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## **The Forum, The System, and the Polity: Three Varieties of Democratic Theory**

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### **Abstract**

The theory of deliberative democracy is here furthered in terms of three images that locate its essence in respectively a single forum, a deliberative system, and an encompassing polity featuring particular integrative norms. The first two are ubiquitous, though contested, the third is stated here. Deliberative theorists need to contemplate how practices that make sense in each image connect to the other two. Forums only make sense when linked in a system that can synthesize very different deliberative virtues (notably, justification, reflection, and inclusion). Any system's democratic qualities can only be evaluated in terms of the polity. While judgment in terms of the conditions of normative integration in the polity is therefore primary, particular forums can promote deliberative authenticity in a system, and systems enable inclusive application of deliberative ideals. Deployed in this way, the three images help solve internal disputes and respond to critics.

### **Keywords**

democratic theory, deliberative democracy, deliberative system, minipublics, forum, polity.

## **Introduction**

Deliberative democracy now stands at the core of democratic theory. As Goodin puts it, 'We are in a period of high innovation, both within democratic theory and within democratic practice. The "deliberative turn" has provided much of the impetus for both.'<sup>1</sup> Innovation is accompanied by intramural disputes, as well as criticisms from other sorts of democratic thinkers – including a recent presidential address to the American Political Science Association.<sup>2</sup> The intent of this paper is to ascertain where the theory and practice of deliberative democracy should now go in light of these disputes.

The argument will proceed in light of three images of deliberative democracy that seek to locate its essence in respectively a single forum (be it a theoretical ideal, a legislature, or a citizens' forum), a deliberative system that specifies some division of responsibility or attributes across multiple sites, and an encompassing polity defined by integrative norms that can be more or less deliberative in their content and formation. The first two images are ubiquitous, though much about them (including their relationship) remains contested, the third is glimpsed in some recent contributions, but requires explicit statement, which it receives here for the first time. I will argue that the three images should be held in productive tension– but then we need to think about how practices that make sense in terms of each of them relate to the other two. The forum cannot do without the system if the very

different micro benefits yielded by different sorts of forums are to be combined in meaningful fashion to have broad political effect. The system cannot do without the polity which provides a necessary democratic vantage point for the evaluation of deliberative systems. So while in this sense the polity image should take priority, this image proves not to give us the points of leverage for improving public deliberation found in the other two images. Advocacy, criticism, and internal dispute alike can be informed by empirical evidence, as well as by conceptual clarification and normative theorizing. I will attend to the evidence to the degree it helps clarify what can be expected of the forum, the system, and above all the polity.

In this light, the various ‘turns’ that deliberative theory has taken over the years – institutional, empirical, and systemic – should not be seen in terms of a sequence of well-bounded generations of theories.<sup>3</sup> Rather, they are essential components of a productive dialogue about how democracy can and should be pursued in theory and practice.

### **Forums in Theory and Practice**

Forum imagery was prominent in early explicit theoretical statements of deliberative democracy. Elster’s sympathetic critique of rational deliberation invokes an undifferentiated citizenry seeking unanimity.<sup>4</sup> Conceptions of democratic legitimacy that specify an ideal of ‘the free and unconstrained deliberation of all about matters of common concern’<sup>5</sup> imply a reference point (if only as an ideal) of an encompassing forum with a common-interest agenda. Cohen’s belief that ‘outcomes are democratically legitimate if and only if they could be the object of free

and reasoned agreement among equals' again calls to mind a body of citizens seeking agreement.<sup>6</sup> Habermas's 'ideal speech situation' – often identified as a precursor of deliberative democracy - proceeds in the image of a single forum.

As soon as we try to apply this image of an ideal forum to real-world politics we encounter the problem of scale: large numbers of people cannot deliberate face-to-face. In practice, then, potentially deliberative forums work with representation of some sort. Representation might be along conventional electoral lines, constituting legislatures. Or it might involve stratified random sampling, constituting citizen forums, now better known as minipublics. Or a forum might bring together partisan advocates for different sides, constituting mediation or what are sometimes called 'consensus-building' exercises (though what constitutes consensus in such exercises can be quite elastic). Authoritative forums may also be constituted on the basis of expertise rather than representativeness – think of constitutional courts. Different thinkers locate the best home for deliberation in each of these categories of forum.<sup>7</sup>

'Deliberative democracy' is sometimes characterized as a 'tool' for the design of forums.<sup>8</sup> But deliberative democracy should not be seen as a toolkit. For each forum type proves to exhibit not only strengths but also potentially fatal weaknesses from a deliberative and democratic point of view, meaning that none is sufficient actually to constitute the essence of a defensible deliberative democracy. Let me take a look at the details.

### **What are Forums Good For? Justification versus Reflection**

Deliberative democracy is characterized by Chambers as a 'talk-centric' (as opposed to 'voting-centric') view of democracy.<sup>9</sup> This talk can involve the giving of reasons for or against positions, though positions can also be justified or criticized by the telling of stories, humor, or various sorts of rhetoric. For talk to take effect, listening is also necessary.<sup>10</sup> To have any deliberative point, listening needs to be accompanied by reflection on the content of positions, commitments, and preferences. For Goodin reflection is something that is done internally, by individuals (ideally those in positions of power) as they contemplate the interests of others.<sup>11</sup> But reflection can also be a social process, as a collectivity together works through the positions it holds, such that publicly defensible reflections (which are not necessarily the same as persisting private desires and prejudices) come to the fore and are embedded in the group's collective position. Different sorts of forums provide different degrees of possibilities and incentives for reflection of this sort; some provide obstacles.

There are reasons to suppose that justification and reflection do not sit easily together. Individuals who are good at making a case may not be very good when it comes to the possibility of changing their mind in response to what they hear from others.<sup>12</sup> But it is not just a matter of personality, it is also one of institutional setting, and that is what I wish to emphasize here. It is hard for particular forums to embody high degrees of justification and reflection simultaneously.

We can note to begin a severe reflection deficit in contemporary parliamentary systems accompanying the partisanship that legislators are expected to show by their parties<sup>13</sup> - and by many of the mostly wealthy individuals,

corporations, and groups that fund either parties or individual candidates for office. Partisan legislators rarely change their minds in response to the arguments of those on the other side of an issue – and are unlikely to admit it and act upon it if they do. Where then might we look for reflection, if not in a legislature?

Here we can turn to some empirical findings concerning how the deliberative virtues of respect and reflection are manifested in different sorts of forums. Many deliberative democrats have been attracted to the idea of minipublics composed of lay citizens, selected to be more or less representative of the larger population. Thousands have now been conducted in many parts of the world; there are a number of different models, including citizens' assemblies, consensus conferences, citizens' juries, and deliberative polls.<sup>14</sup> Initial enthusiasm for these forums celebrated the possibilities they enable for deeper deliberation than is normally possible in the public at large. Fishkin believes the conclusions of one kind of minipublic – the deliberative poll - should 'have a recommending force for policy makers and the broader public' because 'their considered judgments are the ones the public would support under good conditions for considering the problem.'<sup>15</sup> This sort of statement would fuel the fear of Lafont that minipublics could substitute for broader public judgment, and lead to giving up on mass democracy.<sup>16</sup> The fears are warranted for a further reason: mini-publics embody some deliberative virtues, but not others.

Especially when compared to legislative debate, minipublics seem to do poorly when it comes to the virtue of justification. Pedrini compares the level of justification in an online citizens deliberation with that in a legislative debate on the

same immigration issue in Switzerland and finds that the level of justification in the latter is much higher.<sup>17</sup> Bächtiger and Parkinson compare findings from the Europolis deliberative opinion poll (an exercise in cross-national lay citizen deliberation) with debates in national legislatures, and again find the average level of justification much higher in legislatures.<sup>18</sup> Bächtiger and Parkinson conjecture that this justification deficit would be reduced (and possibly even disappear) for the rare long-lived mini-publics in which citizens become experts on the topic they are deliberating – such as the British Columbia Citizens' Assembly on electoral reform, which met over a period of several months.<sup>19</sup> There is no evidence yet available on this conjecture.

Pedrini and Bächtiger and Parkinson also find that the deliberative virtue of respect for the positions taken by others is significantly higher in citizen deliberation than in parliamentary debate.<sup>20</sup> Respect here indicates that what Gutmann and Thompson call reciprocity is taking effect.<sup>21</sup> Reciprocity means an effort to communicate in terms that those who do not share one's framework can accept; explicit expression of respect for the points made by those with whom one disagrees is an indicator that reciprocity has been achieved. In the context of a very different kind of minipublic (the Oregon Citizens' Initiative Review, which convenes citizens' juries to deliberate referendum questions), Knobloch et al note that in drafting a final report, citizen-participants who ended on different sides of an issue helped those on the other side clarify their points in the final short document that is produced for wider dissemination.<sup>22</sup>



Comparing a legislative debate and a citizen conference, both in Germany on the issue of embryonic stem cell research, Landwehr and Holzinger find that communication in the citizens' forum had a much higher dialogical quality than that in the Bundestag, where speakers mostly gave prepared statements – but did not respond to each other.<sup>23</sup>

Respect, reciprocity, and dialogical responsiveness are instrumental to reflection, because all involve taking seriously a position that is different from one's own. We do have considerable evidence from empirical studies of minipublics that reflection does occur and does have an impact on the positions that participants hold. Now, the mere fact of preference change signifies little: it might be for bad reasons (such as social pressures). And if preferences do not change, but are better informed and more soundly backed, that is surely a positive reflective outcome. Niemeyer has developed an index of 'intersubjective consistency' which measures the degree to which people agreeing on inner reasons (values and beliefs) also agree on expressed preferences.<sup>24</sup> Frequently there is a weak relationship before deliberation, a stronger relationship afterward. Niemeyer attributes this (using the terminology of Kahneman) to a move from 'fast' to 'slow' or more considered thinking, as individuals renounce 'cognitive shortcuts' and process the dimensions of an issue more fully.<sup>25</sup> Obtaining direct evidence of the degree to which similar sorts of effects obtain in legislative debate is very hard – minipublics are much easier to treat as experimental settings, with systematic interviews with participants done before, during and after deliberation in order to gather necessary

information. But the very fact that legislative debate generally features justification without dialogue suggests such effects would be less likely therein.

### **Connecting Forums**

Partisan legislatures and minipublics do, then, exhibit very different kinds of deliberative virtues and deficiencies, suggesting that those who believe the essence of deliberative democracy should be sought in either minipublics or legislatures are mistaken.<sup>26</sup> Is it possible to link minipublics and legislatures so as to preserve the virtues while overcoming the deficiencies? Consider for example a jury trial. We do not expect the lawyers advocating the two sides to be good at reflecting upon their relative merits; that task is assigned to the jury. The advocates for the two sides are not of course allowed in the jury room. A jury trial features two physically distinct yet procedurally linked chambers: one of justification, one of reflection (and decision).

But what of democratic political systems, as opposed to the delivery of criminal justice? Here we can look more closely at the idea of a deliberative system. Any system is a set of differentiated yet linked components that can be interpreted in the light of some common purpose. For a deliberative system, the purpose in question might be the generation of democratic legitimacy.<sup>27</sup> Mansbridge et al refer to epistemic (problem-solving), ethical (mutual respect), and democratic (inclusion) functions of deliberative systems.<sup>28</sup> For Mansbridge et al 'the system should be judged as a whole in addition to the parts being judged independently'<sup>29</sup> (I will argue below that Mansbridge et al fail to provide any effective way to assess the

whole). The parts in question might involve 'everyday talk'<sup>30</sup> or abstractions such as 'public space' and 'empowered space'<sup>31</sup> or a sequence of settings such as party caucus, legislative debate, election campaign, and post-election negotiation.<sup>32</sup> It is possible to think of linking different forums with different virtues in this light.

Leydet suggests that the listening and reflection deficit in legislatures does not necessarily matter in light of a model of deliberation that is distributed across different sites.<sup>33</sup> While in an ideal distribution Leydet believes that mass publics would judge the advocacy of legislators, in practice that does not happen, as mostly inattentive publics are only likely to be reached by plebiscitary reason (via a media which has no incentive to correct matters). Leydet points out that unlike a jury mass publics do not have the power to decide on particular issues; so the advocacy of legislators (unlike lawyers) does not have to engage seriously with the arguments of the other side.

Leydet's solution is to move the mass public to later in the deliberative sequence, and promote dissent within parties as a way to get legislators to take the arguments of the other side seriously and respond to them. She recounts the case of a 2013 debate in the UK House of Commons, where – unusually – the government could not rely on its own backbenchers to support a motion authorizing military intervention in Syria. However, on Leydet's account this kind of situation only produces a higher quality of justification in the legislature, as leaders are forced to respond to the arguments of their opponents (rather than talking past them). But Leydet can only hope that the larger public is paying attention; and she provides no

mechanism whereby enlightened public opinion might make itself felt in the deliberative system.

Leydet takes the institutional structure of politics – and parliamentary democracy in particular - as given. But once we start thinking about institutional reconfiguration, some richer possibilities emerge for correction of reflection deficits.

To begin, we might think about the role minipublics can play in deliberative systems, given their role is not to substitute for public judgment. As Hendriks argues, minipublics should be integrated into deliberative processes in the larger civil society.<sup>34</sup> We might note, contra Lafont's fear, that it is not the conclusions of minipublics that should be inserted into larger political dialogue, but rather the arguments<sup>35</sup>. In practice this does not always happen. Karpowitz and Raphael in a content analysis of the reports of minipublics find substantial variation on a continuum from 'decisional' (emphasizing conclusions) to 'dialogical' (emphasizing reasoning).<sup>36</sup> Dialogical reports should undermine the bad symbolic arguments that often dominate the larger public sphere,<sup>37</sup> and promote arguments that are reflectively defensible (including, crucially, to the members of the minipublic who do not agree with the argument in question). In this sense, the place of the minipublic in the larger system should be seen as deliberation-making rather than anything like decision-making.<sup>38</sup> Anything communicated out of the minipublic has survived reflection therein. As Niemeyer puts it, minipublics can be both propagators and regulators of arguments.<sup>39</sup> Of course members of any larger public may still choose to reject the points made by any minipublic. If they do so reflectively, that is no problem from a deliberative point of view.

### **Linking Chambers of Justification and Reflection**

We can be fairly confident that minipublics manifest the deliberative virtue of reflection, even as they fall short on justification. Yet whatever their virtue in this sense, they would still be vulnerable to Pateman's criticism that they are one-shot affairs that are 'not part of the regular political cycle in the life of a community', and as such leave democratically deficient political systems untouched.<sup>40</sup> Pateman believes that the stress on minipublics hurts the pursuit of participatory democracy. From within the deliberative democracy camp, Chambers likewise believes that emphasizing minipublics means giving up on mass democracy.<sup>41</sup> One obvious response here would involve the institutionalization or even constitutionalization of minipublics so that they became a permanent part of the arrangements of government (later, I will show how a deliberative systems image can respond to Pateman's worries about broad participation). Along these lines, Leib imagines the establishment of a fourth 'popular' branch of government in the United States composed of citizens' juries deliberating legislation.<sup>42</sup> While interesting as a speculative exercise, it is not feasible at the US federal level, where the Constitution is so hard to amend even in minor fashion, let alone in the creation of a whole new branch of government.

The more general need here is for any deliberative system to involve moments of justification and moments of reflection that are not necessarily in the same location and engaged equally by the same people. Indeed it may be too much to expect a location dominated by justification to take reflection seriously. So

perhaps what is needed in any system are a ‘Chamber of Justification’ and a ‘Chamber of Reflection’. This resonates with the idea that deliberation may benefit from the sequencing of different sorts of moments – be it within a single forum or across different forums.<sup>43</sup> This proposal is also consistent with the old idea that an upper house in a legislature should be a house of review. In this light, the problem with legislatures such as those of Australia and the United States (at the national level) is that the Senate as well as the House is dominated by partisan advocacy – so there are two Chambers of Justification. If the United States federal government has a Chamber of Reflection it is perhaps the Supreme Court – but this institution too has become increasingly divided on predictable partisan lines. Moreover, it is not a democratic institution, given that its members are appointed for life, so relying on something like a Supreme Court for reflection in the system means attenuating its overall democratic quality. The same might be said for the House of Lords in the United Kingdom. While Parkinson praises the Lords for its deliberative qualities (particularly when it comes to inclusiveness and the examination of arguments),<sup>44</sup> it suffers from the same democratic problem as the Supreme Court: members appointed for life.

Why not then replace upper houses with chambers of randomly selected lay citizens? Their task would be to deliberate and reflect, not to legislate. In 1998 a proposal by the Demos think tank in the UK suggested something like this in the context of debates over House of Lords reform. The title of the pamphlet, ‘The Athenian Option’, reminds us that democratic assemblies were once constituted in this fashion. Currently unicameral legislatures such as those of New Zealand,

Nebraska, and Queensland provide an opportunity to experiment. Of course thinking of an upper house in this light suggests a general-purpose chamber, somewhat different to the single-issue basis on which minipublics are normally constituted. But there is no reason why the entire chamber would need to deliberate every piece of legislation; creative institutional design could reduce the burden on individual citizen-members by having subsets of the whole handle particular pieces (or involve ways to constitute different forums for different issues).

A less thoroughgoing way to make minipublics part of the 'regular political cycle' has already been institutionalized in the state of Oregon, in connection with citizen-initiated referenda, whose results are binding on the State government. In the Oregon Citizens' Initiative Review process established in 2009, a citizens' jury is constituted to deliberate a referendum measure – such as the legalization of medical marijuana or mandatory minimum sentencing for particular crimes. The jury then writes an evaluation that goes into the Voters' Pamphlet that is sent to all voters in the state. This evaluation contains the jury's view of key arguments both for and against the measure.<sup>45</sup> Here we have a process clearly involving justification, reflection, and decision. Justification is made initially by proponents and opponents of the measure in public campaigns, reflection is done initially by the citizens' jury, and decision is made by the voters in the referendum. Ideally, good arguments (on either side of the measure) survive, while bad arguments do not. This sequence – first justification, then reflection, then decision – is actually much more logical than seeing minipublics as providing inputs into legislative debates or executive decision.

For the latter sequence implies moments of reflection precede moments of justification, which then lack the benefit of reflection prior to decision.

Beyond minipublics, ways to promote reflection might also be sought in bodies of unaffected strangers (in a particularly good position to exercise what Sen calls 'open impartiality'),<sup>46</sup> constitutional courts, non-partisan elected bodies, moderated online processes, or indeed the exceptional individuals Goodin believes should exercise 'democratic deliberation within' their own minds, caring about the interests of others.<sup>47</sup> Such institutions and practices could be deployed in such a way that they do not leave the regular cycle of politics untouched.

### **The Challenge of Inclusion**

However much minipublics or their reflective alternatives became part of the regular cycle of politics, participatory democrats such as Pateman might remain unsatisfied because any moments of reflection introduced into the system would not entail the more thoroughgoing participatory development necessary to challenge the core institutions of a limited and unsatisfactory democracy.<sup>48</sup>

Lafont doubts that simply inserting the conclusions of minipublics into broader public communication will bring larger numbers of people into deliberative exchanges, given the 'the highly defective deliberative context of a public sphere full of sound bites, demagoguery, and manipulative misinformation.'<sup>49</sup> Lafont gives no indication as to what else might help when it comes to this dismal condition of the public sphere.



How then to meet the challenge of deliberative inclusion and so respond to critics such as Pateman and Lafont? The best efforts of participatory democrats such as Pateman notwithstanding, recent decades seem to have yielded only a few participatory exemplars with some staying power (such as participatory budgeting) and many short-lived experiments. Moreover, as Fishkin points out, in practice the maximization of participation will often come at the expense of equality – because the more motivated and engaged are more likely to want to participate.<sup>50</sup> But Pateman’s implicit point that democratization needs somehow to promote inclusion of the citizenry at large – rather than (more or less demographically representative) samples of them – is well taken.

Inclusion might seem something that minipublics cannot help with; but we should not summarily dismiss their inclusion-promoting role lightly. Now, for the public deliberation-making task mentioned earlier, the size of the minipublic does not really matter; there is no point in seeking (for example) the ‘millions of voices’ (a slight exaggeration) that help legitimize relatively large exercises promoted under the 21<sup>st</sup> Century Town Meeting Model.<sup>51</sup> However it does matter that all relevant arguments, stories, and subjective stances are present; or to put it another way, the forum should aspire to good discursive representation, where all relevant discourses are represented.<sup>52</sup> (An exception to this principle can be made when the discourse in question seeks mainly to undermine possibilities for effective societal reflection.) Discursive representation is itself a kind of inclusion – though of discourses, rather than persons. But it could also go some way toward promoting inclusion in the larger public sphere to the degree its presence in a smaller forum

would increase the chances that this forum would generate a product that resonates with a larger public's subjective dispositions, thus drawing sections of that public into the deliberative system. Still, the inclusion mechanism here is a bit tenuous and modest.

### **Inclusion in the Deliberative System**

Inclusion is central to the very idea of a deliberative system: the subtitle of Parkinson and Mansbridge's book on deliberative systems is 'deliberative democracy at the large scale', and the move to scale is accomplished not just by linked representative institutions, but also by (for example) recognizing roles for everyday talk, public conversations, and political activism.<sup>53</sup> When Mansbridge et al talk about the 'democratic' functions of deliberative systems, it is inclusion they have in mind.<sup>54</sup>

At one level the connection is obvious: the more sites recognized in a deliberative system (be they social movements, lobby groups, protests, social media, election campaigns, referendums, exercises such as participatory budgeting, minipublics, everyday conversation, or legislatures), the more opportunities there are for inclusions of different sorts.

However, a systemic approach to inclusion cannot be additive: that is, we cannot simply add up bits of inclusion achieved in different locations in a deliberative system, and assume that they support each other and contribute to the inclusiveness of the system as a whole. As a corollary of the deliberative systems axiom that intrinsically non-deliberative acts can have deliberative consequences

for the system as a whole (the standard example is strategic activism that gets hitherto suppressed questions on the political agenda), we should be alive to the possibility that particular inclusions could have consequences that turn out to be exclusive. Consider the inclusion of internet trolls who drive out others from political debate. Or should we welcome into a deliberative system those whose main concern is to strengthen hierarchies based on race, wealth, or nationality? While in a forum it is easy to see how the power of deliberation itself can curb and civilize exclusionary practices, the available mechanisms are much weaker in a deliberative system.

We should also be alive to the possibility that particular exclusions may have systemic consequences that prove to be inclusive. For example, Dryzek et al deploy comparative historical analysis to argue that the exclusion of environmentalists from influence on public policy in some cases contributed to the development of a lively and competent green public sphere that eventually yielded both more effective and more inclusive policy making.<sup>55</sup> Karpowitz, Raphael and Hammond show that restricting participation in a citizens' forum to the disempowered can have positive effects on the participants' competence and appreciation for diverse arguments.<sup>56</sup> Dovi, though not working in a deliberative systems idiom, suggests that the exclusion of privileged oppressors (notably racist groups) can be democratically defensible.<sup>57</sup> The dynamics of inclusion and exclusion are amenable to analysis within a deliberative systems framework, for example as we see how exclusions in one place can promote inclusions in another. What is still missing is some metric to assess the performance of the system *as a whole* on the inclusion

criterion. Mansbridge et al say ‘the system should be judged as a whole’<sup>58</sup> but do not show how this can be done when it comes to inclusion – or indeed on any other deliberative or democratic criterion. This absence applies equally to the criteria of justification and reflection (the key aspects of deliberative authenticity). Or to put it another way, a deliberative systems approach cannot easily tell us the degree to which a *system* is actually deliberative. If some solution cannot be found to this problem then the systemic turn in deliberative democracy is in trouble.

### **The System in the Polity**

To drive home the difficulty a deliberative systems approach has in generating such assessment, consider the *reductio ad absurdum* advanced by Owen and Smith.<sup>59</sup> Taking seriously the axiom that intrinsically non-deliberative practices can have positive systemic deliberative consequences, Owen and Smith raise the specter of a defensible deliberative system that does not actually contain any deliberation – only a series of non-deliberative practices, each of which has positive systemic consequences. (The corollary is surely an indefensible deliberative system composed of fully satisfactory deliberative parts.) One possible solution to their challenge would be specify the necessity of good deliberation only in some particular privileged location within a system (for example, among ‘decision-makers’<sup>60</sup>) – but that would be an effective renunciation of system-level evaluation.

Owen and Smith’s own solution to the problem they identify can be found in what they call a ‘deliberative stance’. While sharing Mansbridge’s commitment to the centrality of ‘everyday talk’,<sup>61</sup> the deliberative stance reveals itself when citizens

are 'engaged in the mutual exchange of reasons oriented *as if* to reaching a shared practical judgment' (emphasis in original).<sup>62</sup> Deliberative democrats should in this light cultivate the 'challenging and fragile' deliberative stance in society as their primary task, and 'consider the ways in which the system enables (or obstructs) the deliberative stance on the part of citizens.'<sup>63</sup> Thus deliberative systems can be evaluated in terms of their impact on the prevalence of the deliberative stance among the citizenry – at least in principle. This does not mean deliberative democrats should turn their back on the system; as Owen and Smith also note, an analysis of how public deliberation (motivated by the deliberative stance) affects collective decision is still required.<sup>64</sup>

In practice matters are not so clear. How do we know if citizens are adopting a deliberative stance, or if they are not? Is it better for many citizens to adopt it in a small way, or for fewer citizens to adopt it in a big way? More generally, given the deliberative stance seems to be an attribute of individuals, how do we move from individuals to (complex) collectivities? Should we just assume that more individuals adopting the stance at some threshold level is enough to render the collectivity deliberative? Is the deliberative stance the same for all people in all places, or is cultural variation in its content allowed? Is it vulnerable to criticism on the grounds raised long ago by Sanders (1997) that deliberation (narrowly defined as reason giving through argument) embodies a particular communication style that privileges some people and marginalizes others?<sup>65</sup> Owen and Smith give no examples that would help clarify such questions and make the deliberative stance concept operationalizable in the assessment of deliberative systems.

We do however need some reference point or level of judgment that is comprehensive or in Owen and Smith's words 'expansive' in order to be able to assess deliberative systems in their entirety. There are two other clear candidates.

The first is the venerable idea of the public sphere, a communicative realm where norms and cultures can be constructed and maintained. The problem here is that the idea of the public sphere has almost always been used by deliberative democrats in the sense of politicized civil society distinct and somewhat separate from formally-constituted public authority (such as the state, or an international governmental organization). This treatment begins with Habermas's classic history of the early bourgeois public sphere in Europe, where the emerging bourgeoisie were excluded from state power by monarchies and landed aristocracies, developing a political society of their own in response.<sup>66</sup> Some more recent treatments of the deliberative system see the public sphere – or public space – as part of the system.<sup>67</sup> In short, the public sphere as understood by deliberative democrats is not encompassing enough to be a reference point for the evaluation of deliberative systems, but would rather involve privileging one location within deliberative systems as a source of assessment. A more encompassing interpretation of the public sphere would, however, overcome this problem.

The second candidate is the idea of a comprehensive deliberative culture as developed by Böker, which she defines as 'all of the informal, unsteered, norms, expectations, meanings, and customs that drive citizens' attitudes and behavior in the political arena.'<sup>68</sup> A specifically deliberative culture would manifest 'the norms of deliberative democracy (such as fairness, equality and the right to justification).'<sup>69</sup>

Böker turns standard notions on their head by treating culture as a driver of change, rather than an inherited set of features. Linking deliberative culture to deliberative systems, she sees culture as the essence of deliberative democracy, as something that is causally prior to institutions within the system. In this sense, deliberative culture is the dynamic counterpart of the deliberative stance proposed by Owen and Smith. Culture should drive institutional development and for Böker can only 'self-evolve' from the bottom up.<sup>70</sup> The idea can be used to evaluate deliberative systems (or at least their components) if as she says 'system components contribute positively to deliberative democracy if they enhance the openness, inclusiveness and autonomy of the social-political space in which democratic cultural processes evolve.'<sup>71</sup>

Deliberative culture is in Böker's eyes a normative concept informed by deliberative theory, which constrains the way a culture can be deliberative. What then are we to make of the observable variety of defensively deliberative cultures?<sup>72</sup> The thickness of the norms of a deliberative culture in Böker's terms may skew evaluation – and sit uneasily beside the cultural self-evolution she also prizes. In addition, there may be times (notably but not solely when it comes to transnational deliberative systems) when the idea of a single culture overstates the conceivable degree of normative integration. A deliberative system can in such cases co-exist with multiple deliberative cultures.

As the dynamic counterpart of the deliberative stance, the deliberative culture concept is also subject to some of the same questions about moving from individuals to collectivity if (as for Böker) culture is defined as a driver of

individuals' 'attitudes and behavior.' However this problem could be solved very easily by treating culture in the intersubjective terms of the ethnographer as opposed to the individualistic terms of the political scientist. Such a move would helpfully separate deliberative culture from what is in Johnson's terms the 'moribund' tradition of political culture research.<sup>73</sup>

The deliberative stance, the public sphere, and the idea of a deliberative culture clearly bear a family resemblance to each other. All take an encompassing approach in contrast to the differentiated orientation of deliberative systems analysts, without quite providing an adequate solution to the pressing need for a means to evaluate the democratic credentials of deliberative systems in their entirety. So is it possible to do better? We can approach an answer from the idea that any deliberative system can be conceptualized as embedded in a polity, though their boundaries need not coincide. Here, it makes sense to use the term 'polity' rather than 'society', because the latter has dimensions that are not necessarily political. In addition, a polity may exist when a society does not; for example, in transnational governance on issues such as climate change, biodiversity, or finance. A society and a polity alike are defined by normative integration: they have norms that regulate the interactions of their members. Integrative norms should not be taken as given, but can themselves be the subject of contestation as they evolve with time. However, there must be a degree of normative integration - not just contestation all the way down - because without it, there is actually nothing to contest.



The integrative norms that define a polity are contextually specific, and can be substantive or procedural. They are substantive when (for example) there is a widely shared discourse – such as sustainable development in global environmental affairs; or neoliberalism in the economic affairs of Anglo-American countries since the 1980s. Aside from shared discourses, substantive integrative norms can take the form of a meta-consensus on the legitimacy of disputed values, the credibility of disputed beliefs, the range of acceptable options, or the nature of disputed choices.<sup>74</sup> Integrative norms are procedural when they concern how actors should relate to each other, be it peacefully or violently, in cooperative or adversarial fashion, through bargaining or argument. The polity image therefore enables response to critics who believe the deliberative systems approach is too forgiving of non-deliberative practices – to the point of abandoning core deliberative commitments.<sup>75</sup>

In this light, deliberative systems can be evaluated in terms of their impact upon the deliberative wellbeing of normative integration in the polity. We ought to be looking for competent, critical, inclusive, and egalitarian communicative action in the definition of integrative norms.

### **Evaluating the System in the Polity: Examples**

Let me give some illustrations to show what such evaluation means in practice.

#### *Partisan Media*

Consider to begin the systems analysis of the media suggested by Mansbridge et al.

After worrying about partisan media falsifying facts and disseminating

misinformation, they say: ‘The partisan media may contain their own partial

corrective for this pathology, as the other side is always looking for the false moves of its adversary. Gross misrepresentation and falsehood probably cannot stay hidden for long in an atmosphere of heightened scrutiny that often accompanies partisan news battles.<sup>76</sup> Consider in this light the analysis of organized movements to deny, respectively, that smoking causes cancer, and that the burning of fossil fuels causes climate change, both of which have had their advocates in the partisan media. As Oreskes and Conway argue, the main point of these movements is not to defeat the other side, but rather to create a debate where there would otherwise be none, by suggesting that legitimate doubt exists about the science of cancer and of climate change, when really it does not (thus creating a systematically distorted meta-consensus on beliefs).<sup>77</sup> The balance doctrine in the more serious media compounds the problem by treating the science as though there were two sides to it, thus giving unfair time to the deniers.<sup>78</sup> ‘Merchants of doubt’ as Oreskes and Conway dub them could still flourish in settings where citizens took the Smith and Owen deliberative stance just discussed. It took several decades to defeat the merchants of doubt on smoking and cancer. But more recently, those active on climate change have succeeded in introducing doubt into public opinion in the United States to the degree that federal legislative action on climate change is impossible. It is not just that effective public policy is precluded, but also a matter of a deliberative system in disrepair. Now, looking closely into this case, deliberative systems analysts might reveal the dynamics of how (for example) the instrumental creation of a debate in the public sphere precludes effective deliberation both in the public sphere itself and in more formal institutions of government. But the situation can only be

evaluated in *systemic* (ie whole-system) terms by looking at the effects on the constitutive norms for deliberation on the smoking/cancer or climate change issue in the polity as a whole. This evaluation shows that the effect of ‘merchants of doubt’ on integrative norms of balance and fairness that help constitute the polity is a pathological one. The nature of this effect highlights the need for the polity in question to have a more reflexive attitude to what balance and fairness should mean – rather than take them as given, which is what the mainstream media has done – and which Mansbridge et al in their brief discussion also do.<sup>79</sup>

### *Legitimizing the Political Economy*

Let me turn now to a more challenging case to illustrate the need to evaluate deliberative systems in terms of their impact upon normative integration in the polity – and how this emphasis points toward making normative democratic theory more generally better able to address key contemporary political questions. Sabl suggests that today’s normative democratic theorists ‘risk focusing on small-scale experiments in participation and deliberation while missing what amounts – if scholars who claim oligarchic trends are right – to a sea change in the *mass* polity from a past that in comparison seems quite benign.’<sup>80</sup> How might deliberative democrats respond to this charge of irrelevance?

A deliberative systems diagnosis of this sea change might point to the fact that the public sphere critical of these oligarchic tendencies and the increasing economic inequalities they reflect has become increasingly detached and distant from and so unable to influence the sites of effective policy making. There was a time when the organized working class could deploy both deliberative and non-

deliberative means (such as strikes and union members' electoral power over political parties of the left) in order to promote such influence. But to make more complete democratic sense of these developments, it is necessary to examine the changing terms in which the political economy has been legitimated – which increasingly occurs in terms of some particular and partial integrative norms. Any account here has to be a bit stylized, given substantial cross-national and temporal variations, but some common themes emerge.

The capitalist political economy in developed democracies was once legitimated in large measure by an interventionist Keynesian welfare state financed by a progressive taxation system that protected those who might otherwise challenge the system as a result of suffering from the income insecurity and precarious living conditions generated by capitalism.<sup>81</sup> As the decades pass, the Keynesian welfare state has been discursively undermined (even as many of its expenditures persist), and legitimation increasingly proceeds through very different discursive means. These means have established themselves as extraordinarily resilient and able to turn even seeming disaster to their advantage.

These means come in the form of a neo-liberalism that sees financial and capital markets as incapable of generating their own systemic crises, free markets in general as unproblematically self-regulating, and redistributive public policy as self-defeating. Their discursive power is exemplified in the Tea Party movement in the United States, which blames government for generating the economic insecurity from which many of its supporters suffer. To the degree neo-liberalism is a hegemonic discourse, effective deliberation is precluded. This hegemony has been

most pronounced in global and transnational financial governance. (The presence of regulative norms embedded in discourses and recognizable governance mechanisms is central to constructivist analyses of international politics.)

Now, in deliberative system terms matters did change after 2008 in the wake of financial crisis: structural questions about banking and finance were politicized, critical journalism came to the fore, publics started to attend to questions they had previously ignored, bankers were occasionally even asked to justify themselves before legislatures. In short, a more confident and autonomous public space emerged from which critique could be launched, with some response among those in positions of public authority. Yet although it seems there were the beginnings of a more effective deliberative system, if we look at the normative integration of the polity, we see that little actually changed. Neoliberal discourse made a remarkable comeback in the wake of crisis, no effective alternative to the normative integration it enables can be discerned, the questioners and critics have not constructed any effective counter-discourse.<sup>82</sup> The main counter-discourse has been developed in radical social movements such as Occupy or the Indignados in Spain, but this remains marginal.

In Europe, the (neo-liberal) discourse of austerity came to dominate. Austerity's main distributive implication was that those with the least responsibility for causing financial crisis in 2008 had to suffer the most in order to solve the subsequent problems – thus reinforcing economic and so political inequality.<sup>83</sup> Major political parties across the continent of the left as well as right adopted this discourse, and the kind of state intervention that briefly looked as though it would

make a major comeback in the immediate aftermath of crisis soon felt the sting of a discursive backlash.<sup>84</sup> Any government trying to resist the austerity tide through redistributive public policy was soon punished by the European Union, IMF, and financial markets; electoral democracy provided little protection against neo-liberal discursive hegemony and the hard financial power deployed in its service. In some countries electoral democracy featured populist parties that blamed immigrants for unemployment, income loss, and insecurity.

These sorts of developments have of course been analyzed and explained in a number of ways (stressing for example the effects of economic globalization, or explicating the power of economic ideas); but normative democratic theory has been largely absent from the conversation. My claim is simply that an analysis couched in the terms of normative integration in the polity enables democratic theory to join the conversation, and to offer at least one way of thinking about how to democratize the terms in which the political economy is now legitimated. We can judge the deliberative ill-health of a system through reference to the conditions of normative integration and discursive engagement in the polity as a whole. In this case, there was deliberative ill-health because a hegemonic discourse has been insulated from critique at the transnational level. The hegemony may not be so complete within the domestic politics of states, but neoliberalism or austerity remain the dominant terms in which economic inequality and associated precarious conditions for much of the population are legitimated. Deliberative theory does not provide the magic bullet necessary to counter such hegemony, but it does have at its

disposal critical standards through which to scrutinize the conditions of communicative action in the definition of integrative norms in the political economy.

#### *Scotland 2014*

The smoking/climate change and political economy examples both feature shortfalls in the contestatory, deliberative scrutiny of integrative norms in a polity. More effective communicative action in addressing integrative norms can be found in a third example, the case of Scotland during the campaign preceding the 2014 referendum on independence from the United Kingdom. The turnout in the referendum itself was remarkably high (85% compared to a normal general election turnout of around 55-60%) but more important was the breadth and intensity of the deliberative engagement, encompassing not just political elites, but also ordinary Scots – including those outside the country who could not vote. This engagement took place in multiple locations, ranging from the media to formal debates across leaders of the yes and no campaigns to online exchanges to conversations in workplaces, bars, and households. I am aware of no analysis of this engagement in deliberative systems terms.<sup>85</sup> Many commentators remarked on the deliberative intensity of Scotland,<sup>86</sup> but it is not just the sheer volume of communicative action that matters, rather the fact that so much of it addressed the integrative norms of the Scottish polity. What kind of Scotland did people want? What did Scottish identity mean? Did it have to be expressed in independence, or could it be accommodated in the union? If Scotland has a distinct social democratic character (different from more conservative England), should that be secured in a separate

country, or should social democracy be fought for in the context of devolution of power within the United Kingdom?

*Deeply Divided Societies*

The need for this kind of polity-level judgment is crystallized when we look at the particular case of deeply divided societies, on which there is now a substantial deliberative literature. Such societies are divided on the basis of identity, be it a matter of religion, nationality, or ethnicity. The divisive politics of identity is everywhere in such societies; the effective norms for interaction can involve enmity, repression, and violence. Deliberative democrats who have contemplated what might be done in such societies differ on whether deliberation across division should be sought first of all in citizen forums,<sup>87</sup> in connection with consociational institutions that involve cooperation across leaders of different blocks,<sup>88</sup> in the public sphere at some distance from any contest over sovereign authority,<sup>89</sup> or in some deliberative system that links these sites. But for all these treatments, the success criterion is the same: the deliberative development of integrative norms that would regulate engagement across identities in more peaceful and productive fashion. Consider in this light South Africa's transition from apartheid in the 1990s. Contributions to a re-orientation of relationships across racial divides were made by peak-level negotiations, by mixed-race discussion groups, by the rhetoric of reconciliation espoused by Nelson Mandela and others. The re-orientation itself was not confined to particular institutions or social settings; its power depended on the fact that it was indeed pervasive in changing the normative foundations of South African society.



*Contestatory Democracy*

Thinking in 'polity' terms about integrative norms can also shed light on continuing differences between those such as agonists who celebrate the inherently conflictual, open-ended nature of democratic politics and deliberative democrats more inclined to seek moments of closure in collective decision. The debate between the two schools has long since moved on from Mouffe's full frontal agonistic attack on deliberation.<sup>90</sup> Mouffe's attack makes sense only to the degree that deliberative democracy is committed to pursuit of consensus that in her eyes suppresses the conflict which is an inescapable feature of democratic politics, and misses the opportunity to (in her language) convert enemies to be defeated into adversaries to be engaged. Mouffe's critique was plausible two decades ago, but deliberative democracy has changed, not least in taking on a more contestatory hue. This change enables for example Ercan to stress agonistic respect as a key ingredient of a pluralizing kind of deliberation concerning what to do about the polarizing issue of 'honor killings' in liberal societies.<sup>91</sup>

Yet differences remain. While they do not use the language of integrative norms, agonists would presumably want to highlight recognition of the right and need to disrupt collective decision as a permanent feature of democratic politics. In this light, any kind of closure (such as a government decision) should never be regarded as settling the matter. For agonists, opponents must always be recognized and engaged, rather than ignored, even when the opponent is not vocal or seems to have lost (So Honig laments what she sees as the fact that pro-choice activists 'ceded

the agon' to their opponents in wake of the Roe v Wade Supreme Court decision that legalized abortion<sup>92</sup>).

Now, the right to contest and disrupt closure as an integrative norm (which Rancière and Wolin among other democratic theorists would join agonists in endorsing<sup>93</sup>) is easy to celebrate if it is something likely to be mobilized by the marginalized and oppressed – and deliberative democrats could indeed join in the celebration. Yet as the 'merchants of doubt' example I discussed earlier highlights, this norm can also be mobilized by powerful material interests whose orientation to public debate is highly instrumental: so long as debate is perpetuated and remains politicized, their profits from tobacco or fossil fuels are secured. So rather than simply celebrate the need always to contest closure as an integrative norm, this norm needs to be scrutinized – along with the notions of balance and fairness that the tobacco and fossil fuel industries and their hired disruptors can also turn to their advantage. These particular norms can be scrutinized in light of material privilege and instrumentality (echoing the old Habermasian distinction between strategic and communicative action), such that the disruption that is engineered in the services of profit should not be treated the same as disruption by those motivated by an ethical stance (however contestable), or those on the receiving end of injustice. The general point is that a more reflexive attitude needs to be adopted toward integrative norms concerning the right to contest and disrupt. Agonists such as Connolly and Honig might in principle accept the need to differentiate between more and less defensible sorts of contestation in light of existing power relations and the need for a shared citizen ethos, such as Connolly's 'ethos of pluralization'

that could be mobilized against anti-pluralist fundamentalisms.<sup>94</sup> However, such fundamentalisms for agonists still need to be engaged, and in practice agonists are reluctant to specify exactly what should be ruled out as detrimental to democratic politics for fear of creating new sorts of exclusion. The 'polity' image in deliberative democracy I have articulated here is much less hesitant on this score.

The idea of a deliberative polity does, then, enable evaluation of deliberative systems, which can be judged in terms of the degree to which they facilitate or obstruct competent, critical, inclusive, and egalitarian communicative action in the development of integrative norms. Integrative norms pervade a polity whether deliberation is present or absent; it is deliberation that can expose these norms to critical scrutiny.

Now, these terms are not the only ones in which deliberative systems can be evaluated; they can also be assessed in terms of the degree to which they enable resolution of collective problems (what Mansbridge et al would call the epistemic function<sup>95</sup>). But it is the best way to evaluate those systems in terms true to the core commitments of deliberative democracy. This emphasis also recalls roots in a critical communications theory that anticipates undistorted communication in the generation of reciprocal understandings.<sup>96</sup> These roots should be remembered by those who see unproblematic locations for deliberative democracy in the liberal democratic state,<sup>97</sup> or think that inserting minipublics into deliberative systems can make a significant difference while the broader context of money, power, and strategizing remains unchanged.<sup>98</sup>

Evaluation is not the same as design. Deliberative polities cannot easily be designed, given that integrative norms reside in an informal realm, beyond the direct reach of constitutional designers. Forums are designed very easily. The design of deliberative systems is harder but still possible, because it means addressing multiple locations (not just one forum); constitutionalism can also be seen as a kind of deliberative system design. The forum and the system are indispensable, even if their evaluation must yield ultimately to the polity.

### **Conclusion**

Deliberative forums *only* make sense in a deliberative system. A deliberative system can *only* be evaluated in comprehensive democratic terms through reference to the idea of a deliberative polity. At the same time, forums are some of the best ways of ensuring that deliberative systems feature the justification and reflection necessary for deliberative authenticity; and systems are vital when it comes to thinking about how to apply deliberative ideals in inclusive fashion at large scale. Yet ultimately it is in terms of the polity that the democratic contributions of forums and systems need to be assessed.

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- <sup>74</sup> John S. Dryzek and Simon Niemeyer, "Reconciling Pluralism and Consensus as Political Ideals," *American Journal of Political Science* 50 (2006): 634-49.
- <sup>75</sup> David L. Ponet and Ethan J. Leib, "Deliberative Law," in *The Oxford Handbook of Deliberative Democracy*, eds. André Bächtiger, John S. Dryzek, Jane Mansbridge, and Mark E. Warren (Oxford: Oxford University Press, forthcoming); Owen and Smith, "Deliberation, Democracy."
- <sup>76</sup> Mansbridge et al, "A Systemic Approach," 21.
- <sup>77</sup> Naimi Oreskes and Erik Conway, *Merchants of Doubt: How a Handful of Scientists Obscured the Truth from Tobacco to Global Warming* (New York: Bloomsbury Press, 2010).
- <sup>78</sup> Maxwell T. Boykoff and Jules M. Boykoff. "Balance as Bias: Global Warming and the US Prestige Press," *Global Environmental Change* 14 (2004): 125-36.
- <sup>79</sup> There is no implication that governments are justified in shutting down debate in order to protect deliberation within state institutions. The idea is reflexivity – not state censorship.
- <sup>80</sup> Andrew Sabl, "The Two Cultures of Democratic Theory: Responsiveness, Democratic Quality, and the Empirical-Normative Divide," *Perspectives on Politics* 13, no. 2 (2015): 346.
- <sup>81</sup> Claus Offe, *Contradictions of the Welfare State* (Cambridge, MA: MIT Press, 1984).

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- <sup>82</sup> See John Quiggin, *Zombie Economics: How Dead Ideas Still Walk Among Us* (Princeton: Princeton University Press, 2012).
- <sup>83</sup> Mark Blyth, *Austerity: The History of a Dangerous Idea* (Oxford: Oxford University Press, 2013).
- <sup>84</sup> Patrick Dunleavy, "The Backlash Against the State," *Political Insights* 2, no. 1 (2011): 4-6.
- <sup>85</sup> For an intention to conduct such a study, see John Parkinson, "A Deliberative System in Scotland?" The Boggler Blog, <http://boggler.johnrparkinson.net/2015/04/10/a-deliberative-system-in-scotland/>
- <sup>86</sup> For example, Stephen Tierney, "And the Winner is... the Referendum': Scottish Independence and the Deliberative Participation of Citizens," *International Journal of Constitutional Law* Blog, Sept. 26, 2014, <http://www.iconnectblog.com/2014/09/and-the-winner-is-the-referendum-scottish-independence-and-the-deliberative-participation-of-citizens/>
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- <sup>88</sup> Ian O'Flynn, *Deliberative Democracy and Divided Societies* (Edinburgh: Edinburgh University Press, 2006).
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- <sup>93</sup> Jacques Rancière, *Dissensus: On Politics and Aesthetics* (London: Continuum, 2010); Sheldon Wolin, "Fugitive Democracy," *Constellations* 1, no. 1 (1994): 11-25.
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- <sup>95</sup> Mansbridge et al, "A Systemic Approach."
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- <sup>97</sup> Gutmann and Thompson, *Democracy and Disagreement*.
- <sup>98</sup> Fishkin, *When the People Speak*.