (such as identifying specific environmental or ethical concerns and establishing proper priorities in light of significant trade-offs).
- <sup>46</sup> I take the idea of anticipatory uses of mini-publics from MacKenzie and Warren, “Two Trust-Based Uses of Minipublics in Democratic Systems.” However, my participatory interpretation of this use differs from theirs in that I do not consider it to be a trust-based use. Rather than the public simply entrusting mini-publics with the task of reaching a considered public opinion on the political issues in question so that these opinions may then be communicated to executive agencies or other public officials, from a participatory perspective, the function is instead to *identify* the issues about which the public needs to collectively form a considered public opinion, and *communicate* this information to both public officials and the citizenry.
- <sup>47</sup> See Bruce Ackerman and James S. Fishkin, *Deliberation Day* (New Haven, Conn.: Yale University Press, 2004). However, this is not to say that all such uses would always be desirable, since other considerations may speak against them. For example, Christopher Zurn proposes to empower mini-publics for certifying popular amendment proposals and to require Deliberation Days for ratification or rejection by the citizenry. See Zurn, *Deliberative Democracy and the Institutions of Judicial Review*, 336; and Zurn, “Judicial Review, Constitutional Juries, and Civic Constitutional Fora.” This type of proposal may have impeccable participatory creden-

tials, but it may raise concerns regarding political stability because it offers no criteria to limit what can and cannot be up for amendment. For a criticism along these lines, see Fishkin, “Deliberation by the People Themselves,” 506. Cristina Lafont

<sup>48</sup> I am thinking here of proposals for empowering mini-publics in the context of constitutional review. See, for example, Ghosh, “Deliberative Democracy and the Countermajoritarian Difficulty”; Spector, “Judicial Review, Rights, and Democracy”; Spector, “The Right to a Constitutional Jury”; and Zurn, “Judicial Review, Constitutional Juries, and Civic Constitutional Fora.” I have serious doubts that any of the proposals currently under discussion meet these criteria, but it cannot be ruled out *a priori* that some modified proposal could meet them.