Deliberative Democracy as Open, Not (Just) Representative Democracy

Hélène Landemore

Abstract: Deliberative democracy is at risk of becoming collateral damage of the current crisis of representative democracy. If deliberative democracy is necessarily representative and if representation betrays the true meaning of democracy as rule of, by, and for the people, then how can deliberative democracy retain any validity as a theory of political legitimacy? Any tight connection between deliberative democracy and representative democracy thus risks making deliberative democracy obsolete: a dated paradigm fit for a precrisis order, but maladjusted to the world of Occupy, the Pirate Party, the Zapatistas, and other anti-representative movements. This essay argues that the problem comes from a particular and historically situated understanding of representative democracy as rule by elected elites. I argue that in order to retain its normative appeal and political relevance, deliberative democracy should dissociate itself from representative democracy thus understood and reinvent itself as the core of a more truly democratic paradigm, which I call "open democracy." In open democracy, popular rule means the mediated but real exercise of power by ordinary citizens. This new paradigm privileges nonelectoral forms of representation and in it, power is meant to remain constantly inclusive of and accessible – in other words open – to ordinary citizens.

HÉLÈNE LANDEMORE is Associate Professor of Political Science at Yale University. Her publications include *Democratic Reason: Politics, Collective Intelligence, and the Rule of the Many* (2013), *Hume: Probabilité et choix raisonnable* (2004), and *Collective Wisdom: Principles and Mechanisms* (ed. with Jon Elster, 2012).

The motivating concern for this essay is the impact that the crisis of representative democracy, widely diagnosed by political commentators and democratic theorists alike, has or should have on deliberative democracy as a mainstream theory of democratic legitimacy. To the extent that the fate of deliberative democracy has become intimately intertwined with representative democracy as both a normative paradigm and a set of particular historical institutions, and to the extent that representative democracy is under attack precisely for being representative and keeping ordinary citizens at arm's length of the real site of decision and power, deliberative democrats should be worried about the status of their theory. Deliberative democracy risks becoming collateral damage of the problems currently facing representative democracy.

© 2017 by The American Academy of Arts and Sciences
doi:10.1162/DAED_a_00446

Downloaded from http://www.mitpressjournals.org/doi/pdf/10.1162/DAED_a_00446 by guest on 29 March 2024

Deliberative Democracy as Open, Not (Just) Representative Democracy

Deliberative democrats thus need to clarify the relationship between deliberation and representation and, more generally, deliberative democracy as a theory of legitimacy, on the one hand, and representative democracy as a specific institutional instantiation of democracy, on the other. This clarification should reveal that while the connection between deliberation and representation might indeed be essential, at least in mass societies, the relation between deliberative democracy as a theory of legitimacy and representative democracy as a historical paradigm is essentially contingent: it is possible to separate the two. I suggest that deliberative democracy is better seen as an independent theoretical module that is compatible with, and indeed better suited to, a different set of institutional principles than the one called "representative democracy." I propose that deliberative democracy should be made a central part of a new and more attractive paradigm of democracy, which I call *open democracy*.

The first section of this essay scrutinizes the relation of deliberation and representation in mainstream theories of deliberative democracy and shows the problems that arise when deliberative democracy is confused or too tightly associated with representative democracy. The second section shows that representative democracy cannot be salvaged as a normative model of democracy because it fails at least three basic criteria we should expect a genuinely democratic rule to satisfy (namely agenda-setting, effective participation, and enlightened understanding). The third section sketches out an alternative: open democracy. Open democracy is meant as a more authentically democratic paradigm in which deliberation among free and equal members – the core of deliberative democracy – is made a central institutional principle. As a result, I argue that open democracy offers to deliberative democrats a more hospitable home than representative democracy.

Deliberative democracy is a theory of democratic legitimacy that traces the authority of laws and policies to the public exchange of arguments among free and equal citizens. This theory was developed in the late 1980s and 1990s as an alternative to the then-dominant theory of aggregative democracy, whereby democratic legitimacy stems simply from the proper aggregation of votes in free and fair elections pitting various elites against one another.

The relation of deliberative democracy to representative democracy has always been undertheorized. Early proponents of the theory assumed direct democracy as their base model.[1] Nothing much was supposed to change, normatively speaking, when deliberation took place among elected representatives rather than the people themselves. The legitimacy was simply transferred to the outcomes of the deliberation among representatives, as if it played out as a perfect substitute for deliberation among all citizens. To ensure a seamless translation of democratic legitimacy from the direct to the representative context, most people resorted to the then-dominant theory of representation formulated by political scientist Hannah Pitkin in 1967. At an abstract level, representation is, for Pitkin, the conceptual solution to the problem of "making present" that which is absent. Democratic legitimacy was found at the level of a representative assembly making present and pursuing the interests of people who could not be present all at once.

Given that direct deliberation among all citizens is widely assumed to be impossible on the scale of the modern nation-state,[2] this simplifying premise of the early deliberative democrats was perfectly understandable, and most other deliberative theorists took it onboard. Philosopher Jürgen Habermas, in a way, merely complicated the picture by conceptualizing two kinds of deliberation happening in two distinct

Downloaded from http://www.mitpressjournals.org/doi/pdf/10.1162/DAED_a_00446 by guest on 29 March 2024

deliberative "tracks." The first kind of deliberation was meant to be formal and decision-oriented, taking place within the walls of Parliament. The other, taking place among the public, was decentralized, distributed, informal, and diffuse, with the assumed function of setting the agenda for Parliament.[3] Habermas additionally posited a porous demarcation between the two tracks, so as to allow for feedback loops between the two spheres. In so doing, he plausibly extended the early version of deliberative democracy, making it applicable to the actual world of representative democracies.

More recently, however, democratic theorists have modified and tightened the normative link between deliberation and representation to the point that one can hardly be conceptualized without the other. The first move has been to show that representation is, in a nutshell, the essence of democracy. For politics scholar David Plotke, "representation is democracy" in the sense that representative practices are always "constitutive" of democracy.[4] Representation no longer consists primarily in making present the absent, but in constructing the demos and its interests. Similarly, for political theorist Sofia Näsström, representative democracy is a "tautology" because it is only through representative structures and practices that the demos constitutes itself.[5] If the authors behind this so-called constructive turn are right, though, then the task of deliberation among citizens is not delegated to representatives only for reasons of size and convenience. Deliberation *must* become the affair of representatives, rather than directly that of citizens themselves, in order to be truly democratic.

Political theorist Nadia Urbinati's theory of representative democracy exemplifies a similar view. For Urbinati, deliberation among a smaller number of representatives is not just equivalent but superior to direct deliberation among all citizens. This is because deliberation among representatives allows for a reflexive delay between the expression of raw judgments and preferences, on the one hand, and the crafting of policy outcomes, on the other.[6] Representation also allows a circular process of communication between representatives and the represented. Representative democracy is, for Urbinati, a more accomplished form of democracy than direct democracy precisely *because* it allows for a discursive exchange to occur over time between representatives and represented.

If this account of the link between deliberation and representation in mainstream democratic theory is correct, what happens to the paradigm of deliberative democracy as a theory of political legitimacy when representative democracy itself comes under attack? What happens when the relationship assumed and described by Habermas between representatives and represented no longer seems a plausible or normatively appealing theory of the way things work and ought to work, in particular because it is no longer credible that the informal public sphere can set up the agenda for the more formal one? What happens when representation no longer *is* democracy, as Plotke has it, but becomes instead, as Rousseau warned long ago, its very demise?

There is no question, at this point, that representative democracy is in the midst of a serious crisis, at least if one is to judge by the recent numbers of books and articles on the topic.[7] Institutionally, the symptoms are well-known: voting absenteeism, the decline of parties as vehicles for mass participation,[8] abysmal rates of approval for politicians and legislatures across much of the Western world, the rise of populist movements and the return of calls for more direct forms of democracy – as are some of the causes – in the United States, a near complete lack of correlation between majority preferences and policy outcomes when elite preferences differ from those of the majority,[9] rising economic inequalities across the

Downloaded from http://www.mitpressjournals.org/doi/pdf/10.1162/DAED_a_00446 by guest on 29 March 2024

Western world, and a sense that democracies have been emptied of their meaning,[10] if not altogether replaced by the rule of experts, bureaucrats, and judges.[11] By contrast, both populist and authoritarian movements are on the rise. These movements have in common an antirepresentative stance that signals the problems with representative democracy and is sometimes meant to hasten its demise.

While it is likely that the crisis of representative democracy is in part due to external factors (such as globalization and technological change or what some see as the crisis of capitalism in the West), it can also plausibly be traced to more fundamental design flaws. To understand what may be wrong with representative democracy per se, it helps to look critically at its core principles, a task to which I now turn.

Representative democracy is the paradigm we associate with the form of democracy that emerged in the eighteenth century at the time of the French and American revolutions. It can be defined as a regime centered on the elections of elites who act as trustees of and make decisions on behalf of the larger population.[12] In theory, representation need not involve election (I will return to this point). In practice, however, elections have become part of the very definition of representative democracy, partly because the theories developed to justify it crucially associate popular sovereignty with democratic authorization, and democratic authorization, in turn, with consent expressed through the ballot box.[13] Thus, although democratic representation need not imply elections, representative democracy has come to mean *electoral* democracy.[14] As a result, a core feature of representative democracy is the delegation of agenda-setting, deliberation, and decision-making to a subset of the polity that is distinct from ordinary people and explicitly identified and chosen as a separate elite.

This electoral and elitist character of representative democracy runs deep. It is unsurprisingly evidenced in the way political theorists have captured the institutional principles of representative democracy. These, it turns out, fall short of being democratic. In order to show this, I apply to Bernard Manin and Nadia Urbinati's list of principles of representative democracy the five criteria that Robert Dahl advances in his classic *Democracy and Its Critics* as the benchmarks of authentic democratic associations: 1) effective participation; 2) voting equality at the decisive stage; 3) enlightened understanding; 4) control of the agenda; and 5) inclusion of all adults. These five criteria are, according to Dahl, "criteria that a process for governing an association would have to meet in order to satisfy the requirement that all the members are equally entitled to participate in the association's decision about its policies."[15]

Effective participation means that there must be a direct connection between popular involvement and ultimate decision-making. Voting equality at the decisive stage means, very simply, "one person, one vote" at the stage when decisions are made final. Enlightened understanding means that citizens must be able to pass informed judgment on the matters deliberated or voted on. Control of the agenda means that the set of issues deliberated on should be defined by the citizens themselves.[16] Inclusion of all adults means that all adult members of the demos (itself more polemically defined by Dahl as the people directly affected by the laws and policy outcomes) be given a share of power.

Now, let us use these five democratic criteria to assess the four institutional principles that Manin has articulated as capturing the core of "representative government" (historically the first version of representative democracy): 1) periodic elections; 2) independence of the representatives; 3) freedom of opinion; and

Downloaded from http://www.mitpressjournals.org/doi/pdf/10.1162/DAED_a_00446 by guest on 29 March 2024

4) trial by discussion.[17] The first principle, periodic elections, is the most central and is the one that most people associate with democracy. It is a principle of the authorization of representatives, renewed at periodic intervals. The periodicity is crucial in that, in theory, it ensures not only renewed consent and thus authorization, but also the accountability and responsiveness of the representatives. Elections thus double as democratic principle and accountability mechanism. The second principle, the relative independence of elites from their constituents, ensures a meaningful space for the exercise of judgment by the representatives, who can depart from their constituents' preferences as needed. The third principle – freedom of opinion – counterbalances the second by ensuring that representatives, despite their freedom of judgment, can be criticized for their decisions and choices. Popular pressure does not jeopardize representatives' independence but supposedly ensures, like periodic election, a form of accountability and responsiveness, including, crucially, in the period between elections. Manin's last feature of representative government is that public decisions are subject to trial by discussion, a feature one may equate with the deliberation at the heart of deliberative democrats' theories.

How does this list of the established practices of representative government fare in light of Dahl's normative criteria? Arguably it satisfies none of them. First, the principle of periodic elections does not specify universal franchise or the principle of "one person, one vote," and is thus fully compatible with voting systems based on a tax threshold and plural voting schemes. As such, representative government can violate both the second and last criteria: namely, voting equality at the decisive stage and inclusiveness. But let us assume that these principles of representative government should today be applied only to a system in which the franchise is universal and voting rights strictly equal so that, by default, criteria 2 and 5 (equality at the decisive stage and inclusion of all adults) are met. Even then, or so I argue, the principles of what we are now supposed to call (and are used to calling) representative *democracy* still fail three out of Dahl's five criteria.

Indeed, neither effective participation, nor agenda-setting, nor enlightened understanding are credibly ensured by the mere ability to elect one's leaders every four years and, in between, publicly criticize their decisions from outside the sites of decisive power. Representative democracy does not, in theory, require any form of popular participation besides voting and, because it also does not credibly accommodate, let alone commit to, agenda-setting by ordinary citizens, it even weakens voting as a form of effective participation. Access to power is only possible through becoming elected, a path that, even in theory, is open only to people endowed with certain qualities and, in practice, is mostly restricted to people with either money or connections. Nor does representative democracy require or guarantee enlightened understanding on the part of citizens. On the contrary, periodic elections and the independence of representatives are intended to *compensate* for the assumed absence of popular enlightenment about political issues. On certain Schumpeterian or "realist" versions of representative democracy, no room is made for democratic deliberation among ordinary citizens as a vehicle for individual and collective enlightenment, since the latter is seen as either pointless or even counterproductive.[18] Representative democracy, finally, also allows for the possibility of a complete disconnect between the decisions of representatives and the preferences of the represented, at least to the extent that the critical bite of "freedom of opinion" proves insufficient to bind elected representatives to their constituents' preferences.

Downloaded from http://www.mitpressjournals.org/doi/pdf/10.1162/DAED_a_00446 by guest on 29 March 2024

The only democratic credentials of representative democracy therefore seem to reside with the authorization and accountability supposedly ensured by the principle of periodic elections in a context of universal suffrage and equal voting rights. The argument that authorization at the voting booth and accountability through retrospective voting amounts to genuine rule of the people may have worked in the eighteenth century, when such a promise seemed radical compared with past and existing regimes. But today, at the beginning of the twenty-first century, who can still argue this with a straight face? The reality is that representative government was mostly designed to maintain the people at a safe distance from any actual decision-making power. Manin wrote that representative government, as a set of institutional principles, replaced the ability to hold office that citizens enjoyed in Ancient Athens with the mere ability to consent to power. Expanding the franchise over the last two hundred years has allowed the advocates of representative government to call it representative *democracy* without altering this fundamental and problematic fact.[19]

Urbinati's normative theory of representative democracy arguably elevates this historical substitution (of consent for exercise of power) to the status of normative ideal. Urbinati's list of principles of representative democracy includes all of Manin's, embraced as normatively desirable in their own right, rather than merely recognized as de facto historical practices.[20] But she also makes two crucial additions to the list: advocacy and representativity. *Advocacy* could be read as a stronger version of Manin's third principle of freedom of public opinion in that representatives are supposed to listen to the criticisms and views voiced in the public sphere, integrate them into their reflections, and make it their duty to make those claims known and considered. *Representativity* means ensuring that the views, perspectives, and interests of the population are not only reported on, but also made present in the political sphere in a way that reflects some minimal amount of identification and similarities between represented and representatives.

Because of these two addenda, Urbinati's picture of representative democracy is more democratic and thus more normatively attractive than representative democracy as it can be theorized on the basis of Manin's historical account. Urbinati's theory, however, accepts as a given the premise that democratic representation must be *electoral* and, despite the promise of a participatory model of representation, seemingly limits citizens' possibility for action to judgment, criticism, and deliberation, all of them decoupled from actual decision-making power. As in Manin's representative government, in Urbinati's representative democracy, citizens can protest and criticize all they want, but they are not meant to have any form of direct access to the decision-making process. Similarly, the ability to set the agenda is missing from her model. Citizens can hope to influence the representatives' agenda only through the blunt mechanism of elections and the indirect pressure of public opinion.

Like that of other prominent deliberative democrats, such as Habermas, Urbinati's theory assumes a reflexive and smooth circularity between the sphere of opinion formation through which ordinary citizens exchange ideas and form views in decentralized and unregulated ways and the sphere of the formal will expressed by party representatives and government officials. Yet the dichotomization between the spheres of opinion and will operates as, or at least tolerates, de facto closure of government to ordinary citizens. In Habermas, the "sluice" metaphor that is supposed to capture the relation between the two deliberative tracks (the formal and the informal) similarly suggests a filtering mechanism separating

Downloaded from http://www.mitpressjournals.org/doi/pdf/10.1162/DAED_a_00446 by guest on 29 March 2024

the unstructured deliberations of the people from those of elected elites. In the end, such dichotomies function as a way to close off the sphere of actual power and effective deliberation to ordinary citizens.

The history of representative democracy and its conceptual elevation to a normative ideal reveal that the crucial novelty of this regime is not so much the indirectness of the rule.[21] Rather, the innovation is the regime form's reflexiveness, and the fact that this reflexiveness is ensured by placing agenda-setting, deliberation, and decision-making power in the hands of elected elites as opposed to ordinary citizens. Representative democracy thus marks the passage from a citizen-centric and people-centric model of democracy to an elite-centric and government-centric one. This elitism and government centricity are present in all institutional versions of representative democracy that have evolved since the eighteenth century: parliamentary, party, and now audience democracy. These three iterations marked important expansions of the franchise just as they maintained, and arguably deepened, the rift between the people and the class of law- and policy-makers supposed to represent them. In other words, to put it bluntly, representative democracy as we know it has turned out to be an exclusionary paradigm, not a truly democratic one. It satisfies, at best, only two of Dahl's democratic criteria (inclusiveness and equality at the decisive stage), failing to meet the crucial standards of effective participation, enlightened understanding, and control of the agenda.

If what I just said is true, it has potentially worrying implications for deliberative democracy. Deliberative democrats cannot at the same time claim that proper deliberation is only possible, and indeed desirable, in representative bodies and that their theory of legitimacy is unaffected by the crisis of representative democracy. How can deliberative democrats ensure that deliberative democracy is authentically democratic if it must also be representative?

One way out is to try and bypass representation altogether by developing models of inclusive deliberation among all citizens, as opposed to just their representatives. The digital revolution has created the hope that the need for representation is now over and that all citizens can and should now deliberate with each other at once, online, in what can be theorized as "mass online deliberation."[22] The recent "systemic" turn in deliberative democracy may perhaps be read as a similar extension of the hope of realizing direct deliberation on a mass scale.[23] Such an approach has to assume either that the people and its interests are self-revealing in immediate ways or can be constructed in nonrepresentative ways.

Another way out – more promising, in my view – is to acknowledge that democracy is always representative but that "representative democracy" as a historical paradigm is but one model of indirect or (more aptly) deliberative and reflexive democracy. But here, too, there are two possible strategies. One is to reclaim the concept of representation and build into it new, more democratic meanings. This is the path currently taken by a number of democratic theorists. Michael Saward, for example, has argued for "making representation strange again" and redefining it away from electoral authorization, as well as one-to-one or one-to-many relationships mediated by voting only, and toward a pluralized understanding of representation as "claim-making." In the same vein, a number of democratic theorists have started advocating for nonelectoral forms of democratic representation.

In theory, nothing precludes us from recovering the term *representative democracy* to mean a truly democratic system. But my sense is that, at this point, we are better off starting fresh, and this is for at least four reasons. The first is semantic. If we accept the

Downloaded from http://www.mitpressjournals.org/doi/pdf/10.1162/DAED_a_00446 by guest on 29 March 2024

constructive turn and the view that "representation is democracy," as Plotke has it, then the expression "representative democracy" is largely redundant and uninformative. We need a better, more meaningful name. A second reason to abandon representative democracy is historical. Representative democracy was born as an alternative to democracy: the mixed regime known as "representative government." It was only slowly and painfully (and only somewhat) democratized over the last two centuries, with exclusionary trends arising to combat each move toward inclusion. Despite theorists' best efforts, one can only do so much to change a fundamentally elitist and antidemocratic construct into one in which power is exercised by ordinary citizens. The third reason is pragmatic: it is simply too difficult at this point to clear the name of a paradigm that is, the world over, associated with electoral (and thus partly elitist) democracy.[24] Finally, a fourth reason has to do with the de facto association of representative democracy with the nation-state and a narrow understanding of what counts as "political." In today's global age, one can argue that our understanding of democracy should be more ambitious, expanding both laterally (to the economic sphere) and vertically (to the international level).[25]

My own suggestion, therefore, is to move entirely past and beyond "representative democracy." Instead, deliberative democrats should build a new paradigm that places at its core democratic deliberation as a source of political legitimacy, meets basic democratic standards such as effective participation, agenda-control, and enlightened understanding, and accommodates the realities and expectations of twenty-first-century citizens. I offer below what I take to be an attractive version of such a new paradigm of democracy: open democracy.

Let me offer a list of principles for open democracy. But before I do, let me emphasize that my analysis presupposes the lexical priority of two higher-order principles that should be at the core of any form of democracy: namely, inclusiveness and equality. Inclusiveness means both that every adult member of the demos is entitled to a share of power and that the definition of the demos itself is inclusive.[26] Equality means that this share of power must be equal for all. Concretely, equality will often mean "one person, one vote" where voting (as distinct from elections) is needed. This principle of equality also means that each voice should be given the same ex ante chance of being heard where deliberation is needed. Finally, equality means that each individual has the same opportunity of being a representative where representation is needed. These two higher-order principles, inclusiveness and equality, have to be assumed as underlying (or lexically prior to) any of the other, lower-order principles that follow.

Building on this, I propose that the main five institutional principles of open democracy are:

1) Deliberation
2) The majoritarian principle
3) Complex representation
4) Rotation
5) Openness.

The first principle, deliberation, forms the core of the theory of democratic legitimacy that deliberative democrats have convincingly developed over the last thirty years.[27] Deliberation applied in the democratic context is usually defined as the public exchange of reasons among free and equals. It is, to some degree, similar to Manin's and Urbinati's "trial by discussion" principle, except that deliberation is not assumed to involve ordinary citizens only as members of a diffuse civil society without access to direct decision-making power (as in Manin's, Habermas's, or Urbinati's model). In this paradigm, democratic deliberation, whether direct or performed

Downloaded from http://www.mitpressjournals.org/doi/pdf/10.1162/DAED_a_00446 by guest on 29 March 2024

through representatives, must involve ordinary citizens. This principle helps ensure that the system meets Dahl's requirement of "enlightened understanding."

The second principle is the majoritarian principle. It is, strangely, the principle that often makes most people recoil in fear of the "tyranny of the majority." Yet above and beyond elections, majority rule or some variant of it (such as majority judgment)[28] is also the principle most widely associated with democracy. To the extent that voting is necessary to resolve disagreements when deliberation does not produce a consensus, a default decision rule must be in place. The most democratic one, barring any good countervailing arguments to posit voting thresholds and minority vetoes, is some version of majority rule, for which both strictly procedural and epistemic reasons can be adduced.[29] The majoritarian principle is the only principle that prevents the domination of any minority.

The third principle, complex representation, acknowledges that delegation of authority is both unavoidable in any reasonably sized polity and desirable on its own, insofar as it allows for the discovery, articulation, and even construction of shared interests. In a democratic context, however, representation should not necessarily (or at all) translate into electoral modes of representation. Thus, the principles of open democracy do not explicitly include the principle of elections because elections, far from being *a*, let alone *the* democratic principle, are merely one selection mechanism among others.[30] Instead, lottery-based representation – or "lottocratic representation" of the kind arguably central to Ancient Athens – becomes the default democratic mode of representation, though not necessarily the only one. In some contexts, self-selection – and perhaps even reinvented forms of electoral representation – may also prove an appropriate form of democratic representation.

Rotation, as a fourth principle, ensures that power be made to circulate and not stay with any subset of the polity for longer than strictly necessary. In the context of randomly selected assemblies characteristic of lottocratic representation, periodic rotation would have the beneficial effect of impeding group-think, corruption, the formation of static coalitions, and the creation of a separate class of rulers. The mandates for randomly selected or elected assemblies could last from a few months to a few years, but this principle makes it clear that the practice of politics as a profession and politicians as a separate caste is not part of this new ideal of democracy. While there should be plenty of room for expert administrators in the machinery of government, the law and policy decisions should ultimately be vetted by ordinary citizens (properly educated for and informed about the tasks at hand), not experts or career politicians. To the extent that open democracy may still accommodate elected politicians, the ideal would ensure a significant turnover of the personnel occupying these elected functions, not just through the periodicity of elections (which, as we now know, may ensure some responsiveness and accountability but does little for actual turnover of the political personnel) but also, for example, through term limits.

Openness, finally, is an umbrella concept for both direct popular participation of different types and transparency.[31] Because representation always creates the risk of robbing the people of the capacity for effective participation, agenda-setting, and enlightened understanding, one needs to introduce the counterbalancing principle of openness, in which, in the ideal, citizens can make their voices heard at any point in time, initiate laws when they are not satisfied with the agenda set by representative authorities, and keep an informed eye on every step of the political process.

Openness thus prevents the closure and entrenchment of the divide between repre-

Downloaded from http://www.mitpressjournals.org/doi/pdf/10.1162/DAED_a_00446 by guest on 29 March 2024

sented and representative that may accompany representation. Openness means that power should flow through the body politic, rather than stagnate with a few people. Openness should translate into process transparency much of the time (though not always transparency about substance). It should also translate into a citizens' right of initiative and other modes of direct, effective participation. The principle of openness is uniquely enabled by late-twentieth- and early-twenty-first-century technologies, such as the Internet, smartphones, and social media. It is what makes open democracy most distinctive.

These five institutional principles are meant to operate under specific and enabling conditions: liberal and what might more inclusively be termed "empowerment" rights. Such rights constrain from the outside the five institutional principles listed above. They also enable them by ensuring that everyone, including minority members, is given a meaningful voice in the democratic process. Such rights may need to translate into quotas or parity laws ensuring that deliberations take into account minority perspectives, especially in contexts in which systematic minorities are at risk of exclusion. Empowerment rights may also translate into rights of initiative, which allow the discontents to challenge the status quo provided they garner a minimal amount of support. Finally, to counter the oppressive potential of the state, empowerment rights may translate into specific protection rights for whistleblowers. These empowerment rights, however, need not amount to full-fledged countermajoritarian constraints (such as vetoes, supermajority thresholds, or the creation of independent courts and agencies), which would impede, rather than enable the principles of open democracy.

Let us now review the crucial differences between open democracy and representative democracy. Unlike representative democracy, which is fully compatible with purely aggregative (usually Schumpeterian or "realist") models of democracy, open democracy explicitly places deliberation at its normative core. It also acknowledges the majoritarian principle as pointing to a certain type of democratic default rule when deliberation does not produce a consensus and disagreement subsists. And at least at the theoretical level, open democracy measures up to basic democratic criteria that representative democracy fails to satisfy, including effective participation, agenda-setting, and enlightened understanding. In open democracy, ordinary citizens have a meaningful chance to participate in law- and policy-making. They can be chosen by lotteries to occupy a position in significant political assemblies, something that under the right implementation should happen often enough. Even if they are not selected by the lottery process, citizens can freely access crowdsourcing platforms through which their voice can be heard and can make a difference to the outcome. In open democracy, ordinary citizens are also in control of the agenda, either indirectly via randomly selected assemblies or more directly via procedures such as a constitutionally entrenched citizen's initiative or a right of referral. Having control of the agenda and a say in deliberation early in the process in turn renders voting, typically in a referendum, a genuinely effective form of final say and participation. The principles of deliberation combined with complex representation and openness thus spreads enlightened understanding among citizens.

In open democracy, democracy no longer means merely consenting to power, as it does in our current understanding of representative democracy. It does not always mean holding office, as it did in ancient democracy. But it means being able to access and thus hold power, whether as a simple citizen able to influ-

Downloaded from http://www.mitpressjournals.org/doi/pdf/10.1162/DAED_a_00446 by guest on 29 March 2024

ence the agenda of the legislative assembly through an initiative, the content of representatives' deliberations through crowdsourcing platforms,[32] and the outcome of a vote in a referendum whose options were shaped by his views; or even more directly, by being chosen to participate in a randomly selected assembly charged with setting the agenda or making the law.

I have not mentioned in this list of principles the nature of the relation between representatives and represented, because in this new paradigm, the representative relationship should be able to take many forms as long as it is broadly democratic (a question that needs a lot more investigation than can be conducted here). Most important, anyone should be able to be a representative. This is what lottocratic representation would ensure by default, though one could envision a reimagined electoral system along the lines of what is sometimes theorized as "delegative" or "liquid" democracy, in which people can give their votes to anyone they like, either for a specified amount of time or just to work on certain issues, with the option of recall at any time and the possibility of retaining the right to direct input throughout.[33]

Open democracy, finally, marks a distinct historical stage in the unfolding of the ideal of democracy, including deliberative democracy. Because it is not as tied down to established practices and institutions (such as periodic elections, parties, and geography-based constituencies) as is representative democracy, it opens itself to entirely new applications, including in firms, online communities, and at various levels of the international stage. Open democracy allows us to reinvent democratic politics for the twenty-first century.

In order for deliberative democracy to remain relevant in the crisis of representative democracy, its advocates must distance themselves from the paradigm of representative democracy, at least as this essay has reconstructed an important critical reading of it. There are probably many ways to rescue deliberative democracy from the crisis of representative democracy. The strategy pursued here is to break entirely the current association between deliberative democracy and representative democracy by sketching a new paradigm of democracy that maintains deliberation among free and equal individuals as the core of democratic legitimacy, but also complicates our understanding of democratic representation and detaches it from electoral mechanisms. In this new paradigm of open democracy, deliberation, the majoritarian principle, complex representation, rotation, and openness would bring power back to the people, instantiating the ideal of people's rule (*demokratia*) more fully than representative democracy as we know it.

ENDNOTES

[1] Joshua Cohen, "Deliberation and Democratic Legitimacy," in *The Good Polity*, ed. Alan Hamlin and Philip Pettit (Oxford: Basil Blackwell, 1989). Otherwise anticipated by many other authors from Aristotle to Madison and John Stuart Mill, as well as, in its contemporary version, Joseph Bessette.

[2] One could argue that Bruce Ackerman and James Fishkin's Deliberation Day, as well as constitutional moments, count as direct deliberation on a national scale, but the reality is that they are more akin to deliberation among clusters of individuals occurring across the country, with no evidence that these clusters add up to what genuine mass deliberation should look like: namely, one single, integrated conversation among all individuals gathered in the same room.

Downloaded from http://www.mitpressjournals.org/doi/pdf/10.1162/DAED_a_00446 by guest on 29 March 2024

[3] Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*, trans. William Rehg (Cambridge, Mass.: The MIT Press, 1996).

[4] David Plotke, "Representation is Democracy," *Constellations* 4 (1) (1997): 19 – 34; Sofia Näsström, "Representation as Tautology," *European Journal of Political Theory* 5 (3) (2006): 321 – 342; Nadia Urbinati, *Representative Democracy: Principles and Genealogy* (Chicago: University of Chicago Press, 2006), 328; Nadia Urbinati and Mark Warren, "The Concept of Representation in Contemporary Political Theory," *Annual Review of Political Science* 11 (2008): 387 – 412; and Lisa Disch, "Toward a Mobilization Conception of Democratic Representation," *American Political Science Review* 105 (1) (2011): 100 – 114.

[5] Näsström, "Representation as Tautology."

[6] This model departs from traditional views on the role of representatives (such as Madison's or Burke's) in that no assumption is made that the judgments of the representatives are in any way superior to those of the ordinary citizens.

[7] Jack Hayward, ed., *The Crisis of Representation in Europe* (Abingdon, United Kingdom: Routledge, 1996); Colin Crouch, *Post-Democracy* (Cambridge: Polity, 2004); Pippa Norris, *Democratic Deficit: Critical Citizens Revisited* (Cambridge: Cambridge University Press, 2011); Donatella della Porta, *Can Democracy Be Saved? Participation, Deliberation, and Social Movements* (Cambridge: Polity, 2013); Yannis Papadopoulos, *Democracy in Crisis: Politics, Governance, and Policy* (London: Palgrave, MacMillan, 2013); and Simon Tormey, *The End of Representative Politics* (Cambridge: Polity, 2015).

[8] See Peter Mair, *Ruling the Void: The Hollowing Out of Western Democracy* (New York: Verso, 2013).

[9] Martin Gilens and Benjamin Page, "Testing Theories of American Politics: Elites, Interest-Groups, and Average Citizens," *Perspectives on Politics* 12 (3) (2014): 564 – 581.

[10] Colin Crouch, *Post-Democracy* (Cambridge: Polity, 2004); and John Keane, *The Life and Death of Democracy* (New York, London: W. W. Norton & Company, 2009).

[11] Frank Vibert, *The Rise of the Unelected* (Cambridge: Cambridge University Press, 2007); and Papadopoulos, *Democracy in Crisis*.

[12] Bernard Manin, *The Principles of Representative Government* (Cambridge: Cambridge University Press, 1997).

[13] Ibid.

[14] For example, see ibid., 18; and Eric Nelson, "Prerogative, Popular Sovereignty, and the American Founding," in *Popular Sovereignty in Historical Perspective*, ed. Richard Bourke and Quentin Skinner (Cambridge: Cambridge University Press, 2016).

[15] Robert Dahl, *Democracy and Its Critics* (New Haven, Conn.: Yale University Press, 1998), 37 – 38.

[16] Political scientists in the twentieth century learned that power involves not only deciding (the most visible "face" of power) but also agenda-setting. See Peter Bachrach and Morton S. Baratz, "Two Faces of Power," *American Political Science Review* 56 (4) (1962): 947 – 952; and Steven Lukes, *Power: A Radical View* (London: Macmillan Press, 1974).

[17] Bernard Manin, *The Principles of Representative Government* (Cambridge: Cambridge University Press, 1997). These four principles are not ideal criteria (like Dahl's) but mere idealizations of established historical practices; thus, their fuction is essentially descriptive rather than normative.

[18] See Christopher Achen and Larry Bartels, *Democracy for Realists: Why Elections Do Not Produce Responsive Government* (Princeton, N.J.: Princeton University Press, 2016); and Ian Shapiro, "Collusion in Restraint of Democracy: Against Political Deliberation," *Dædalus* 146 (3) (Summer 2017).

[19] Manin, *The Principles of Representative Government*, 79.

[20] Though she does not list them explicitly in her book, Urbinati mentions that she accepts all of Manin's principles in Hélène Landemore, "Is Representative Democracy Really Demo-

Downloaded from http://www.mitpressjournals.org/doi/pdf/10.1162/DAED_a_00446 by guest on 29 March 2024

cratic? Interview of Bernard Manin and Nadia Urbinati, New York, April 10, 2007," http://www.booksandideas.net/Is-representative-democracy-really.html.

[21] For example, agenda-setting in Ancient Athens, the classic archetype of "direct" democracy, was done by a randomly selected subset of citizens, the Boule – arguably a representative, rather than direct, assembly.

[22] Cyril Velikanov, "Mass Online Deliberation," unpublished article, https://www.academia.edu/12031548/Mass_Online_Deliberation (accessed December 25, 2016).

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

[24] Consider the Freedom House definition of democracy as a political system "whose leaders are elected in competitive multi-party and multi-candidate processes in which opposition parties have a legitimate chance of attaining power or participating in power."

[25] For a defense of democracy in the firm, see Hélène Landemore and Isabelle Ferreras, "Toward a Justification of the Firm-State Analogy: In Defense of Workplace Democracy," *Political Theory* 44 (1) (2016): 53 – 81.

[26] The exact criterion for inclusiveness may be too controversial to specify further, since the "all-affected" principle is often seen as too general and any restriction based on nationality, geography, or ethnicity too arbitrary.

[27] By itself, deliberation is not a democratic principle. Deliberation becomes democratic when it is constrained by the underlying higher-order principles of inclusiveness and equality. Additionally, deliberation must take place publicly in order to count as democratic. Embedded in the ideal of deliberation as a condition of legitimacy is another principle, orthogonal to that of equality: namely, the principle of substantive merit. Although all should have an equal chance of being heard, arguments should be judged on the merits. It is therefore legitimate that not all voices influence the outcome equally.

[28] See Michel Balinski and Rida Lariki, *Majority Judgment: Measuring, Ranking, and Electing* (Cambridge, Mass.: The MIT Press, 2011). In this book, Balinski and Lariki suggest substituting the traditional interpretation of majority rule as a collective ranking of the available alternatives with an interpretation of majority rule as a collective judgment or evaluation of these same alternatives (as in, typically, wine competitions).

[29] I have myself offered an argument for the epistemic properties of democracy based on democratic inclusiveness as a proxy for the cognitive diversity necessary for smart deliberation. See Hélène Landemore, *Democratic Reason: Politics, Collective Intelligence, and the Rule of the Many* (Princeton, N.J.: Princeton University Press, 2013).

[30] It is possible to imagine elections falling closer to democracy than they currently do on the continuum between oligarchic and democratic device. Nonetheless, elections are a fundamentally Janus-faced selection mechanism that functions to exclude as well as include. Because their democratic credentials are only partial, elections should not be raised to the level of democratic principle. One could even imagine democracies that would do away with elections entirely, if elections proved too difficult to reconcile with the equality of opportunities to become a representative. For example, see David Van Reybrouk, *Against Elections: The Case for Democracy* (New York: Random House, 2016).

[31] See the Obama administration's concept of "open government." Although the implementation fell short of the promise, the concept remains enticing as an umbrella for democratic values such as transparency, participation, and collaboration.

[32] For examples of crowdsourcing as a participatory tool in policy processes, see Hélène Landemore, "Inclusive Constitution-Making: The Icelandic Experiment," *Journal of Political Philosophy* 23 (2) (2015): 166 – 191.

[33] See Bryan Ford, "Delegative Democracy," unpublished article (2002), http://www.brynosaurus.com/log/2002/0515-DelegativeDemocracy.pdf.

Downloaded from http://www.mitpressjournals.org/doi/pdf/10.1162/DAED_a_00446 by guest on 29 March 2024