Democracy When the People Are Thinking: Deliberation and Democratic Renewal[1]

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All over the world democracy is in disarray. Approval ratings for key leaders and institutions are vanishingly low. The public distrusts the policy elites, and the elites fear the angry voices of populism. The very idea of democracy is under threat from supposedly benevolent forms of authoritarianism like the Singapore model or what is held to be the "China model"[2] and also by the stealth transformation of democracy via what's called "competitive authoritarianism," by which democratic forms are turned into non-democratic processes.[3] Democracy appears to deliver deadlock, and these other systems appear to deliver efficient results.

Is the solution more democracy or less democracy? In my view, it depends on what kind of democracy. A certain form of democracy, often invoked but almost never implemented, could actually help address many of our problems. That form of democracy, which may seem utopian or unrealistic, I call *deliberative democracy by the people themselves*. It seems utopian because we lack institutional designs that would help realize it. There are, however, ways to implement it that are eminently practical.

Consider four forms of democratic practice:

- Competitive Democracy

- Elite Deliberation

- Participatory Democracy

- Deliberative Democracy by the People Themselves

Almost all current systems are some combination of the first three in various admixtures. The fourth is primarily invoked rhetorically. Its actual practice harks back to ancient Athenian institutions and, on

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2   Bengardi, "Singapore's Challenge"; and Bell, *China Model*.
3   Levitsky and Way, "Rise of Competitive Authoritarianism."

occasion, public deliberation in times of fundamental change, some-times called "constitutional moments."[4]

Let's briefly identify these forms in order to highlight what is distinctive about the fourth, which will be our main subject. By *competitive democracy* I mean the notion of democracy based on electoral competition, typically between political parties. Most influentially, this approach was championed by Joseph Schumpeter and more recently by Richard Posner and others.[5] This approach to democracy is in fact the one most widely accepted around the world.

On this view democracy is not about collective will formation, formulating and expressing the "will of the people," but rather, it is just a "competitive struggle for the people's vote," to use Schumpeter's famous phrase. Legal guarantees, particularly constitutional ones, are designed to protect against tyranny of the majority. Within that constraint, the key desideratum is competitive elections. On Schumpeter's view, it is a mythology left over from ill-defined "classical theories" of democracy to expect the will of the people to be meaningful. Electoral competition, *without* any constraints on whether candidates or parties can mislead or bamboozle the voters to win, is what matters on this view.

Schumpeter argues that we should not expect a "genuine" public will, but rather "a manufactured will": "The will of the people is the product and not the motive power of the political process." Further, "the ways in which issues and the popular will are being manufactured is exactly analogous to the ways of commercial advertising." In fact, he believes that competing parties and interest groups have "infinitely more scope" on public issues than in commercial competition to manufacture the opinions they hope to satisfy.[6] Competitive democracy, at least on Schumpeterian terms, sees little likelihood and little need for deliberation by the people.

Some advocates of competitive democracy add important provisos about liberties of thought, expression, and association as well as other due process rights familiar in constitutional democracies. A variant often termed *liberal democracy* is clearly an improvement from the standpoint of key democratic values. It has sometimes been given the name *polyarchy*.[7] However, these additional rights do not adequately address the problem of primary concern here—the problem of collective will formation. The very rights of free expression and

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4   Ackerman, *We the People*.

5   Schumpeter, *Capitalism, Socialism and Democracy*; Posner, *Law, Pragmatism and Democracy*; and Shapiro, *State of Democratic Theory*.

6   Schumpeter, *Capitalism, Socialism and Democracy*.

7   Dahl, *Polyarchy*; and Dahl, *Democracy and Its Critics*.

association that we cherish in western democracies can be used for the manipulation of public opinion and the spread of disinformation, when it is in someone's electoral interest (or that of third parties). What is the "will of the people" when the public has been bamboozled or manipulated?

Our republic, in the United States, was born with a different vision from that of modern polyarchies relying on party competition. Deliberation was central, but by representatives, in the indirect "filtration" championed by Madison in his design for the U.S. Constitution. The constitutional convention, the ratifying conventions, and the U.S. Senate were all supposed to be small elite bodies that would consider the competing arguments on the merits. They would "refine and enlarge the public views by passing them through the medium of a chosen body of citizens," as Madison famously said in Federalist No. 10, discussing the role of representatives. Madison held that the public views of such a deliberative body "might better serve justice and the public good than would the views of the people themselves if convened for the purpose." This position, like the last one, avoids embracing mass participation as a value. The passions or interests that might motivate factions are best left unaroused. The Founders, after all, had lived through Shays' Rebellion and had an image of unfiltered mass opinion as dangerous. If only the Athenians had had a Senate, they might not have killed Socrates.[8]

If modern legislatures functioned like Madison's vision of the Senate, there would be far less of a case for new institutions to bring citizen deliberation into lawmaking. The representatives would deliberate on behalf of the people. There would not be a deliberative deficit at the legislative level to respond to. But the emergence of political parties, direct election of the Senate, and party discipline in legislatures, not only in the United States but around the world, has greatly limited the opportunities for deliberation by representatives. They are constrained to follow the "party whips" and only in acts of political courage or when there are explicitly open or free votes of conscience do they get to follow their deliberative preferences rather than the party line.

By *participatory democracy*, I mean an emphasis on mass participation combined with equal counting of votes of those who participate. While many proponents of participatory democracy would also like to foster deliberation, the essential components of the position require participation, perhaps prized partly for its educative function and equality in considering the views offered or expressed in that

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8   See for example, Federalist No. 63. For the many uses of this event for anti-democratic argument, see Roberts, *Athens on Trial*.

participation (even if that expression is by secret ballot).[9] Advocates of participatory democracy might also advocate voter handbooks, as did the Progressives, or perhaps new technology for voter information,[10] but the foremost priority is that people should participate, whether they become informed or discuss the issues. Many states in the United States combine some explicit participatory mechanisms, such as ballot propositions, with representative government. Various mixtures of these forms of democratic practice are common.

A fourth position, which I call *deliberative democracy*, attempts to combine deliberation by the people themselves with an equal consideration of the views that result. One method for implementing this twofold aspiration is the deliberative microcosm chosen by lot, a model whose essential idea goes back to ancient Athens for institutions such as the Council of 500, the *nomethetai* (legislative commissions), the *graphe paranomon,* and the citizens' jury. Modern instances of something like this idea include the Citizens' Assemblies in British Columbia and Ontario and what I call the "Deliberative Poll,"[11] a design we will return to below. A second possible method for implementing deliberative democracy by the people themselves would involve some scaled-up institution of mass deliberation. Instead of a random sample, it would somehow engage the entire population. Bruce Ackerman and I have discussed designs for such an institution in *Deliberation Day*.[12]

These four forms of democracy highlight the limited possibilities currently available for deliberative politics and lawmaking. Competitive democracy does not incentivize deliberation. Candidates do not wish to win the argument on the merits as much as they wish to win the election. If they can do so by distorting or manipulating the argument successfully, many of them are likely to do so. Representatives elected through such processes are looking ahead to the next election while in office. They have only occasional opportunities to deliberate on the merits because of party discipline. Participatory democracy, at least at the scale of ballot propositions, is no more deliberative than party competition–based mass politics. And the fourth model, deliberative democracy by the people themselves, lacks an institutional home for any connection to lawmaking. The lack of deliberation in our

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9   Pateman, *Participation and Democratic Theory*; and Pateman, "Participatory Democracy Revisited."

10   See Project Vote Smart at http://votesmart.org, for the provision of a great deal of very user-friendly information to voters. For an assessment of voter advice applications, see Walgrave, van Aelst, and Nuytemans, "Do the Vote Test."

11   Fishkin, *Democracy and Deliberation*; Fishkin, *When the People Speak*; and Fishkin, *Democracy When the People Are Thinking*.

12   Ackerman and Fishkin, *Deliberation Day.*

current institutions of competitive, representative, and participatory democracy provides an opening for arguments that might institutionalize deliberation.

Efforts at democratic reform have long been entangled in an apparently forced choice between two fundamental values—political equality and deliberation. Around the world, changes in democratic institutions, both formal and informal, have brought "power to the people" but under conditions where the people have little reason or effective incentive to think very much about the power they are supposed to exercise. A vast social science literature documents that the mass public in almost every polity lacks information or even pays much attention to political matters.[13] And when it does, it tends to engage the side of the argument it finds most congenial. The like-minded share information, or misinformation or even congenial but fake information, and never get engaged with the thinking of those they disagree with. Such a public is easily subject to manipulation by the mechanisms of one-sided persuasion developed for advertising and for propaganda.[14] In our long journey of bringing power to the people—through mass primaries, referenda, recall elections, direct election of Senators in the United States, public opinion polls, and other forms of public consultation— we have empowered a public that generally lacks the information and attention that would be required for applying the value of deliberation in making those choices. We reform politics in the name of democracy, but it is a thin democracy that, even at its best, prizes political equality (equal counting for those who show up) without deliberation.[15] Such a democracy risks substituting the whims of the people for the will of the people and the methods of Madison Avenue for the values of James Madison.

Athenian Reflections

In rethinking where democratic reform might go, it is worth pausing to reflect on the design of "the first democracy."[16] There are positive lessons to be learned not so much from the direct democracy in the Assembly but from other institutions that the Athenians came to employ to cure the mischiefs of what we would now call populism. Athens is often pictured primarily in terms of the Assembly where the

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13 For an overview, see Delli Carpini and Keeter, *What Americans Know*.

14 These excesses are long-standing. For compelling cases, see Jamieson, *Dirty Politics*.

15 "At its best" is an important qualifier, given incentives for vote suppression undermining political equality. See, for example, Overton, *Stealing Democracy*.

16 Woodruff, *First Democracy*.

people made authoritative decisions. [17] In sight of the Acropolis, about 6,000 citizens could fit in an area called the Pnyx, discuss proposed laws, and vote on them by show of hands in the Assembly. However, the citizenry of Athens ranged between 30,000 and 60,000 males during the periods of democracy. Women, slaves, and *metics* (legal resident aliens such as Aristotle) could not vote. Hence most of the population, indeed, most of the eligible citizenry, could not vote at any given meeting of the Assembly. Nevertheless, this first democracy set an example for direct rule that has reverberated through the ages.

The picture of Athens as a direct democracy is the one that was familiar to the American founders. Indeed, it was the dangers of such a system that helped inspire their ideas of indirect filtration. In Federalist No. 10, Madison described the dangers of direct democracy in building the case for institutions such as the Senate to control the mischiefs of faction:

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

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

Mogens Herman Hansen sees a clear motive for the redesign: "The tendency of the reforms is clear: the Athenians wanted to obviate a return to the political crises and military catastrophes of the Peloponnesian War." The orators could goad the Assembly into hasty or unwise actions, including disastrous wars. The Athenians had learned that "a skillful demagogue could win the citizens to his project irrespective of whether it was really in their interest." [18]

In the new system, a decree passed by the Assembly could not become a law unless it was approved by the *nomothetai,* a randomly selected sample of citizens who would deliberate for a day, hearing the arguments for and against the proposal. Only if the proposal got majority support by this body could it become a law. Harrison suggests

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17 I take this term from Woodruff, *First Democracy*.

18 Hansen, *Athenian Democracy*.

that they had "deliberately invented a perfectly democratic brake to slow down the machine." It was designed to maintain "the restored order against the possible ill effects of snap votes in the ekklesia [the Assembly]."[19] "A perfectly democratic brake" suggests that instead of restricting their democracy, they had introduced another kind of democratic institution, one that was also democratic but in a different way.

The system now had deliberating microcosms chosen by lot before the Assembly, during the Assembly, and after the Assembly. Before the Assembly, only proposals approved by the randomly selected Council of 500 could be considered in the Assembly. During the Assembly, orators had to be mindful that they were subject to a special court, the *graphe paranomon*, which could prosecute an illegal or unwise proposal made in the Assembly. The purview of this special court, which also had 500 or more randomly selected members, was broad (and sometimes misused).[20] But the intention was clearly to provide incentives against irresponsible demagogues turning the Assembly to their will. After the Assembly, there was now a clear distinction between mere decrees, which the Assembly could pass, and laws which had to be approved by the *Nomothetai*.[21] This provided a multistage process hemmed in before, during, and after the meetings of the Assembly, so that the direct democracy was fused with deliberative institutions representing all the people through random sampling.

The reforms were designed to "hedge about" the Assembly with deliberative groups chosen randomly who could ensure more responsible decisions.[22] The samples were not precisely what modern experts would call random samples, but they seem to have been regarded as such.[23] People had to put themselves on the list from which the random sample would be drawn. But the sense of public duty was widespread among those privileged enough to be male citizens, presumably motivating participation. Participation in all aspects of Athenian self-governance was extraordinary.[24] And the sampling process was taken seriously. In early times the method was to draw beans from a

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19   Harrison, "Law-Making at Athens."

20   Grote, *History of Greece*. Grote notes that the *graphe paraonomon* did not always work as intended. It could degenerate into a forum for personal attacks turning "deliberative into judicial eloquence, and interweaving the discussion of a law or decree along with a declamatory harangue against the character of its mover."

21   Hansen, *Athenian Democracy*.

22   Grote, *History of Greece*.

23   Sinclair, *Democracy and Participation*.

24   When participation flagged, incentives were instituted, which led to criticism that these institutions, especially the juries that were constituted in the same way, were dominated by the poor and the elderly. The propensity of the poor and the elderly to do jury service was satirized by Aristophanes in *The Wasps*. Henderson, *Aristophanes*.
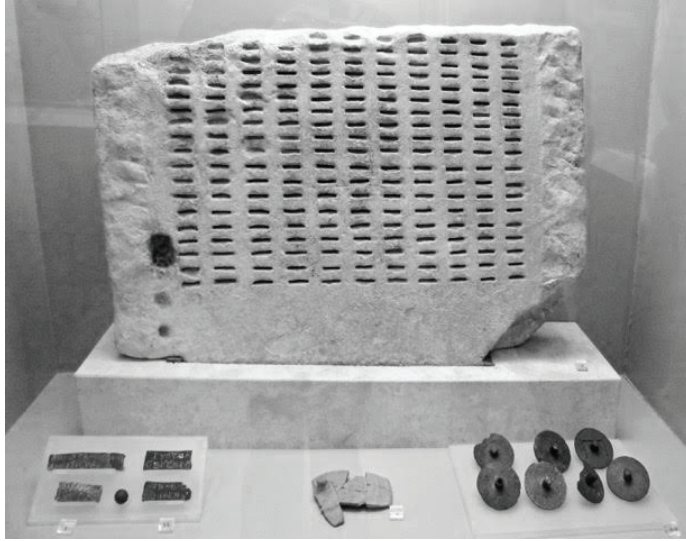
FIGURE 1. The *kleroterion*, an allotment machine, was used to randomly select citizens for Athenian institutions.

container.[25] But the Athenians perfected the process with an allotment machine, the *kleroterion*, which yielded random samples of those who put themselves on the list (Figure 1). The sampling was conducted in public ceremonies. Some argue that random sampling was an embodiment of equality. Some argue that it was a guarantee against corruption and a method of dispute resolution. Both rationales are relevant for our purposes.

In viewing the system as a whole, there was also another key point: rotation. There were so many opportunities to be selected randomly and so many meetings of the Assembly that people could take turns "to rule and be ruled by turns," as Aristotle noted in the *Politics*.[26] Hansen calculates that "something like every third citizen served at least once as a member of the Council" and three quarters of all members had to serve as the rotating head of government for a day. "Simple calculation leads to this astounding result: Every fourth adult male Athenian citizen could say, 'I have been 24 hours President of Athens.'"[27]

Fourth-century Athens did not rely entirely on deliberative democracy any more than fifth-century Athens before it had relied entirely on direct democracy. The reformed design was clearly a mixed system still with a very prominent element of direct democracy. But this system

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25 Sinclair, *Democracy and Participation.*

26 Aristotle's *Politics* 1317b2, cited in Hansen, *Athenian Democracy,* p. 313.

27 Hansen, *Athenian Democracy.*

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

Criteria for Modern Applications

Both the merit and the vulnerability of the deliberating microcosm chosen by random sampling is the hypothetical inference—these are the conclusions the population would come to if it could somehow consider the issue in depth under good conditions. The conditions must be credible as good conditions (access to good information and relevant arguments, for example), and the sample must be representative. Consider some criteria for the design of such an effort, criteria building on one or the other of these two basic points—the representativeness of the sample and the "good conditions" for considering the issue:

- Demographic representativeness
- Attitudinal representativeness
- Sample size

If these three aspects are satisfied, then we would want to engage such a sample in good conditions for deliberation. The following factors need to be considered:

- The opportunity to engage policy arguments for and against proposals for action in an evidence-based manner
- Knowledge gain

- Opinion change[28]

- Whether distortions in the dialogue are avoided

- Whether there are identifiable reasons for considered judgments after deliberation

These criteria apply to a simple practical method, one that attempts to employ modern social science to fulfill the spirit of an ancient idea of democracy. Gather random samples, not just to ask them their impression of sound bites and headlines as in conventional polling, but rather to engage them in many moderated small group discussions with trained moderators who help them engage with balanced and evidence-based materials. Train the moderators not to give any hint of their own positions. Have advisory committees representing different points of view supervise the briefing materials so that they are really balanced and have the best information available. Have the random sample question competing experts in depth. Ensure that the sample is large enough for statistically meaningful study of its representativeness and of any opinion changes. Situate this convening of a microcosm of the population in a decision process where its conclusions have real consequences. Take a survey in depth both on recruitment and after the deliberations are completed. Add control groups where possible for further comparisons. I call this method *Deliberative Polling*, and it has now been used, with various collaborators, more than 100 times in 28 countries.[29]

We used it in Texas, beginning in 1996, to consult the public about how to provide electricity in the eight, then-regulated, service territories in the state. Should electricity be provided by natural gas, coal, renewable energy, or conservation (to cut back the need)? In the eight projects, the percentage of the public willing to pay a bit more on monthly utility bills for the support of renewable energy rose from 52 percent to 84 percent. There was a similar increase in support for conservation or "demand side management." The public utility commission and then the state legislature used these results to make a series of decisions that moved Texas from last to first in wind power among the 50 states. The same process has since been used on a myriad of other public policy issues in 28 countries around the world.

It has been used in Japan to consult the public about the acceptability of options for pension reform and for the energy options facing the country after the Fukushima disaster. It has been used in Bulgaria

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28   Opinion change is not itself a criterion for success of the deliberations. However, if it occurred rarely then there would be little practical incentive to add this elaborate process on top of conventional polling.

29   Fishkin, *Democracy and Deliberation*; Fishkin, *When the People Speak*; and Fishkin, *Democracy When the People Are Thinking*.

FIGURE 2. Participants of the Mongolian Deliberation on Constitutional Amendments April 2017. Credit: Parliament Secretariat of Mongolia.

to clarify whether the public could accept the desegregation of the then Roma-only segregated schools. The willingness to integrate the schools in the Deliberative Poll was one of several factors supporting integration, which has now been largely accomplished. It was also used in Macau, a Special Administrative Region of China, to clarify options for government involvement in the regulation of the press. After deliberation, the public supported self-regulation instead, a result accepted by the government.

In perhaps the most remarkable case, Mongolia, a competitive democracy with a private property market system, passed a "Law on Deliberative Polling" in 2017. A random sample of voters must be convened to deliberate about proposals before the Parliament can consider a constitutional amendment. A credible national sample of nearly 700 citizens, representative of the electorate in attitudes and demographics (and selected by the National Statistical Office who do the Census), recently considered 18 proposals over a long weekend (Figure 2). Key proposals supported by members of each of the two main parties had little support after deliberation. Support for a second chamber of Parliament fell from 61 percent to 30 percent. Support for electing the president indirectly through a vote of Parliament and other public officials went from 37 percent to 33 percent. But support for a series of proposals that would guarantee a professional civil service and an independent judiciary had more than 80 percent support.

FIGURE 3. Shin Gori Reactors 5 and 6, South Korea. Credit: Korea Shin-Kori NPP.

Dealing with corruption and protecting the independence of the civil service were the people's top priorities. Consider one simple example. When governments change, the names of ministries can be changed, allowing the government to say that ministry X or Y no longer exists. If a ministry no longer exists, then civil servants can be fired and politicized. The solution the public supported was to put the names of key ministries in the constitution.

When the Parliament reconvenes it has the option under the law to pass the amendment by a two-thirds vote or to send the question to a referendum. After Brexit, there seems little appetite, even in Mongolia, to take important issues to decision by referendum. The deliberations of a microcosm offer the judgments of the people without the manipulations and distortions of referendum campaigns.

In Texas, Japan, Macau, Mongolia, and other sites, the deliberations of the random sample were an input to established government institutions to make the final decision.[30] But recently in South Korea, the government faced the difficult choice of whether to resume or abandon construction of two partially built nuclear reactors (Shin Gori Reactors 5 and 6; Figure 3). The new government of President Moon was generally opposed to nuclear power but abandoning these reactors after so much had been spent on constructing them posed a hard choice. To the surprise of many observers, the government left the final decision to a national Deliberative Poll. After several days of deliberation, the sample of nearly 500 moved to support resumption of the

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30 These cases are all discussed in further detail in Fishkin, *Democracy When the People Are Thinking.*

construction by 59.5 percent to 40.5 percent.[31] The government is implementing this decision.

When ordinary citizens deliberate in moderated small groups, they actually listen to each other with mutual respect. They make decisions based on the substance of policy choices. They are willing to engage the best information available. By doing so, they can restore legitimacy to democratic decisions. Deliberations with a random sample represent the conclusions of everyone, not just those who are angry enough to be mobilized. Such deliberations offer the public's considered judgment. Instead of the appearance of public support from propaganda and mobilization, they offer the representative conclusions of the whole country in microcosm.

Some political scientists say it is only a myth, a "folk theory" that the people could be competent enough for self-government.[32] But it depends on our institutions. If for key questions we engage the public under the right conditions, they are collectively competent to rule themselves. We just need some updates to our operating system for listening to the people.

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31   See http://cdd.stanford.edu/2017/results-of-participatory-surveys-for-public-deliberation-on-shin-gori-nuclear-reactors-no-5-6/.

32   Achen and Bartels, *Democracy for Realists*.

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