

**The “Filter”, the “Mirror” and the “Mob”:
Reflections on Deliberative Democracy¹**

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I will begin with the debate over the American founding to illustrate a conundrum in democratic theory--and how it might be solved. My purpose is analytical rather than historical. However, I continue to be impressed by the richness of the debate over the founding and its suggestiveness for modern theorizing about deliberative democracy. The founders, while practical people, were also political theorists of continuing relevance.

Our vision of democracy is a split picture, dominated by three starkly different images—the “filter,” the “mirror” and the “mob” (or its avoidance). Each image embodies a core principle: With Madison and the Federalists, the filter became a prominent metaphor for deliberation; with the Anti-Federalists, the “mirror” became a metaphor for political equality. Since the death of Socrates, the “mob” has been an image to be feared, embodying non-tyranny (or the principle that tyranny of the majority should be avoided).²

In my view, the central problem of democratic theory is whether or not it is possible to achieve all three of these principles and unify the split picture in a single coherent vision of democratic practice. The three principles all played key roles in the debate over the founding, but they also have more ancient pedigrees. The problem is: can we design institutions that will realize political equality, deliberation and non-tyranny? Can we combine the “reflective” preferences that would come from deliberation with the “reflected” preferences that would seem required by the mirror of political equality and, at the same time, avoid the “mob” that would rob some members of fundamental rights or essential interests?

In this essay, I will set the justificatory issues mostly to one side. However, it should be obvious that each of these three principles identifies a dimension of democracy that can be argued for independently. First, deliberation gives us considered and thoughtful judgments in a process that attempts to deal conscientiously with public problems. Few critics deny the desirability of such judgments. Rather, critics of deliberative democracy tend to argue that non-deliberative processes might approximate the judgments people would reach with fuller information and reflection—and save everyone decision costs through the use of heuristics.³ While there is no question that people use heuristics, there are, in my view, strong empirical grounds for questioning the

extent to which heuristics or shortcuts can plausibly proxy for deliberation.⁴ Second, the point of political equality is to count everyone's views in the same way. Democratic decisions that violate political equality are normatively suspect because portions of the public who have to live with the results are not represented; they do not have their viewpoints articulated or their votes counted. Fairness arguments strongly support claims of political equality. Third, even when votes are counted equally or viewpoints are equally voiced, and even where there is considerable discussion, there remains the possibility that majorities can do bad things, that they can commit sufficiently flagrant injustices upon some of their number that any normative claim of democracy would be undermined. A democratic theory that supports tyranny of the majority would seem subject to decisive objection. Hence, all three conditions would seem essential for any defensible normative theory of democracy.

However, strong arguments have long been invoked for concluding that the three principles form an incompatible triad, a trilemma, if you will, of democratic theory.⁵ More specifically, pursuit of political equality undermines deliberation, on the one hand, and opens the way to problems of demagoguery and tyranny of the majority, on the other.

Yet, I will argue, the trilemma is only apparent. These conflicts are not inevitable. It is, in fact, possible to achieve deliberation, political equality and nontyranny—all at the same time. Institutions can be designed especially for this purpose. I will discuss one such effort, the Deliberative Poll. In addition, depending on how, precisely, the three principles are formulated, it is also possible for all three principles to be achieved, at least at times, by more conventional institutions. Indeed, I believe Madison offers hints of such a resolution.

The Filter

As Madison reported on his own position in his notes on the Constitutional Convention, he was “an advocate for the policy of refining the popular appointments by successive filtrations.”⁶ Famously, he argued in Federalist No. 10, that the effect of representation was “to refine and enlarge the public views by passing them through the medium of a chosen body of citizens...under such a regulation it may well happen that

the public voice, pronounced by the representatives of the people, will be more consonant to the public good than if pronounced by the people themselves, if convened for the purpose.” Running throughout Madison’s thinking is the distinction between “refined” public opinion, the considered judgments that can result from the deliberations of a small representative body, on the one hand, and the “temporary errors and delusions” of public opinion that may be found outside this deliberative process, on the other. It is only through the deliberations of a small face to face representative body that one can arrive at the “the cool and deliberate sense of the community” (Federalist No 63). This was a principal motivation for the Senate, which was intended to resist the passions and interests that might divert the public into majority tyranny. Large meetings of citizens were dangerous because they were too large to be deliberative, no matter how thoughtful or virtuous the citizenry. As Madison said in Federalist No 40, “had every Athenian citizen been a Socrates, every Athenian assembly would still have been a mob.”

The filter can be thought of as the process of deliberation through which representatives, in face to face discussion, may come to considered judgments about public issues. For our purposes, we can specify a working notion of deliberation: face to face discussion by which participants conscientiously raise and respond to competing arguments so as to arrive at considered judgments about the solutions to public problems. There are issues about the quality of any such deliberation that turn on a) the accuracy or reliability of the information used in the deliberations, and b) the completeness or incompleteness with which arguments offered on one side are responded to by advocates of competing positions. Both a) and b) are matters of degree and we can specify that for a deliberation to be defensible, the information must be reasonably accurate and there must be significant opportunities for advocates of each side to respond to arguments offered by competing sides. The aim is for the participants to come to their conclusions after a balanced consideration of the competing arguments and on the basis of reasonably good information.

The Mirror

As Jack Rakove has noted, the one widely shared desideratum in the American notion of representation at the time of the founding was the idea that a representative assembly should, to use John Adams' phrase, be "in miniature an exact portrait of the people at large."⁷ In the hands of the Anti-Federalists, this notion became a basis for objecting to the apparent elitism of the filtering metaphor (only the educated upper classes were expected to do the refining in small elite assemblies). Fundamentally, the mirror notion of representation was an expression of fairness and equality. As the "Federal Farmer" put it: "A fair and equal representation is that in which the interests, feelings, opinions and views of the people are collected, in such manner as they would be were the people all assembled."⁸ As Melancton Smith, who opposed the constitution at the New York ratification convention argued (and who may well have been "The Federal Farmer"), representatives "should be a true picture of the people, possess a knowledge of their circumstances and their wants, sympathize in all their distresses, and be disposed to seek their true interests." In line with the mirror theory of representation, Anti-Federalists sought frequent elections, term limits, and any measures that would increase the closeness of resemblance between representatives and those they represented.

"The people all assembled" is exactly the kind of gathering the Federalists believed would give only an inferior rendering of the public good. Recall Madison's claim that a small representative group would give a better account of the public good than would the "people themselves if convened for the purpose" (Federalist No. 10). The mirror is a picture of public opinion as it is; the deliberative filter provides a counter-factual picture of public opinion as it would be, were it "refined and enlarged". If political equality requires the consideration of public opinion, just as it is, without the benefit of the kind of refinement that would come in small deliberative bodies, then the conflict between the filter and the mirror seems inevitable.⁹

Before we search for ways out of this conundrum, let us pause to get at least a working definition of political equality: a practice satisfies political equality when it gives equal consideration to everyone's views. For the moment, we need not concern ourselves with who is included in the term "everyone". Obviously, there have been enormous

changes in suffrage, or in the definition of the relevant demos, during the period covered by this discussion.¹⁰ There are also various ways to provide for “equal consideration”. For our purposes here we can specify a root notion—an equal chance of being the decisive voter (assuming that we know nothing about the preferences of the other voters). This notion is the intuition behind indices for equal voting power such as the Banzhaf index.¹¹

It is also worth noting that political equality can be applied to formal political processes such as voting in elections or primaries or referendums. It can equally be applied to unofficial processes such as public opinion polls, and to many other informal processes where it is far less successfully realized: straw polls, town meetings and other informal gatherings where opinion is loosely assessed¹². One key issue that I have also left intentionally underspecified at this point is the question of what “views” are to be considered equally.

The Mob

Fear of majority tyranny was one of the principal motivations for the original design of the U.S. constitution. Famously, Madison did not embrace the term “democracy” preferring “republic”, by which he meant “a government in which the scheme of representation takes place.” By contrast, in the small face to face democracy of the ancient city states, “a pure democracy” without representation, (he believed), there was “no cure for the mischiefs of faction. A common passion or interest will, in almost every case, be felt by a majority of the whole...there is nothing to check the inducements to sacrifice the weaker party or an obnoxious individual” (Federalist No. 10). The rationale for the Senate was that “an institution may be sometimes necessary as a defense to the people against their own temporary errors and delusions.” It was to protect the people, not from their considered judgments, not from the “cool and deliberate sense of the community” but from “the people stimulated by some irregular passion, or some illicit advantage, or misled by the artful misrepresentations of interested men” (Federalist No. 63) who might then act as a “faction” adverse to the rights and interests of others, or

to the permanent and aggregate interests of the community as a whole. A Senate might have saved Socrates, Madison suggests:

What bitter anguish would not the people of Athens have often escaped if their government had contained so provident a safeguard against the tyranny of their own passions? Popular liberty might then have escaped the indelible reproach of decreeing to the same citizens the hemlock on one day and statues on the next. (Federalist No. 63).

The courts were obviously another key bulwark against the passions of the mob, the passions of the public that could be aroused by “designing men.” The judiciary could resist the momentary lapses, the immediate passions that lead factions to do things that the people would later regret on reflection and with more information. As Hamilton argued in Federalist No. 73:

The independence of the judges is equally requisite to guard the Constitution and the rights of individuals from the effects of those ill humors which the arts of designing men, or the influence of particular conjunctures, sometimes disseminate among the people themselves, and which, though they speedily give place to better information and more deliberate reflection, have a tendency, in the meantime to occasion dangerous innovations in the government, and serious oppressions of the minor party in the community.

But Hamilton, at least, did not believe the courts would prove a strong bulwark against majority factions. He did not think it likely that judges would have the “fortitude” to “do their duty as guardians of the Constitution, where legislative invasions of it had been instigated by the major voice of the community” (Federalist No. 73).

The Framers were clearly haunted by the possibility that factions aroused by passions or interests adverse to the rights or interests of others, could do very bad things. The image they feared seems to be some combination of the Athenian mob and Shays’s rebellion. “Tyranny” of the majority is only loosely specified, but they were clearly fearful of substantial and avoidable deprivations committed against life, liberty or property. While these notions are suggestive, we need a working definition here of those government decisions that would be so unacceptable that there would be overriding

normative claims against them even when they were otherwise supported by democratic principles.

For our purposes, we can say that tyranny (whether of the majority or minority) is the choice of a policy that imposes severe deprivations of essential interests when an alternative policy could have been chosen that would not have imposed comparable severe deprivations on anyone. By nontyranny I simply mean the avoidance of “tyranny” in this sense.¹³ There are, of course, interesting questions about the definition of “essential interests” and the sense in which policies are alternatives, one to another. I have developed one version of how such issues might be dealt with.¹⁴ However, the basic notion does not turn on any specific account of these notions. For our purposes here, the basic idea will serve: that it is objectionable when people choose to do very bad things to some of their number, when such a choice could have been avoided entirely.¹⁵

The Apparent Conundrum

The problem is that pursuit of political equality would seem to undermine both deliberation and nontyranny. From the standpoint of the Founders, the problem was soon dramatized by the Rhode Island referendum, the only effort to consult the people directly about the ratification of the Constitution. Rhode Island was a hotbed of paper money and, from the Federalist standpoint, irresponsible government and fiscal mismanagement. An Anti-Federalist stronghold, it lived up to the Founders’ image of a place where the passions of the public might undermine both deliberation and nontyranny.

The Anti-Federalists sparked a thorough going debate over the proper method of consulting the people. Referendum advocates held that “submitting it to every Individual Freeholder of the state was the only Mode in which the true Sentiments of the people could be collected”(emphasis in original).¹⁶ However, the Federalists objected that a referendum would not provide a discussion of the issues in which the arguments could be joined. By holding the referendum in town meetings scattered throughout the state, different arguments would be offered in each place, and the arguments offered would not get answered. “The sea-port towns cannot hear and examine the arguments of their brethren in the country on this subject, nor can they in return be possessed of our views

theoreof...each separate interest will act under an impression of private and local motives only, uninformed of those reasons and arguments which might lead to measures of common utility and public good.”¹⁷ Federalists held that only in a Convention could representatives of the entire state meet together, voice their concerns and have them answered by those with different views so as to arrive at some collective solution for the common good. The very idea of the convention as a basis for ratification was an important innovation motivated by the need for deliberation. Direct consultation of the mass public, realizing political equality, would sacrifice deliberative discussion.

Federalists also noted another defect—lack of information: “every individual Freeman ought to investigate these great questions to some good degree in order to decide on this Constitution: the time therefore to be spent in this business would prove a great tax on the freemen to be assembled in Town-meetings, which must be kept open not only three days but three months or more, in preparation as the people at large have more or less information.” While representatives chosen for a convention might acquire the appropriate information in a reasonable time, it would take an extraordinary amount of time to similarly prepare the “people at large.”

Of course, what happened in the end, is that the referendum was held; it was boycotted by the Federalists; and the Constitution was voted down. Rhode Island, under threat of embargo and even of dismemberment (Connecticut threatening to invade from the South and Massachusetts from the North) capitulated and held the required state convention to eventually approve the Constitution.

The effort to realize political equality by directly consulting every freeman undermined deliberation and, given the passions involved in the referendum campaign, posed risks of violating nontyranny as well. This incident was an early American salvo in a long war of competing conceptions of democracy. In the long run, the Federalist emphasis on deliberation and discussion may well have lost out to a form of democracy, embodied in referendums, and in other forms of more direct consultation that achieve political equality—regardless of whether or not it is also accompanied by deliberation.

In the more than two centuries since the Founding, many changes, both formal and informal, in the American political system have served to further realize political equality through more direct public consultation, but at the cost of deliberation. Consider

what has happened to the Electoral College, the election of Senators, the presidential selection system, the development and transformation of the national party conventions, the rise of referenda (particularly in the Western states) and the development of public opinion polling. People vote directly and their votes are counted equally (except, of course, in voting for the Senate, if we compare across states). Many aspects of Madisonian “filtration” have disappeared in a system that has taken on increasing elements of what might be called “plebescitary” democracy (embodied in referenda, primaries and the influence of polls).

The Electoral College was, of course, originally intended to be a deliberative body, meeting state by state, that would choose the most qualified person. Now if members of the Electoral College exercise independent judgment, they are condemned as “faithless electors” and may be subject to challenge in the courts. Senators are elected directly since the 17th Amendment (which came into effect in 1913). Primaries and referenda bring to the people decisions that were previously made by political elites-- party leaders in the case of nominations and legislators in the case of laws. Public opinion polls bring substantive issues directly to the public (in representative samples) without any effective opportunity for “filtering” or deliberation by the mass public.

This movement to more direct consultation has come at a cost—a loss in the institutional structures that might provide incentives for deliberation. Much social science has established that ordinary citizens have a low level of political knowledge. In terms made famous by Anthony Downs, they can be thought of as suffering from “rational ignorance”.¹⁸ Each individual voter or citizen can see that his or her individual vote or opinion will not make much difference to policy outcomes, so there is little reason to take the effort to become more informed. On this hypothesis, the result is a consistently low level of knowledge in the electorate about politics and policy (a problem the American electorate shares with comparable electorates around the world).¹⁹ On this view, the pursuit of political equality through increasingly direct methods of public consultation has brought the locus of many important decisions to a mass public which has little reason to pay attention. The result has been a loss in informed choice and deliberation.

The apparent trilemma has two essential claims: pursuit of political equality undermines deliberation and pursuit of political equality undermines nontyranny. The

Federalist claim that deliberation could only take place in small representative bodies, such as ratifying conventions or the proposed Senate, and not through direct consultation, such as the Rhode Island referendum, shows how the pursuit of political equality through more direct consultation would, on their view, undermine deliberation. From a more modern perspective, the mass incentives for rational ignorance, for citizens' acquiring information, or even paying attention beyond a sound bite, render the prospects for deliberative democracy on a consistent and continuing basis among the mass public rather dubious.²⁰

The second claim that forms the basis for the apparent trilemma is that the pursuit of political equality through more direct consultation undermines non-tyranny. As we have already seen, this was clearly a main worry of the Founders. Madison, for example, believed that without the filter of a Senate, the direct democracy of the ancients had no barriers to passions or interests that might motivate factions adverse to the rights of some minority. While a great deal of the American experience with injustice and majority tyranny cannot be pinned on the spread of political equality (indeed, it is arguable that the spread of the franchise has, on balance had a salutary effect) it is nevertheless the case that a great deal of political experience around the world since Madison's time supports the view that direct democratic consultation holds dangers, at least on occasion, of majority tyranny. As Vernon Bogdanor noted of West European experience:

From the time of Napoleon...the referendum has been used to provide popular legitimacy not for democratic government but for dictatorship. In 1800, it was used to make Napoleon first consul; in 1802 to make him consul for life; and in 1804 the hereditary emperor. Napoleon's nephew, Louis Napoleon, used the referendum in December 1851, after his coup d'etat, to secure ratification of his new constitution, which replaced the Second Republic and made him president for ten years. He used it again in 1852 to establish the empire in which he became Napoleon III. In 1940, Marshal Petain's proposed constitution would also have found a place for the referendum.²¹

Later use of the referendum by Nazis and other fascists also tarnished the reputation of the device. Clearly, a great deal of care must be taken with the social context of referendums: how they are proposed and with what motives, and what opportunities are offered for serious public education on competing sides of the issue.

Some of the American experience in the western states where referendums are common also raises issues of “faction” aroused by passions apparently adverse to the rights of others. A good example might be Proposition 187 in California, which was intended, in 1994, to deny access of illegal aliens to schools and medical care.

Madison’s “Cure”

The pursuit of political equality through direct public consultation can undermine both deliberation and nontyranny. However, the key to opening a way out of the trilemma is to realize that direct public consultation is not the only way of realizing political equality. Other methods of satisfying political equality can be achieved without the necessity to experiment with direct democracy. A glimpse of what I have in mind can be seen in Madison’s account, in Federalist No. 10 of how deliberative democracy is possible. Later, I will describe ways to realize deliberative public opinion that make explicit what is only implicit in Madison’s account.

Madison offers an elegant and compact argument in Federalist No.10. However, it is one that includes a puzzle. After defining factions (“by a faction I understand some number of citizens, whether amounting to a majority or minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of others citizens, or to the permanent interests of the community”) he offers two methods for controlling them, removing their causes or controlling their effects. The causes cannot be eliminated without eliminating liberty so the problem is to control the effects.

He then considers two cases, minority and majority factions. In the minority case “relief is supplied by the republican principle, which enables the majority to defeat its sinister views by regular vote.” But the solution is not so easy in the case of majority factions. “When a majority is included in a faction, the form of popular government, on the other hand enables it to sacrifice to its ruling passion or interest both the public good and the rights of other citizens.” How to control majority factions, is the “great object”: “To secure the public good and private rights against the danger of such a faction, and at

the same time to preserve the spirit and the form of popular government, is then the great object to which our inquiries are directed.”

Note that Madison has just identified the “republican principle” with majority rule in claiming that minority factions can be controlled simply by use of the republican principle. But how to “preserve the spirit and form of popular government” and at the same time control majority factions is the “great object.”

The extensive discussion of Federalist No. 10 has been dominated by the second of two arguments he offers in response to this problem. The second argument is a justly famous one: “extend the sphere and you take in a greater variety of parties and interests; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens; or if such a common motive exists, it will be more difficult for those who feel it to discover their own strength and to act in unison with each other.” But this argument is about how majority factions are less likely to form in large states, or if they form, how they are less likely to make themselves felt. It does not deal explicitly with the apparent incompatibility between the “republican principle” itself and the principle that majority factions adverse to the rights of others should not carry the day (how to satisfy the nontyranny principle).

The conceptual problem, in other words, is that if the “republican principle” is an expression of majority rule (and for that reason can control minority factions), why should it not also carry the day with majority factions? The answer turns on how the republican principle, and hence political equality is applied—what views or preferences are counted equally. Madison says he must “preserve the spirit and form of popular government” in the face of a majority faction. It is the “spirit and form” of popular government, not its mechanical application to preferences as they exist.

When Madison defines a republic as “a government in which the scheme of representation takes place” he says it is this fact that “promises the cure we are seeking.” He then explains the function of representatives in the famous phrase: “to refine and enlarge the public views by passing them through the medium of a chosen body of citizens whose wisdom may best discern the true interests of their country and whose patriotism and love of justice will be least likely to sacrifice it to temporary and partial considerations.”

As noted, this “refined” view of public opinion will be different from what we would get if we convened the public and asked them their views on the spot. It is not the mirror but the filter. As such it is usually a counterfactual picture of public opinion, held on behalf of the public by its representatives. But there is a sense in which it can also be a majority view—what the public would think if it were able to consider the issue in the way that representatives can in a deliberative body. It is not just the views of the representatives, because it is a refinement and enlargement of the “public views” not just those of the representatives. It is an application of the “republican principle” but not to the opinions people actually have but to those they would have if they could think about them in the sense Madison advocates.²²

Madison’s “cure” for the problem of how to reconcile political equality (in the form of the “republican principle”) and non-tyranny (avoiding tyranny from majority factions) is to apply political equality, not to public opinion as it is, but to deliberative public opinion, once it has been refined and enlarged. Madison believes this can best be discovered by the deliberations of a small representative body, such as the Senate, and, hopefully, the ratifying conventions to the Constitution. These were, in effect, gatherings aimed at discovering refined public opinion. Later, I will turn to experiments or quasi-experiments with the same aim.

Madison offers the outlines of a political psychology that would also explain why he thinks the deliberative process, the filter, applied in this way also solves the faction problem. The filter, combined with the mirror of political equality, can avoid the mob and solve the tyranny problem. To be clear, it is not a mirror that reflects actual preferences, but rather, one that ends up reflecting a counter-factual public, the refined views that people would arrive at after deliberation.

But why does Madison believe that this kind of filtered public opinion would avoid tyranny of the majority? The answer lies in the distinction between the “cool and deliberate sense of the community” (Federalist No. 63) and the “passions and interests” that would support factions adverse to the rights or interests of others. Deliberation filters the public views in a calm and dispassionate way to arrive at collective solutions to public problems. Madison and Hamilton both argue consistently from the distinction between the passions and interests that motivate factions and “the reason, alone of the

public that ought to regulate and control the government” (Federalist No. 69). Madison is positing the rudiments of a political psychology connected with deliberation. The filtering of public views arrives at a dispassionate and shared account of the solutions to public problems. It is not motivated by immediate passions directed against others or interests that seek profit at the expense of others.

If Madison is correct in positing this political psychology, then it should not be surprising that it is possible to combine all three fundamental principles. The filter produces the “cool and deliberate sense of the community” which, by its very nature lacks the motivations for tyranny of the majority, the passions or interests adverse to the rights or claims of others. Deliberative public opinion is sufficiently dispassionate and sufficiently sensitive to the public good that it will tend to satisfy nontyranny. Furthermore if the views considered equally are the considered judgments filtered by deliberation, the “public views” after they have been “refined and enlarged” then there is a sense in which political equality has been satisfied as well. It is the “spirit and form of popular government” that has been satisfied—the equal counting of deliberative public opinion.

The Role of Representatives

Madison’s arguments and speculations were filled with arm-chair empiricism and they were designed for a specific political context. Despite these limitations, they provide three distinctive points for our purposes. First, his “cure” suggested a solution to what we have been calling the trilemma or conundrum. Second, that “cure” rested on empirical claims about what happens in deliberation. Third, the cure opens up the possibility of other institutional forms that might similarly, or even more explicitly, overcome the trilemma.

Of course, Madison’s picture of deliberating representatives seems far removed from most of our political experience since the Founding. It is far removed from a contemporary world of political parties, campaign contributions, television advertising and candidates who function as issue entrepreneurs in an environment of near-perpetual campaigning. Madison, who lived at least part of his life in an era when letters from

Virginia to Massachusetts would slowly travel via England, had no inkling that technology might transform politics as it transformed political communication. Madison thought elections would be less subject to “the vicious arts” in large electorates than in small ones. He was thinking primarily of bribery, and it is of course harder to bribe a large population than to bribe a small one.²³ However, the opportunities for demagoguery and manipulation of the public are clearly available in large electorates, particularly when technology makes communication to vast numbers so easy. Vicious arts, conceived more broadly than just bribery, may actually be easier to practice in large electorates, requiring communication via the media, than in very small ones where vestiges of face to face democracy remain.²⁴

The philosophical relevance of Madison’s “cure” for our purposes lies, first, in the suggestion that representatives might properly take account of a counter-factual—what the “public views” would be if “refined and enlarged”. Second, it lies in the fact that while this refined public opinion may well be counterfactual for the entire mass public, it can be made real for a representative group. And it is made real in a way that satisfies political equality, at least in “spirit” and that likely avoids tyranny of the majority

This gloss on Madison suggests a middle ground in the common account of the dilemma often facing representatives.²⁵ Should they follow the polls? Or should they vote their own views of what is best for the country (or their state or district)? This crude dichotomy dominates the discussion about how members of Congress and other legislators should approach their task, yet each of these two basic possibilities has difficulties. If members of Congress follow the polls, then they can be dismissed as leaderless weathervanes for the shifting winds of public opinion. Given how ill informed the public tends to be on most policy issues, the blind would literally be doing the leading. On the other hand, if they follow their views of the substantive merits when their constituents disagree, then they can be criticized for imposing their personal value judgments on an electorate that thinks otherwise.

A slight variant is to think of representatives not as weathervanes, but as weather predictors—as attempting to predict what their constituents will think about an issue as it evolves. However, from a normative standpoint, this is not an improvement. It is quite obvious that on many issues, the public will never be well informed and may even

become increasingly misled. What the public would think if it could get some reasonable account of the relevant information is very different from what it is likely to think over time in an environment of attack ads and sound bite campaigning. Representatives admittedly have strong incentives to pay attention to the latter. Yet, there may still be occasions when they can pay attention to the former.

The middle position, between following public opinion as it is, and following one's personal views on the merits is so obvious that it hardly requires explicit statement. It is easily overlooked and only occasionally articulated. Representatives can take account of what they think their constituents would think about an issue, once they were well informed and got the facts and heard the arguments on either side and had a reasonable chance to ponder the issues. This view of a representative's role provides grounds for resisting the pressure of polls on issues that the representative knows the public knows little about. On the other hand, this position is not the same as just the representative's own views on the issue in question. The representative may know that his or her values differ from those of constituents on a given question or that constituents would never accept a particular policy, even with a great deal more information and discussion. The representative may also know his or her constituents well enough to have some idea of what they would accept, if only they had the information. This deference to the counterfactual deliberating public provides a way of thinking about the representative's role that avoids the difficulty of following the public's uninformed views, on the one hand, and of following the representative's more informed but (perhaps) merely personal views, on the other.

While this view of the representative's role is not often articulated, it does surface in rare moments when Congress is being self-conscious. Consider Samuel Beer's recommendations to the House Judiciary Committee during the preparations for the impeachment trial of President Clinton. Beer's claim was that the Congress is "a creature of the people, acting in lieu of the people between quadrennial elections. At their best, the legislators will do what the people, at their best, would do (emphasis added)"²⁶ Several members of Congress publicly rationalized their role in the impeachment process by reference to the same notion—what the public would think if they were as informed as the members.²⁷

Impeachment is, of course, a rare and momentous event. The extent to which members might accept such a view of their role on more routine issues is an open question for empirical study. For our purposes we need only note that this middle ground position on the role of representatives expresses a normative claim of deliberative democracy—the aspiration to represent the public’s considered judgments. While representatives may fulfill this role (at least by their own lights) on rare occasions, are there mechanisms that might realize this aspiration more systematically? Can we do more to realize deliberative democracy in practice and thus overcome the trilemma?

From Thought Experiments to Real Experiments

Thought experiments have been the focus of a great revival of political theory over the last three decades. John Rawls asked us to imagine ourselves choosing principles of justice from behind a veil of ignorance; Robert Nozick asked us to imagine people in a state of nature with Lockean rights forming protective associations and, eventually, the rudiments of a state. Bruce Ackerman asked us to engage in an imaginary dialogue on a space ship constrained by normative criteria of consistency, rationality and neutrality and subject to a “perfect technology of justice.”²⁸ In this style of theorizing, there is a claim of normative relevance for our beginning with certain conditions, and then following the choices or behavior of people as they produce a counterfactual, but normatively relevant outcome when thinking or acting under those specified conditions. Because the conditions are normatively relevant, we are to conclude that in some sense the outcome is as well.

These “thought experiments” offer an “experimental treatment”, if you will, but one that is distinctive for normative purposes. For example, the Rawlsian “veil of ignorance” and its related conditions in the original position, are said to embody fairness and to define the best possible conditions for making the choice of principles of justice the participants are to live with in actual life. Whatever people in the thought experiment would choose under the stated conditions is then said to have a claim on us. In other words, if the experimental treatment has the appropriate normative relevance, and if we can reliably know that the participants would indeed arrive at the alleged conclusions or

behaviors, then the “thought experiment” has recommending force. It speaks to us. It tells us what anyone (including we ourselves) would do under the supposedly most appropriate conditions for making the choice.

These thought experiments occur with theoretically defined individuals under stipulated conditions. We can always imagine other individuals and other conditions. Slightly different versions of the veil of ignorance, or slightly different assumptions about the preferences of individuals in, say, Nozick’s state of nature, lead to different results. Which imaginary individuals and which imaginary situations have a claim on us? This is, if you will, the “jurisdiction problem” among competing hypothetical experiments, each of which has some putative claim to normative relevance.²⁹

The weaker and hence, more inescapable the stipulations about the experimental treatments and the preferences of the individuals subjected to them, the more inescapable will be the conclusions that come out of the experiments. Three decades of discussion, however, have demonstrated that there is no known inescapable construction of the appropriate assumptions and motivations for a thought experiment choosing first principles for a society or for making public policy recommendations within it. The resulting theoretical impasse raises the question of whether another strategy might be worth exploring.³⁰

From very weak assumptions in a thought experiment, it is difficult to get definite conclusions.³¹ But if we move from thought experiments to real experiments, and if we can specify the experimental treatment on the basis of sufficiently weak or non-controversial assumptions, then the people in the experiment can provide the more specific conclusions. To preview the argument below: If we have the appropriate normative basis for the experimental treatment, and if the experiment has sufficient internal and external validity, then it can lay claim to a recommending force. It represents the conclusions the rest of the public would reach if they were similarly exposed to good conditions for considering the issue. Or, at least, that is the idea we would like to realize.

In the case of deliberative democracy, there seems little reason, in any case, to confine ourselves to hypothetical thought experiments. Indeed, on the interpretation offered here, Madison and the Framers clearly hoped to employ real institutions to approximate deliberative public opinion, the “refined and enlarged” versions of the

“public views”. The conditions of relatively small group deliberation and representation defining a “convention” constituted the appropriate conditions for making the choice in the view of the Founders³². The Constitutional Convention, the ratifying conventions in each of the states and the Senate, were all meant in theory to be deliberative bodies applying the filter to the public’s views. In this light a convention was an empirical exploration, or, if you will, a (non-rigorous) experiment, aimed at discovering what the deliberative opinions of the relevant public might be.

The research agenda of Deliberative Polling takes this aspiration a step farther, at least for informal public consultation. It attempts to employ social science to uncover what deliberative public opinion might be on an issue by conducting a quasi experiment, and then it inserts those deliberative conclusions into the actual public dialogue, or, in some cases, the actual policy process.

Deliberative Polling begins with a concern about the defects likely to be found in ordinary public opinion. Two that are especially worth mentioning are the incentives for rational ignorance applying to the mass public and the tendency for sample surveys to turn up non-attitudes or phantom opinions (as well as very much “top of the head” opinions that approach being non-attitudes) on many public questions. The public does not like to admit that it does not know and may well make up answers on the spot in response to questions.³³ These worries are not different in spirit from the Founders’ concerns about mass public opinion, at least as contrasted to the kinds of opinion that might result from the filtering process of deliberation.

At best, ordinary polls offer a snapshot of public opinion as it is, even when the public has little information, attention or interest in the issue. Such polls are, of course, the modern embodiment of the mirror theory of representation, perfected to a degree never contemplated by the Anti-Federalists. But Deliberative Polling is an explicit attempt to combine the mirror with the filter. The participants turned up by random sampling, who begin as a mirror of the population, are subjected to the filter of a deliberative experience.

Every aspect of the process is designed to facilitate informed and balanced discussion. After taking an initial survey, participants are invited for a weekend of face to face deliberation; they are given carefully balanced and vetted briefing materials to

provide an initial basis for dialogue. They are randomly assigned to small groups for discussions with trained moderators, and encouraged to ask questions arising from the small group discussions to competing experts and politicians in larger plenary sessions. The moderators attempt to establish an atmosphere where participants listen to each other and no one is permitted to dominate the discussion. At the end of the weekend, participants take the same confidential questionnaire as on first contact and the resulting judgments in the final questionnaire are usually broadcast along with edited proceedings of the discussions throughout the weekend.³⁴ In every case thus far, the weekend microcosm has been highly representative, both attitudinally and demographically, as compared to the entire baseline survey and to census data about the population. In every case thus far, there have also been a number of large and statistically significant changes of opinion over the weekend. Considered judgments are often different from the top of the head attitudes solicited by conventional polls.

But what do the results represent? Our respondents are able to overcome the incentives for rational ignorance normally applying to the mass public. Instead of one vote in millions, they have, in effect, one vote in a few hundred in the weekend sample, and one voice in fifteen or so in the small group discussions. The weekend is organized so as to make credible the claim that their voice matters. They overcome apathy, disconnection, inattention and initial lack of information. Participants from all social locations change in the deliberation. From knowing that someone is educated or not, economically advantaged or not, one cannot predict change in the deliberations. We do know, however, from knowledge items, that becoming informed on the issues predicts change on the policy attitudes. In that sense, deliberative public opinion is both informed and representative. As a result, it is also, almost inevitably, counter-factual. The public will rarely, if ever, be motivated to become as informed and engaged as our weekend microcosms.

The idea is that if a counterfactual situation is morally relevant, why not do a serious social science experiment—rather than merely engage in informal inference or arm chair empiricism-- to determine what the appropriate counter-factual might actually look like? And if that counterfactual situation is both discoverable and normatively relevant, why not then let the rest of the world know about it? Just as Rawls's original

position can be thought of as having a kind of recommending force, the counterfactual representation of public opinion identified by the Deliberative Poll also recommends to the rest of the population some conclusions that they ought to take seriously. They ought to take the conclusions seriously because the process represents everyone under conditions where they could think. Deliberative Polling is meant to uncover representative and deliberative conclusions—considered judgments that embody deliberation, political equality and, presumably, non-tyranny.

The idea may seem unusual in that it melds normative theory with an empirical agenda--to use social science to create quasi experiments that will uncover deliberative public opinion. But most social science experiments are aimed at creating a counterfactual—the effect of the treatment condition. In this effort to fuse normative and empirical research agendas, the trick is to identify a treatment condition that embodies the appropriate normative relevance.³⁵

Two general questions can be raised about all research designs—questions of internal and external validity.³⁶ Sample surveys are relatively high on external validity: we can be fairly confident about generalizing the results to larger populations. By contrast, most social science experiments done in laboratory settings are high in internal validity: we can be fairly confident that the apparent effects are, indeed, the result of the experimental treatments. However, experiments done with college students, for example, lack a basis for external validity if the aim is to find out something about the general population.

If a social science experiment were to have relatively high internal validity, where we could be confident that the effects resulted from the normatively desirable treatment, and if it were also to have relatively high external validity where we could be confident about its generalizability to the entire citizen population, then the combination of those two properties would permit us to generalize the consequences of the normatively desirable property to the entire citizenry. We could be confident in the picture of a counterfactual public reaching its conclusions under normatively desirable conditions. In other words, if an experiment with deliberation were high on internal validity, then we could be confident that the conclusions were the result of deliberation (and related factors such as information). And if such an experiment were high on external validity then we

could be confident about generalizing it to the relevant public of, say, all eligible voters. Only with both kinds of validity would the quasi experiment called Deliberative Polling have any claim to represent the considered judgments of the people.

In political science, it is unusual (but not unprecedented) for research designs to achieve a high degree of both internal and external validity. There is only limited basis for generalizing controlled experiments with college students to the general population. And investigations in the field with the general population often lack the experimental controls that would provide a basis for internal validity.

Deliberative Polling assesses public opinion in random samples of the population, both before and after the participants have had an opportunity to deliberate. Because it uses random samples of several hundred drawn from the voting public, Deliberative Polling provides a basis for claims of external validity. Because the research designs often, (and ideally will) employ control groups of various sorts, they provide a basis for claims of internal validity. Once we are confident that the considered judgments really are the consequence of deliberation and that they are generalizable to the relevant public, then there is a sense in which the experiment speaks for the people in a distinctive way—a way that can easily be distinguished from other methods of public consultation. Focus groups and citizens juries are too small to be statistically representative. So-called “town meetings” in the media usually employ convenience samples or self-selected groups. Conventional polls assess public opinion when it is often top of the head, or when it may not exist at all. Referendums and various forms of direct democracy suffer from rational ignorance, campaign inequalities and manipulation. So-called “consensus conferences” use self-selected samples and do not assess opinion individually and confidentially (but instead attempt to produce a “consensus”). Deliberative Polling stands out as a form of consultation that can credibly capture the considered and representative judgments of the public.³⁷

In their landmark study of political participation, Verba, Scholzman and Brady posit a fundamental criterion they call “participatory distortion” which “exists when any group of activists—such as protesters, voters or contributors—is unrepresentative of the public with respect to some politically relevant characteristics.” Their concern is that “unequal participation has consequences for what is communicated to the

government...the voices that speak loudly articulate a different set of messages about the state of the public, its needs and its preferences.” Almost in passing, they note that this problem would only be solved “were everyone equally active, or were activists drawn at random from across the population.”³⁸ They then leave this apparently utopian counterfactual in order to model the actual state of inequality.

In real life, the very notion of activists drawn at random is oxymoronic, as activists are usually thought of as those who select themselves because they are especially interested, for one reason or another. But in an experiment³⁹, we can see what such a world would look like, drawing participants equally from all segments of the population through random sampling. At least for the question at issue, we can see what a world without “participatory distortion” would look like. But Deliberative Polling goes even further, because it combines political equality with deliberation. It attempts to apply political equality not just to participation in a political event, but also, through deliberation, to preference formation on the issue in question. If, as Verba, Schlozman and Brady note, participatory distortion gives government officials a skewed notion of the public voice, then the addition of Deliberative Polling to the public dialogue can serve a constructive purpose.

We began with a democratic vision split by three starkly contrasting images—the filter, the mirror and the mob (or its avoidance). The principles associated with these images seemed to form an incompatible triad—pursuit of political equality seemed incompatible with both deliberation and nontyranny. The difficulty has been that our method of implementing political equality, throughout most of our history, has been through increasingly direct forms of public consultation. But if instead of asking people directly, we gather a small and representative group for which each voter has an equal chance of being included, we can apply the filter to a perfected version of the mirror.

But what of the remaining pattern of alleged conflict? Historical experience has rightly confirmed, as we noted, the worry that direct public consultation offers the potential for demagoguery and tyranny of the majority. Why should the alternative of implementing political equality through deliberative microcosms avoid the problem? Why is it that we can sometimes have deliberation, political equality and nontyranny, all at the same time? The basic answer is the insight supporting Madison’s “cure”. There is a

political psychology applying to deliberation--to face to face discussion in which participants conscientiously raise and respond to competing arguments so as to arrive at considered judgments about the solutions to public problems. Madison's mistake, if he made one was in being over-optimistic about whether his small representative bodies would operate deliberatively.

He was fully aware of the difficulty. In the passage in Federalist No. 10 immediately following the "refine and enlarge" function of representatives, he admits the possibility that representatives may not function in the way he hoped:

On the other hand, the effect may be inverted. Men of factious tempers, of local prejudices or of sinister designs may, by intrigue, by corruption, or by other means, first obtain the suffrages and then betray the interests of the people.

The problem of constitutional design is to minimize this risk but it can never be ruled out. In this passage, Madison is not denying the function of the filter but rather, acknowledging that representatives may fail to serve that function. They may fail, in the passions of the moment or in the pursuit of political self-interest, to really deliberate the public's problems.

In Deliberative Polls, we have participants who are not trying to get re-elected, who are not ambitious to manipulate the process for personal benefit. When ordinary citizens deliberate, they conscientiously consider the public's problems and, in doing so, they exhibit very much the behavior that Madison sought for the filter. Deliberating citizens show little or no interest in taking away the rights of other citizens or in pursuing merely personal interests at the expense of others. In fact, they show a willingness to make at least modest sacrifices of self-interest for the public good⁴⁰. Madison saw that deliberation was unlikely to produce factions supporting tyranny of the majority. He was right.

Deliberative Polling offers a glimpse of democratic possibilities. It can enrich the public voice as an alternative to top of the head polls. It can serve an advisory function to government officials and legislators if they are interested in what their constituents might think about an issue when more informed. And it embodies a research program exploring what public opinion might be like if the public were motivated to behave a bit more like ideal citizens. At this stage, it is a melding of social science with normative concerns in

order to contribute to the public dialogue. Whether, or in what context, we might go further in institutionalizing it, is very much an open question awaiting the results of further research.⁴¹

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² See Jennifer Tolbert Roberts Athens on Trial (Princeton: Princeton University Press, 1994) for account of the impact of Socrates’s trial on western democratic theory. For applications to Madison, see pp. 186-8.

³ Some prominent examples of this approach include Samuel Popkin The Reasoning Voter (Chicago: University of Chicago Press, 1991) and Arthur Lupia and Mathew McCubbins The Democratic Dilemma (New York: Cambridge University Press, 1998). For a careful assessment, see James H. Kuklinski and Paul J. Quirk "Reconsidering the Rational Public: Heuristics, Cognition, and Opinion" forthcoming in Arthur Lupia, Mathew McCubbins, and Samuel Popkin, eds., Understanding and Expanding the Limits of Political Rationality

⁴ Deliberative Polling can be viewed, in part, as an investigation into whether what Popkin in The Reasoning Voter calls “low information rationality” will yield the same opinions as would higher information rationality. For inferences from survey evidence supporting my skepticism that shortcuts lead voters to their “fully informed” positions, see Larry M. Bartels “Uninformed Votes: Information Effects in Presidential Elections” American Journal of Political Science Vol. 40, No. 1 February 1996, pp. 194-230.

⁵ In Justice, Equal Opportunity and the Family, I used the term “trilemma” to refer to a pattern where commitment to any two principles would require sacrifice of a third. Here, I mean the term more loosely to refer to an incompatible triad of principles: further pursuit of political equality requires significant sacrifices in one or more of the other two. Another difference, of course, is that in this case, I believe the apparent trilemma has a solution.

⁶ James Madison Notes of Debates in the Federal Convention of 1787 Reported by James Madison With an Introduction by Adrienne Koch (New York: Norton, 1987), p. 40.

⁷ Jack N. Rakove “The Mirror of Representation” in Original Meanings: Politics and Ideas in the Making of the Constitution (New York: Vintage Books, 1997), p. 203.

⁸ Herbert Storing ed. The Complete Anti-Federalist (Chicago: University of Chicago Press, 1981), Vol. II, p. 265.

⁹ Hamilton, in defending the filter, explicitly attacked the mirror: “The idea of an actual representation of all classes of the people by persons of each class is altogether visionary” he argued in Federalist No.35. Hamilton thought quotas in elections for each profession would be unworkable and he also questioned whether those from some backgrounds would be suited for “a deliberative assembly.”

¹⁰ As Rogers Smith notes : “when restrictions on voting rights, naturalization, and immigration are taken into account, it turns out that for over 80 per cent of U.S. history, American laws declared most people in the world legally ineligible to become full U.S citizens solely because of their race, original nationality or gender. For at least two-thirds of American history, the majority of the domestic adult population was also ineligible for full citizenship for the same reasons.” Rogers Smith Civic Ideals (New Haven: Yale University Press, 1997). See also part III of my Voice of the People.

¹¹ See Jonathan Still “Equality and Election Systems”, Ethics (April 1981) for an overview of this literature that is still very useful. “Equal probabilities” is more demanding than a closely related criterion such as equal shares and less demanding than anonymity or majority rule. For some complications see the commentary by Grofman in same volume.

¹² See John G. Geer From Tea Leaves to Opinion Polls (New York: Columbia University Press, 1996) for an excellent account of how politics has changed for political leaders as they have learned to assess public opinion more systematically.

¹³ This account has obviously been influenced by Robert Dahl’s discussion of Madison and the problem of tyranny in democratic theory in his A Preface to Democratic Theory (Chicago: University of Chicago Press, 1956). The rest of my argument has also benefited greatly from Dahl’s discussion of the problem of achieving “enlightened understanding” in Democracy and Its Critics (New Haven: Yale University Press, 1989).

¹⁴ See my Tyranny and Legitimacy: A Critique of Political Theories (Baltimore, Md.: Johns Hopkins University Press, 1979).

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- ¹⁵ When decision makers are in a blind alley situation such that no matter which option they choose, terrible consequences will result for at least some people, it hardly seems appropriate to use such a severe term as “tyranny”. Rather, they are in a situation that might better be characterized as “tragic choice.”
- ¹⁶ “Rhode Island’s Assembly Refuses to Call a Convention and Submits the Constitution Directly to the People” in Bernard Bailyn ed. The Debate on the Constitution Part II (New York: The Library of America, 1993), p. 271.
- ¹⁷ “The Freemen of Providence Submit Eight Reasons for Calling a Convention” in Bailyn ed The Debate, p. 280.
- ¹⁸ See Anthony Downs An Economic Theory of Democracy (New York: Harper and Row, 1956). But see Donald Green and Ian Shapiro who note the surprising lack of any systematic empirical investigation supporting such a widely accepted hypothesis. Donald Green and Ian Shapiro Pathologies of Rational Choice Theory (New Haven: Yale University Press, 1994), pp. 94-6.
- ¹⁹ See Michael X. Delli Carpini and Scott Keeter What Americans Know About Politics and Why It Matters (New Haven: Yale University Press, 1996). For an excellent overview, see Robert C. Luskin “From Denial to Extenuation: Political Sophistication and Citizen Performance” in James H. Kuklinski (ed.) Thinking About Political Psychology (New York: Cambridge University Press, forthcoming, 2000).
- ²⁰ I say on a consistent and continuing basis so as not to rule out the possibility that, episodically, there may be a crisis that produces what Bruce Ackerman calls a “constitutional moment.” See We the People, Vols. I and II.
- ²¹ Vernon Bogdonar “Western Europe” in David Butler and Austin Ranney Referendums Around the World (Washington, D.C.: AEI, 1994).
- ²² This reading has much in common with the valuable book by Joseph Bessette The Mild Voice of Reason (Chicago: University of Chicago Press) See for example, his claim that the Framers “did not see their system as simply displacing citizen deliberation with those of the wise and virtuous... Representatives according to Madison would pronounce the “public voice” not their own enlightened judgments.” (p. 45). Curiously, when Bessette goes on to study deliberation in Congress, he defines it simply as “reasoning on the merits of public policy” and drops all reference to refinement of the public views and whether members are sensitive to what they think their constituents would think if the latter were better informed.
- ²³ See Edmund S. Morgan “Safety in Numbers: Madison, Hume and the Tenth Federalist” Huntington Library Quarterly (1986): 95-112. See p. 105. Even this premise seems to assume that it is the politicians who will be offering rather than receiving the bribes or inducements. No one in Madison’s time could have envisaged our use of television and the enormous appetites for campaign funding that it creates, rendering politicians who wish to be re-elected in need of so much financial support that the collection of campaign money comes perilously close to bribery, offered by factions and interests.
- ²⁴ However, for an account of the transformation of the New Hampshire primary from retail politics to “wholesale” campaigning see Gary R. Orren and Nelson W. Polsby Media and Momentum: The New Hampshire Primary and Nomination Politics (Chatham, N.J.: Chatham House: 1987).
- ²⁵ For a classic statement of the dilemma, see Hanna Pitkin, The Concept of Representation (Berkeley: University of California Press, 1967), chapter 7. Pitkin does not consider the middle ground position sketched here, but is (in my view) unduly dismissive of the Madisonian “filter” later in the book (pages 194-5). Interestingly, she later offered a re-reading of Locke on obligation in terms of hypothetical consent-what citizens would agree to, if they were more informed. See Pitkin, “Obligation and Consent” in Peter Laslett, W. G. Runciman and Quentin Skinner Philosophy, Politics and Society, Fourth Series (Oxford: Basil Blackwell, 1974).
- ²⁶ Testimony of Samuel H. Beer before the House Judiciary Committee, Dec. 8, 1998.
- ²⁷ See, for example, Representative Lindsey Graham discussing the public’s views on impeachment: “they have an impression about this case from just tons and tons and tons and tons of talk, tons and tons and tons of spin; and that one in five, they tell me, are paying close attention to this. The question you must ask: If every American were required to do what I have done, is sit silently, listen to the evidence, would it be different?” CNN transcript, Jan 16, 1999.
- ²⁸ See John Rawls, A Theory of Justice (Cambridge: Harvard, 1971), Robert Nozick Anarchy, State and Utopia (New York: Basic Books, 1974) and Bruce Ackerman Social Justice in the Liberal State (New Haven: Yale University Press, 1980).
- ²⁹ See my Dialogue of Justice (New Haven: Yale University Press, 1992) for a detailed account.

³⁰ For comments in a similar spirit on the theoretical impasse reached by hypothetical thought experiments, see Ian Shapiro Democracy's Place (Ithaca, N.Y. Cornell University Press, 1996), pp. 5-6: "if however, there is no compelling answer to the motivating question, as the existence of multiple pretenders to the neo-Kantian throne suggests is the case, then the enterprise is forlorn."

³¹ The dispute between Rawls and Harsanyi, for example, turns on so subtle a difference as being in an original position where one is simply uncertain about one's place and being in an original position where one can assume an equal probability of being anyone. The former interpretation of the conditions provides a basis for maximin (or at least some choice strategy conservative towards risk); the latter provides a basis for average utility. One can determine a result from the original position by stipulating one of these interpretations or the other (as each of these theorists has done). But such a strategy does not provide a convincing basis for the resulting principle.

³² See Rakove, Original Meanings, for an account of just how original the idea of a convention was, as a method for consulting the people.

³³ See the seminal essay by Phil Converse and the enormous literature it stimulated (which I cannot review here): Philip Converse "The Nature of Belief Systems in Mass Publics" in David E. Apter, ed. Ideology and Discontent (pp. 206-61). New York: Free Press, 1964. For a general account of public opinion in terms of the selection of "top of the head" considerations, see John Zaller, The Nature and Origins of Mass Opinion (Cambridge: Cambridge University Press, 1992). Zaller's model "abandons the notion that individuals typically possess preformed attitudes that they simply reveal when asked by a pollster to do so. It instead adopts the view that people possess numerous, frequently inconsistent "considerations" relating to each issue, and that they base their survey responses on whichever of them are at the top of the head at the moment of response" (p.54). From the standpoint of deliberative democracy, the picture of mass public opinion offered by Zaller is no more reassuring than that offered by Converse in his discussion of non-attitudes.

³⁴ For more on how this works, see James Fishkin and Robert Luskin "Bringing Deliberation to the Democratic Dialogue" in Max M. McCombs (ed.) A Poll with a Human Face: The National Issues Convention Experiment in Political Communication (Mahwah: N.J. Lawrence Erlbaum, forthcoming, 1999) and Robert Luskin, James Fishkin and Roger Jowell "Considered Opinions: Deliberative Polling in the U.K." presented at the International Society of Political Psychology, Vancouver, Canada, July 1996 and Robert C. Luskin and James S. Fishkin "Deliberative Polling, Public Opinion and Democracy: The Case of the National Issues Convention" presented at the annual meeting of the American Association for Public Opinion Research, St Louis, MO May 1998.

³⁵ A key part of the strategy must be to correctly match the treatment condition with appropriate normative claims. For an attempt at fusing experimental and normative concerns that misfires in my view, see Norman Frohlich and Joe A. Oppenheimer Choosing Justice (Berkeley: University of California Press) Here the aspiration was to approximate the Rawlsian veil of ignorance under experimental conditions, but with students who clearly were in possession of too much information to duplicate the demanding Rawlsian conditions.

³⁶ See Donald Campbell and Julian Stanley Experimental and Quasi-Experimental Designs for Research (Chicago: Rand-McNally, 1963).

³⁷ For more on these alternatives, see James Fishkin and Robert Luskin "Deliberative Polling and Citizen Consultation" UK CEED Bulletin No. 55 (Winter 1998/99).

³⁸ Sidney Verba, Kay Lehman Schlozman and Henry Brady Voice and Equality: Civic Volunteerism in American Politics (Cambridge: Harvard University Press, 1995). The quotations are from pages 15 and 11.

³⁹ Strictly speaking, the Deliberative Polls have, at best, been "quasi-experiments" conforming to the "post-test only" design recommended by Campbell and Stanley.

⁴⁰ For example, in the eight Deliberative Polls held on electric utility matters, the participants consistently showed a dramatically increased willingness to pay more on their monthly utility bills if it would help the environment through alternative energy sources (wind and solar power) or investments in conservation or if it would help poor customers.

⁴¹ The use of Deliberative Polling by the Public Utility Commission in Texas as an aid in "integrated resource planning" provided an unexpected context where the process could be incorporated into government decision-making, at least in a regulatory context. For a brief account, see the "Afterword" in my The Voice of the People: Public Opinion and Democracy (New Haven: Yale University Press, expanded paperback edition, 1997)