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# Making Direct Democracy Deliberative through Random Assemblies\*

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## Abstract

Direct-democratic processes have won popular support but fall far short of the standards of deliberative democracy. Initiative and referendum processes furnish citizens with insufficient information about policy problems, inadequate choices among policy solutions, flawed criteria for choosing among such solutions, and few opportunities for reflection on those choices prior to decision making. We suggest a way to make direct democracy more deliberative by grafting randomly selected citizen assemblies onto existing institutions and practices. After reviewing the problems that beset modern direct-democratic elections and the long history of randomly selected citizen assemblies, we propose five different varieties of randomly constituted citizen bodies—Priority Conferences, Design Panels, Citizens’ Assemblies, Citizens’ Initiative Reviews, and Policy Juries. After selecting members through stratified random sampling of citizens, each of these assemblies would operate at a different stage of the legislative process, from initial problem identification through approval of a finished ballot measure. Highly structured procedures guided by professional moderators and featuring expert testimony on policy and legal matters would help to ensure deliberative quality, and careful institutional designs would make each body politically powerful. In the end, these citizen bodies would be likely to address the deliberative deficit of direct democracy and better achieve the public’s desired policy objectives.

## Keywords

citizen assemblies, direct democracy, initiative and referendum, public deliberation, random assignment

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The idea that citizens should play a direct role in making laws has a long history, dating back to the Greek conception of democracy itself. In the modern context, Athenian assemblies made up of male citizens chosen by lot sounds almost mythical, a symptom partly of the limited historical record of that practice that has survived to the present day.<sup>1</sup>

In the modern world, direct democracy now connotes a very limited set of practices—the referenda, initiatives, and other ballot measures whereby citizens vote directly on levies, legislation, and constitutional amendments. In the United States, most adult citizens will have multiple opportunities to vote in these ways at one or more levels of government.<sup>2</sup> Many other countries go farther, even holding national referenda, such as in those nations deciding whether to join the European Union.<sup>3</sup> Other institutions have conferred considerable authority on citizen bodies, as in the case of criminal and civil juries;<sup>4</sup> but in this article, we focus on direct democracy exclusively in relation to the legislative branch of government.

Calls for expanded direct citizen voting come, in part, about concerns that traditional representational systems fail. As the first author of this article said in *By Popular Demand*, “There are two fundamental problems in American politics. The first is that most Americans do not believe that elected officials represent their interests. The second is that they are correct.”<sup>5</sup> A familiar factor in such distrust is the role of money in political campaigns,<sup>6</sup> a situation exacerbated by the 2010 *Citizens’ United* US Supreme Court ruling.<sup>7</sup> Other concerns include the strength of partisan divides and the drive to make policy choices for strategic political reasons, rather than in pursuit of the common good.<sup>8</sup>

Nonetheless, those who embrace direct and participatory democracy often have similar concerns about the quality of lawmaking that occurs in referenda and initiative elections. Such systems ask an underinformed and often unreflective public to choose among often-flawed alternatives in a campaign and media environment that foregrounds the sensational over the substantive or, in the case of low-profile ballot measures, provides little or no information.<sup>9</sup> Even those more sympathetic to the process place their hopes on voters using low-information shortcuts,<sup>10</sup> which depend on the wisdom of partisan elites or prove unavailable in those cases where voters have no clear partisan bias or elites stand in agreement or indifference.<sup>11</sup> In the language of one modern democratic theory, it is fair to conclude that these direct-democratic practices are rarely, if ever, *deliberative*.<sup>12</sup>

Calls to remove or replace direct voting on legislation must face this reality: once the public gains the right to vote on legislation, however, it is unlikely it will ever willingly relinquish it. Popular opinion has long supported initiative and referenda rights,<sup>13</sup> and public officials are far more likely to seek a means to improve than remove these processes.

With these facts in mind, we suggest a way to make direct democracy more deliberative by grafting random citizen assemblies onto existing institutions and practices. We first offer definitions of key terms that make clearer the constituent elements of deliberation and how it operates at micro- and macro-level scales. Next, we examine more closely the problems that beset modern direct-democratic elections, notably the

biasing of campaign communication by advertising and shortcomings in official electoral information sources that reduce the quality of information on which voters base their choices. After a quick review of the history of random assemblies, we then propose five different varieties of random assembly forms and explain how they can address the deliberative deficit of direct democracy. These assemblies include bodies designed to set policy priorities, draft and fine-tune ballot initiatives, evaluate such initiatives, and approve or reject such initiatives. These five types of random assembly constitute “real utopian” designs in that they can engender dramatic social change through realistic political reform.<sup>14</sup> They have the potential to substantially improve initiative and referendum processes by rendering citizens much better informed about initiative proposals and therefore much better equipped to choose the laws by which they will govern themselves.

## Direct versus Deliberative Models of Democracy

The term democracy has a notorious history of vague and various definitions, but political theorists such as David Held provide clear distinctions among the different democratic models.<sup>15</sup> In simple terms, democracy is a system of self-government controlled by the entire *demos*, or body of citizens in a political system. In practice, the best one can aspire to on a large scale is a *polyarchy*, the term theorist Robert Dahl coined to describe rule by “the many,” in contrast to the unattained “rule by all” or the less desirable “rule by a few” (oligarchy).<sup>16</sup>

Within the larger family of democratic systems, direct democracy distinguishes itself by requiring that citizens have direct control over legislation. Whereas representative systems retain citizen control over the elected, direct democracy cuts out these intermediaries by having citizens write the laws themselves, rather than filling in ballots to choose their lawmakers.<sup>17</sup> Though the modern practice generally involves referenda and initiative elections, direct democracy encompasses a wider range of direct citizen self-government, such as citizen bodies empowered to govern directly over budgets, institutions, or other public entities. The Brazilian innovation of participatory budgeting has direct-democratic features, though it often relies on nongovernmental organizations as intermediaries.<sup>18</sup> The Indian People’s Campaign in the state of Kerala provides local citizens a direct role in shaping local planning budgets, though those plans remain subject to regional and state amendment.<sup>19</sup>

Deliberative democracy both overlaps and contrasts with the direct model. Though we offer a more elaborate definition shortly, the basic meaning of deliberative democracy is a system of self-government that concerns itself as much with the quality of its internal deliberation as it does with the distribution of formal power. When people deliberate, they carefully examine a problem and arrive at a well-reasoned solution after a period of inclusive, respectful consideration of diverse points of view.

Whereas architects of representative democracy can call it a day once they have established a free and fair system of democratic elections for public officials, deliberative democracy demands that those elections proceed in a deliberative manner.

Moreover, a deliberative democrat requires that elected officials themselves deliberate when making legislative decisions. Likewise, direct democracy's advocates can congratulate themselves once they have devolved authority directly to the mass public, particularly but not exclusively at the local level. Deliberative democrats often see wisdom in such empowerment, but they remain wary of any institution—direct or representative—that does not include the architecture and cultural norms that can sustain high-quality deliberation. In this view, it is no improvement that the mass of citizens, rather than select elites, should be the ones to make ill-considered choices in a disrespectful civic climate.

## Democracy and Deliberation at Two Social Scales

Having dispensed with that potential bit of confusion, we offer one of our own. Though the terms have been used interchangeably at times, one can usefully distinguish “democratic deliberation” from “deliberative democracy.” For the purpose of this paper, it is also necessary to elaborate considerably the meaning of each of these terms.

### *The Accomplishment of Democratic Deliberation*

We begin with “democratic deliberation,” a phrase we use to describe an event in which a body of people communicate with one another in a particular way. The first author of this article has written extensively on this term and has developed a particular conception of democratic deliberation that gives each word its due.<sup>20</sup> In brief, the “democratic” adjective refers to the egalitarian and respectful social character of a forum, assembly, conference, or other public event. The “deliberation” noun refers to the rigorous analytic decision-making task taken on by that public body. To count as democratic deliberation, a public event has to meet high standards both for democracy and deliberation.

Table 1 shows the more detailed elements of democratic deliberation, as identified in terms of five analytic and four social goals. The table also identifies the obstacles to those goals that occur in the regular course of human interaction and the process features of a deliberative design intended to overcome those obstacles. A “deliberative design” is any number of processes, such as National Issues Forums, Citizen Juries, Consensus Conferences, and many others, that provide a framework for talk intended to yield a high degree of democratic deliberation (or at least specific elements thereof).<sup>21</sup>

It is easiest to read Table 1 from left to right; the rows show how to design a public meeting to achieve the various goals of democratic deliberation. For instance, the first row stresses that a fully deliberative process requires a sound footing in basic information, such as the economic, social, and legal parameters of a given problem—for example, rising dropout rates in a local district's public schools. This goal has to overcome the community's low baseline knowledge about this issue and their limited ability to understand the complexities of financing, the distribution of taxes and revenues across different levels of government, and so on.<sup>22</sup> To address this problem,

**Table 1.** Analytic and Social Goals for a Democratic Deliberative Event, the Obstacles to Them, and the Process Features Designed to Achieve Them.

Analytic Goal	Obstacle to Deliberation	Design Features to Overcome Obstacle
Create a solid information base	Low policy knowledge; limited analytic ability	Briefing materials in advance and access to experts during event
Prioritize the key values at stake	Values confusion; difficulty making value claims	Putting on agenda explicit discussion of values, the likelihood of their being broadly shared, but also the importance of prioritizing them
Identify a broad range of solutions	Limited political perspectives; lack of creative insight	Frame discussion with a range of solutions and encourage “free flow” of ideas about alternatives
Weigh the pros, cons, and tradeoffs among solutions	Motivated reasoning; preexisting biases	Emphasize the unique opportunity the event provides to carefully work through ideas and evidence before making judgments; provide ample time to do so
Make the best decision possible	Social identity effects; conformity pressure; majoritarian bias	Use secret ballots; require super-majorities; do not permit premature voting; emphasize the stakes of the event and importance of its process integrity
Social Goal	Obstacle to Democratic Process	Design Features to Overcome Obstacle
Adequately distribute speaking opportunities	Social hierarchies; personality variations in loquacity and verbal skill	Have a professional facilitator present to encourage balanced speaking opportunities; break the body into subunits (3–5 persons each) for small group discussions
Ensure mutual comprehension	Wide variations in familiarity with technical terms; impatience with less knowledgeable participants	Emphasize importance of asking questions of clarification and persisting when answers are not understood
Consider other ideas and experiences	Tendency to focus on shared information and ideas; absence of minority voices	Structure process to ensure time to explore range of views; facilitator emphasizes the value of hearing minority viewpoints and gives appreciation to those demonstrating active listening
Respect other participants	Prominent social models of political talk emphasize interpersonal conflict, character assault, and general disregard for those holding contrary views	Provide clear ground rules for conduct; encourage self-facilitation of conduct; facilitator intervenes when necessary

a well-designed public forum includes both background materials written in plain language and access to content experts during the course of the forum. The more complex the issue, the more important it is that the process have an iterative character, whereby participants reflect on what they learned one day to formulate better understandings—and *questions*—the next day.<sup>23</sup>

Addressing this particular challenge is so important that it constitutes the primary concern of at least one process, the Deliberative Poll. These events often run three days, with the first day primarily generating questions that panels of experts answer on the second day. By polling participants via written surveys before and after the event, the Poll is able to discern whether public opinion shifts in response to new information.<sup>24</sup>

Looking to the social goals of democratic deliberation, consider the aim of adequately distributing speaking opportunities. Groups both large and small must overcome the tendency to allocate turns according to one's standing in social hierarchies. People also naturally vary in their tendencies to talk at length and interrupt or jump in during pauses.<sup>25</sup> Real differences in communication skills, styles, and opportunities together present a significant challenge and have caused many critics to doubt the ability to satisfy this criterion in deliberating groups.<sup>26</sup> To address this problem, nearly every highly structured deliberative process deploys professional facilitators. They help keep a deliberative body—or its smaller subgroups—on topic, but they also help to balance speaking opportunities by drawing out quieter participants and asking the most talkative to pause and let others speak. Active facilitators use a variety of tools, such as round-robins and dialectical inquiry to achieve the desired result.<sup>27</sup> The mere presence of a facilitator can promote this goal, though it helps for them to at least reiterate and model the ground rules of deliberation.<sup>28</sup> That said, the influence of external power dynamics can create challenges for even skilled facilitators.<sup>29</sup>

When a public-engagement event includes the various features from the right-hand column of Table 1, the net result is often a highly democratic and deliberative process. Case studies from a wide range of deliberative designs support this viewpoint, and the participants themselves routinely report having an experience unlike anything they thought was possible in politics and public life.<sup>30</sup> But as explained earlier, democratic deliberation occurs in a specific time and place, which means that this powerful experience comes rarely.<sup>31</sup> Convening a Planning Cell or other specialized process requires considerable resources and can accommodate only so many people. Online deliberation and networked large-scale processes have had some success, but the best of those have proven expensive.<sup>32</sup>

Democracy, however, has long recognized the value of specialized discursive spaces. We presume that legislatures play a valuable role partly because of their limited size, and the jury system gives just a few citizens the chance to hear any given case. So, too, might small bodies of citizens—the randomly selected assemblies we examine more carefully below—play such an important role that their ability to achieve a high level of democratic deliberation justifies their relatively limited access.

## *Institutions and Social Practices Fostering Deliberative Democracy*

Whereas “democratic deliberation” refers to a discrete piece of time-space, such as a weeklong event that brings together a panel of citizens to deliberate at a conference facility, we reserve the term “deliberative democracy” for reference to large social scales and wider expanses of time. This is akin to the distinction sociologist Anthony Giddens makes between the localized practices of a particular point in time and larger social systems, which by definition must “stretch” across a sufficiently broad expanse of time and geographic space.<sup>33</sup> Given this difference, it is no surprise that we think a given group can achieve a high level of democratic deliberation, whereas a society can only aspire to meeting the full requirements of a deliberative democracy.<sup>34</sup>

Though a state or nation might never become a full-fledged deliberative democracy, it can still gather together a set of institutions and social norms and practices that make it *more deliberative* and *more democratic*. Happily, we can use the same fundamental concepts introduced in Table 1 to categorize examples of these diverse institutions and social features, and we do so in Table 2.<sup>35</sup>

For example, respecting the goal of weighing the advantages, disadvantages, and tradeoffs among proposed policy solutions, many jurisdictions distribute official voters’ guides to every household with a registered voter.<sup>36</sup> These guides provide nonpartisan descriptions of candidates and, where direct democracy is permitted, of ballot measures. Candidate profiles usually include candidates’ accounts of their positions on particular policies. Descriptions of ballot measures offer estimates of fiscal impact, often followed by partisan statements offering reasons for supporting or opposing the measures.<sup>37</sup> By presenting neutral descriptions of candidates and proposed laws along with arguments of informed advocates, voters’ guides have the potential to offer citizens high-quality guidance in the decision-making process.

The social goal of ensuring citizens’ mutual comprehension respecting policy issues is potentially furthered through education in communication and civics. A key motivation for offering language instruction in US free public schools has been equipping students to understand and engage with political discourse.<sup>38</sup> Adult civic educational institutions—such as Great Books, Great Decisions, Study Circles, and the National Issues Forums—share the same purpose.<sup>39</sup>

When one looks at intermediate social scales, such as an electoral process, one can do so effectively through both the macro- and micro-deliberative lenses. From the macro perspective, one can ask whether the assemblage of structures and norms that make up a given election qualify it as a relatively deliberative-democratic election. It is from that vantage point that the next section will inventory the failings of conventional direct-democratic elections. From a micro perspective, however, one can examine the smaller public forums that occur as part of an election, and that will be the focus when we turn our attention squarely to the specialized roles that random assemblies can play in redeeming referenda and initiative elections. As we shall see, the introduction of random assemblies of citizens could bolster every row in Table 2, and so can they address—to some degree—the wide range of problems we are about to inventory.

**Table 2.** Examples of Institutions, Practices, and Norms/Beliefs that Help to Achieve Analytic and Social Goals in a Deliberative Democracy.

Analytic Goal	Institutions, Social Practices, and Public Norms/Beliefs
Create a solid information base	Public journalism to help the public identify and understand its challenges Public infrastructure for research Strong institutional and public memory
Prioritize the key values at stake	Public dialogues with broad participation Artistic community actively confronting contemporary issues
Identify a broad range of solutions	Innovative public-policy think tanks Multiple influential political parties and civic/political associations that represent a diversity of viewpoints Online citizen-consultation platforms to elicit expert ideas from the public <sup>93</sup>
Weigh the pros, cons, and tradeoffs among solutions	Official Voters' Guides and other non-partisan analyses that provide useful comparative information on candidates and ballot measures <sup>94</sup> Representative and influential citizen deliberation on policy Rigorous governmental deliberation (legislative, executive, judicial, and jury)
Make the best decision possible	Elected officials with the wisdom and courage to make sound public policy, even when its justification is complex and its adoption is unpopular Public commitment to implementation of well-justified policies, even if not preferred
<hr/>	
Social Goal	
Adequately distribute speaking opportunities	Constitutionally secure freedom of speech and association Public issues forums Extensive social-network ties facilitating conversations among citizens
Ensure mutual comprehension	Public education system teaching language and communication skills Adult civic-educational opportunities
Consider other ideas and experiences	Social and political connections across prominent socioeconomic differences Appreciation of art, drama, and literature
Respect other participants	Celebration of cultural diversity Strong trust in neighbors and fellow citizens Respect for legitimate public institutions and their officials



## The Problems of Modern Direct Democracy through Referenda and Initiative

The preceding conceptual analyses make it possible to look critically at direct electoral processes to form a nuanced deliberative-democratic perspective. Scholars trace the origins of direct elections to Switzerland, which implemented a form of referendum in the thirteenth century, and provided for constitutional referenda in its 1848 federal constitution. Between 1845 and 1869, most Swiss cantons adopted the legislative initiative.<sup>40</sup> During the Progressive Era, several US states, in the spirit of governmental reform, amended their constitutions to permit citizens to propose and vote on initiatives or referenda. South Dakota led the way in 1898, followed by eighteen other states by the end of World War I. The late-nineteenth century also saw the beginning of direct voting at the local level; California allowed county-level initiatives in 1893, and five years later “San Francisco and Vallejo” implemented the initiative process. According to John Matsusaka, “[b]y 1911... ten states” allowed their cities to implement initiatives, and home-rule municipalities “in at least nine other states had adopted the initiative.”<sup>41</sup>

Today, a total of twenty-four US states allow direct democracy via citizen-initiated ballot measures, and all US state legislatures have adopted procedures allowing them to place measures on the ballot.<sup>42</sup> US citizens may propose initiatives in 50 percent of US municipalities, and in 80 percent of the largest American cities.<sup>43</sup> Although the use of statewide initiatives and referenda declined during the 1950s and 1960s, direct democracy activity in US states has since revived, and in 2012, a total of 174 measures appeared on US state ballots.<sup>44</sup>

Referenda and initiative elections have done many good things.<sup>45</sup> For example, citizens have used the ballot measure to implement policy reforms that were inconsistent with the interests of legislators and lobbyists—such as term limits, limits on taxation, and the creation of new governmental bodies.<sup>46</sup> In addition, there is evidence that the ability to vote on citizen-initiated measures increases citizens’ internal and external political efficacy and fosters increased voter turnout.<sup>47</sup>

But we come here to bury—not to praise—direct democracy. Only the most naïve optimist could deny that these processes have also failed the very voters who use them. Direct elections have passed patently unconstitutional laws, which—even if overturned—cause confusion and resentment. They have eroded state and local tax bases in ways voters did not intend or anticipate. And they have proven a useful vehicle for both majority tyranny and the clever manipulation of public sentiment by narrow special interests.<sup>48</sup>

From the perspective of deliberative democracy, many factors corrode conventional direct-democratic processes. Table 3 provides an accounting of the worst problems by organizing them in terms of the same analytic and social goals introduced earlier. For example, initiative and referendum processes rarely equip citizens with the knowledge necessary for weighing the advantages, disadvantages, and tradeoffs of proposed legal measures. Since voters’ guides rarely identify the inconsistencies of ballot measures with constitutional or other law, courts frequently invalidate ballot

**Table 3.** The Problems that Direct Democratic Practices and Institutions Cause for Deliberative Democracy.

Analytic Goal	Macro-Level Problems
Create a solid information base	Voters receive very limited third-party information, if they even have a public Voters' Guide; many relevant empirical beliefs are systematically distorted <sup>95</sup>
Prioritize the key values at stake	Emotional appeals often play on values but deny reality of values conflicts and caricature alternative views as valueless
Identify a broad range of solutions	Voters constrained by only having a yes/no vote on a single ballot measure
Weigh the pros, cons, and tradeoffs among solutions	Difficulty advancing and attending to complex arguments in a crowded and sensationalist mediated public sphere
Make the best decision possible	Partisan electoral cues drive decision making; voters altogether unaware of low-profile measures
<b>Social Goal</b>	
Adequately distribute speaking opportunities	Role of money in politics ( <i>Citizens' United</i> ruling) gives some dramatically more opportunity to advertise/advocate than others; inequalities in political efficacy
Ensure mutual comprehension	Technical and legal details in proposed legislation not understood, sometimes even intended to obfuscate or confuse
Consider other ideas and experiences	Segmentation of media and selectivity bias cause voters to learn only those arguments aligned with their preexisting biases <sup>96</sup>
Respect other participants	Campaigns and media play up partisan and cultural divides when framing issues

measures.<sup>49</sup> Further, voters' guides seldom explain the policy objectives of ballot measures, the likelihood that measures will achieve those objectives, alternative means of obtaining those objectives, or possible unintended consequences of the measures, even though citizens evince great interest in those objectives and consequences.<sup>50</sup> Accordingly, information provided through direct democracy processes often leaves citizens ill-prepared to evaluate proposed laws.

What's more, direct democratic processes often fall short of the social goal of ensuring mutual comprehension among citizens. For example, ballot measures are often so lengthy and their language so arcane that citizens have difficulty understanding them.<sup>51</sup> Moreover, voters' guides, intended to increase voters' understanding of ballot measures, rarely fulfill their purpose, for at least two reasons: a substantial proportion of citizens do not read available voters' guides,<sup>52</sup> and citizens who do read voters' guides often cannot understand the guides' content—because the guides' language exceeds most citizens' reading level—or cannot absorb the content because guides are excessively long.<sup>53</sup> Finally, mass media advertising about proposed ballot

measures frequently contains false or deceptive information, which vitiates voters' information base and thwarts understanding.<sup>54</sup>

Some elections fall farther from the deliberative-democratic ideal than others because there exists considerable variation in the practice of elections at different local, state, and national levels. Better campaign-finance laws, more robust political cultures, and more vibrant civic sectors will all contribute to better campaigns. Nonetheless, any direct-democratic process could stand considerable improvement, and in the remainder of this paper, we argue that the best means for doing so lies in a relatively rare—but exceedingly powerful—mechanism, the random citizen assembly.

## A Brief History of Random Assemblies

Though some view it as an oddity, random selection has a long history in human political arrangements.<sup>55</sup> From ancient Greece to radical proposals for restructuring government presented in the past few decades, there have been many visions of how to use randomly selected bodies of citizens to improve the political process. Most recently, real accomplishments in Oregon and British Columbia provide hard evidence that such proposals have real potential.

### *Reimagining Athens*

Many of the bolder proposals for random assemblies have drawn inspiration from the Athenian idea that such bodies could be central policy-making organs. Athens in the late fifth and fourth centuries BCE employed random selection (in the form of the choosing of lots) to fill many key governmental offices from among the citizenry. Citizens were drawn from the population of adult males “without property qualifications.” Among the offices filled by lot were the boards of “the legislative bodies of Lawmakers,” the Council, juries, and “most offices of the state.”<sup>56</sup>

A variety of proposals in recent decades have suggested roles for assemblies drawn through stratified random samples (i.e., those where pure randomness is bounded by demographic quotas). One proposal would replace Congressional elections with random samples of citizens to make a truly citizen legislature.<sup>57</sup> More modest ideas have random assemblies of citizens generating or reviewing legislative proposals or at least gathering to scrutinize candidates and parties.<sup>58</sup> Even if raw in their original forms, it is easy to imagine refinements to such proposals. For instance, to counterbalance the inexperience of randomly chosen representatives, the selected legislators could have a year between notification and taking office—all the while free from the pressures of reelection if limited to single terms in office.

Demarchy likewise proposes replacing government itself with quasi-random assemblies. This approach both localizes government but also subdivides it horizontally between different functions. Thus, the local transportation bureau operates independent of the local hospital board or any higher-level body. The members of these boards and councils are all selected by lottery from the pool of volunteers (i.e., those

who view themselves as stakeholders on a given issue).<sup>59</sup> As it happens, California's new statewide redistricting body has a design with some of these features, especially a quasi-lottery among volunteers.<sup>60</sup>

Two of the most recent detailed proposals include those from legal scholar Ethan Leib and another from political scientist Kevin O'Leary. Contrary to our own approach, Leib rejects the idea of tinkering with direct democracy and offers a new popular legislative branch to complement representative institutions. He writes,

As a practical matter, this branch would replace the initiative and the referendum; its institution would be established to address many of the shortcomings of those forms of direct democracy. Its functions could be brought about through national or state constitutional amendments, and its findings would enact laws ... that could be repealed or vetoed by the relevant ... executive or legislative branch (with a supermajority), or could be challenged in the judicial branch.<sup>61</sup>

Along similar lines, in *Saving Democracy: A Plan for Real Representation in America*, democratic theorist Kevin O'Leary proposes establishing a third legislative branch, consisting of 43,500 citizens chosen by lot.<sup>62</sup> One plan he offers would convene a kind of state-sponsored Deliberative Poll: each House district would have its own public assembly, whose 100 members were chosen by lottery every two years. In exchange for nothing more than a per diem to cover expenses, these citizens would discuss issues in depth, and well-timed polls of this deliberating microcosm would be reported to public officials to influence pending legislation. O'Leary's alternative proposal creates a People's House, a more powerful citizen body built on the same 435-district model. This House could introduce a few bills each session, pull dying bills out of committee for a floor vote, and reject legislation by majority vote (overridden by a three-fifths vote in the House or Senate). A citizen steering committee would set the agenda for the House, and each year, every district would nominate one of its members for the committee.

### *Modern Random Assemblies in Use*

One might doubt the viability of such proposals, but none can deny that two real random assemblies have established themselves as working models of citizen deliberation. The 2004 British Columbia (Canada) Citizens' Assembly provided one model, which Ontario and others have now copied, and the Oregon (U.S.A.) Citizens' Initiative Review had a successful trial run in 2010 and has become established by state law as a regular part of that state's initiative process.

The British Columbia Citizens' Assembly was designed to advance a concrete proposal for revising the voting system in British Columbia. It did weigh alternatives, but it ultimately had to make a very clear choice—a recommendation spelled out in sufficient detail that it could be put to a vote of the full provincial electorate. Though the Assembly's proposal ultimately won support from a majority of voters, it failed to reach the 60 percent threshold required for passage. A revote held a few years later

failed to even win a majority. The precedent was established, though—that a body of deliberative citizens could create credible legislation through a focused, months-long meeting process.<sup>63</sup>

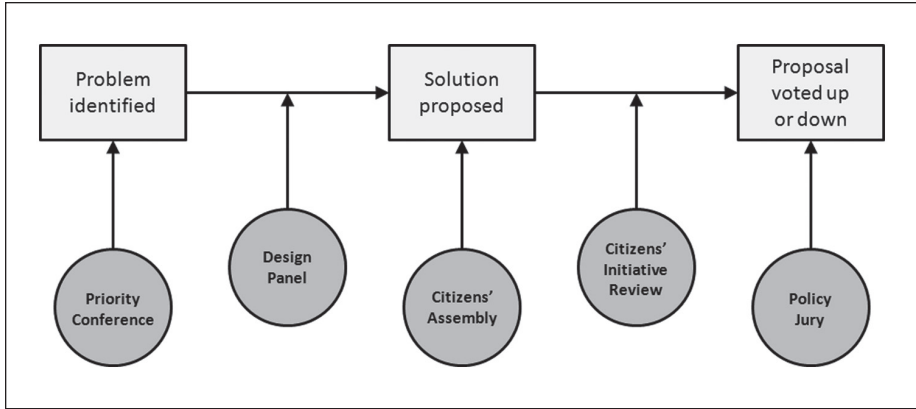
Like the Citizens' Assembly, the Oregon Citizens' Initiative Review (CIR) process is interfaced with a larger voting public, but rather than drafting a law and forcefully recommending it, the 2010 CIR evaluated laws proposed *by others* through the referendum/initiative process. The CIR convened two small deliberative groups of randomly selected Oregon citizens to help the wider Oregon electorate make more informed and reflective judgments on two specific ballot measures in the general election. The first CIR panel deliberated from August 9–13 on Measure 73, which required increased minimum sentences for certain repeated felony sex crimes and for repeated drunk driving. The second panel met from August 16–20 on Measure 74, which would have established a medical-marijuana supply system and assistance and research programs and permitted the limited selling of marijuana. Our evaluation of these panels and their consequences for the 2010 election answered two questions.

The first author of this article led a research team that directly observed the August CIR citizen deliberations and interviewed CIR panelists and project staff before and after the August events. This assessment found that the CIR citizen panels conducted a rigorous analysis of the issues put before them and maintained a fair and respectful discussion process throughout their proceedings. The Citizens' Statements they produced included almost all of the key insights and arguments raised during their meetings and were free of any gross factual errors or logical fallacies. In addition, through a pair of statewide surveys (one rolling cross-sectional and one online panel survey), researchers found that Oregon voters who read the CIR Citizens' Statements said they were helpful in deciding how to vote on the issues that CIR panels studied. On balance, those who read the Statements became more knowledgeable about both Measures 73 and 74 and much less inclined to support either one. At the same time, however, a majority of Oregon voters remained unaware of the CIR process and did not read the CIR Statements in the Oregon Voters' Pamphlet.<sup>64</sup> When the CIR process repeated in 2012, however, a majority (fifty-two percent) of Oregonians who completed their ballots were aware of the CIR, and preliminary analyses again showed clear signs of influence on voter decision making.<sup>65</sup>

Both of these real achievements in British Columbia and Oregon complement the more ambitious blueprints for random citizen assemblies. In the final section, we draw on, adapt, or elaborate on these models to show several different ways random assemblies can plug into the referendum and initiative process.

## **Locating Random Assemblies in the Direct-Democratic Process**

There exist an infinite number of variations on random assemblies that could fit into one or another part of the referendum and initiative process, but here we showcase five specific proposals. We deliberately tuned the details of these to show many variations



**Figure 1.** Five citizen deliberative designs at five points in the policy-making process.

on the basic random-assembly model in terms of how they function and how they interface with government and the wider public. After describing each of the five designs, we explain more directly how they address the problems of direct democracy that we enumerated earlier. We also highlight some of the less obvious challenges that these designs present.<sup>66</sup>

### *Five Deliberative Designs*

One can think of the initiative process as having three stages, each of which could benefit from an infusion of democratic deliberation. As shown in Figure 1, this process begins with the identification of the problem that a ballot measure could address, such as excessive property taxes or inadequate environmental protections. This leads to the proposal of a specific solution—the precise language of the ballot measure the public will consider. Then, in the final stage, voters decide whether to support or oppose the measure.

A Priority Conference would intervene in the first stage. Table 4 summarizes the key features of this process, as well as the other four that follow. The Conference would serve to identify issues that require government action. A legislature could convene a Conference directly, if it wished to judge the public's level of concern about an issue in a way more sophisticated than simply polling. Alternatively, a petition signed by a sufficient number of citizens could bring a Conference into being. Once called, Conference organizers would gather a random sample of 400 citizens to meet over four days, either weighing the relative importance of issues competing for public attention or simply weighing the importance of a single issue domain. This might go far enough to explore potential policy solutions, but the primary focus would remain on gauging the seriousness of different public problems. The result of a Conference would be to require legislative action within a given time period; at the end of that

**Table 4.** Distinct Roles and Structures for Five Different Types of Random Public Assemblies.

Random Assembly Type	Function and Authority	Institutional Authorization or Trigger	Participants and Duration	Institutional Check	Link to a Public Vote
Priority Conference	Agenda setting: Selects issues that compel legislative action or trigger Citizens' Assembly	Legislative authorization or petition	400 citizens 4 days	Legislature or public vote required to act on issue	Can lead to a ballot measure being put to a public vote
Design Panel	Initiative design: Evaluates and potentially revises initiative petition before circulated	Initiative petitioner can pay for conference to reduce signature requirement	24 citizens 5 days	Petitioners can reject recommendations (and comply with higher signature requirement)	Improves ballot measures put before public
Citizens' Assembly	Drafts specific policy question to be put to a public vote	Authorized by legislature	150 registered voters 8 weekends	Legislative action can block the recommended measure from going to a ballot	Public votes on the proposed measure
Citizens' Initiative Review (CIR)	Provides issue analysis and balance of reflective opinion in one-page statement in Voters' Guide	CIR Board identifies ballot measures subject to review	24 registered voters 5 days	Secretary of State and CIR Board oversight	Public reads the CIR analysis before voting
Policy Jury	Makes decisions on proposed legislation	<i>Version 1:</i> Legislature can pass proposed legislation to the jury <i>Version 2:</i> Petitioner gives proposal to jury	50 citizens 2 weeks	<i>Version 1:</i> Subject to judicial review <i>Version 2:</i> Without amendment, legislature has final vote	None

time, a relatively inexpensive polling of the Conference attendees could judge whether the legislature took sufficient action to address the problem. If the citizens judged it to have failed, this could trigger a Citizens' Assembly (see below).<sup>67</sup>

One institutional experiment that bears a passing resemblance to the Priority Conference was the Deliberative Poll conducted by What's Next California in 2011 that led to the drafting of Proposition 31, which appeared on the 2012 statewide ballot in California. More than four hundred randomly selected citizens studied the interconnections among the initiative process, legislative representation, local government, and tax and fiscal policy. After sifting through many policy proposals, citizens came up with a plan to extend the budget cycle to every two years and to change the budgeting and public notice rules for the governor, legislature, and local governments. With significant opposition from the political left and right, the initiative that came out of this process received only forty percent of the vote on Election Day. Details aside, however, it does show at least one rough approximation of the Priority Panel in practice.<sup>68</sup>

The second process, which we call a Design Panel, intervenes slightly later in the initiative process, when an issue public has championed a particular issue and has drafted—but not yet placed on the ballot—a prospective solution. With this reform in place, an initiative petitioner can pay the secretary of state (or local equivalent) to convene a Design Panel to evaluate and potentially revise the proposed ballot measure before it is circulated for signatures. Twenty-four citizens over five days would sit with the measure's advocates, relevant public officials, and critics to consider how to improve—or whether to reject—the measure. If the sponsor accepts the recommended changes, this could earn the measure a quasi “seal of approval” in the subsequent voters' guide and substantially reduce the legally required signature threshold. The sponsor of such a measure takes a risk in convening the Panel, but the potential payoff could merit doing so, especially if the sponsor takes care in drafting the measure with public scrutiny in mind.<sup>69</sup>

The third process, called a Citizens' Assembly, parallels the aforementioned British Columbia model of the same name. To recap, a legislature can turn over to an Assembly a specific problem—particularly one that might pose a conflict of interest (e.g., electoral and campaign reform). The Assembly then convenes 150 registered voters over eight weekends, possibly spreading them out to permit statewide public hearings or other complementary activities. In the end, the Assembly forwards a recommendation to the legislature, which then passes it along to the electorate for a statewide vote.<sup>70</sup>

The one significant modification we make to the Canadian precedent is to give the Assembly's recommendation a quick “silent approval” process, whereby its proposal goes directly to the ballot *unless* the legislature introduces a measure to block it and receives a majority of votes to do so. This design makes it easier for elected officials to let pass by an Assembly recommendation that serves the general public interest but might harm specific interests, who will have more difficulty mobilizing legislators to “kill” an Assembly recommendation than they would have had simply slowing or blocking its passage on to the voters.<sup>71</sup>

Once approved to appear on the ballot, a measure could also be subject to examination by the fourth proposed process—the Citizens' Initiative Review (CIR). This parallels the Oregon process described earlier, in which a randomly selected body of twenty-four citizens deliberates for a week to develop a one-page analytic statement that appears in the Voters' Guide. As with all five of these processes, an independent board or commission undertakes the logistical task of setting up and convening the deliberation. Such boards could consist of various appointees, but a majority should consist of former CIR members, selected by the CIR participants themselves.<sup>72</sup>

The final proposed process, the Policy Jury, draws on the hypothetical models advanced by Ethan Leib, Kevin O'Leary, and others, as discussed in the previous section. The most radical of the five proposals, the Policy Jury dispenses with both conventional legislative and electoral processes altogether. In their place, it puts a stratified random sample of fifty citizens, which deliberates for two weeks on a specific piece of legislation. If their judgment is final and subject only to judicial review (as in Version 1 in Table 4), then it would be prudent to require a two-thirds majority for passage, as this covers the margin of error for a sample of that size.<sup>73</sup> On the other



hand, if the Policy Jury formed as a result of a petition and requires legislative approval for final passage, then a simple majority or more modest supermajority rule might suffice.

The method of selection of participants for each of these processes would be stratified probability sampling, as illustrated by the Oregon CIR.<sup>74</sup> The preliminary sample would be chosen at random from voter registration lists, and would include the desired number of participants, plus a small number of alternate participants, plus several additional individuals who would be utilized in stratification.<sup>75</sup> The sample would then be *stratified*, or adjusted to ensure that the demographic characteristics of the sample match those of the population.<sup>76</sup> To foster participants' sense of autonomy, participation would be voluntary. Financial compensation (e.g., a stipend equal to the average weekly wage in a given jurisdiction, plus travel expenses) would encourage participation. Replacements for sample members who declined to participate would be chosen in the same manner.

### *How These Designs Address Problems of Direct Democracy*

Showing again our fondness for tabular summary, the advantages of each of the processes for deliberative democracy comes in the form of Table 5. This table shows that not every one of these interventions addresses every one of the problems identified earlier. The CIR, for instance, has no ability to change the constraint of a simple yes/no vote. Moreover, many of the processes have different purposes but yield similar benefits. For example, each process in its own way provides deliberators—if not the wider public—a modicum of training in values analysis.

Some of these benefits are more obvious than others, and one bears special mention. The problem of money in politics has bedeviled many campaign reformers, and the deliberative reforms proposed herein take on this problem of unequal voice in different ways. The Priority Conference gives a microcosm of the public the chance to weigh the gravity of problems more soberly, which makes them less subject to the media campaigns private interests orchestrate to manufacture public outrage or alarm. The Design Panel's "seal of approval" can provide inexpensive credibility to a well-crafted, but underfunded, ballot measure. In a similar way, the Citizens' Assembly and CIR lend deliberative credibility and a powerful voting cue that might overpower paid advertising. Finally, the Policy Jury ignores the campaign season altogether, with only one variant of it involving a highly constrained up-down legislative vote.

### *Challenges and Difficulties*

We present these deliberative designs for direct democracy in a spirit of optimism partly owing to the recent successes of the Citizens' Assembly and Oregon CIR, along with the aforementioned institutionalization of Participatory Budgeting and other new methods of public engagement. That said, we recognize that obstacles stand in the way of implementing such processes, and difficulties lie ahead for those that become institutionalized.

**Table 5.** How Each Type of Random Assembly Brings Direct Elections Closer to Deliberative Democratic Ideals.

Obstacle to Deliberative Analysis	Most Important Process Feature of Random Assembly Type				
	Priority Conference	Design Panel	Citizens' Assembly	Citizens' Initiative Review	Policy Jury
Limited policy knowledge and analytic ability	Improved public understanding of problems at early policymaking stage	Intensive study of problem		–	–
Values confusion	Training in values analysis and time devoted to exploring values				
Constrained by simple yes/no vote	Exploration of the viability of potential solutions	Time to study alternatives and/or modify proposal	Ample time to explore alternatives	–	–
Rarity and challenge of complex arguments	Intensive deliberative process encourages in-depth analysis		Training in argumentation and intensive study of pros and cons, which are then communicated to a wider public		
Partisan electoral cues and low issue awareness	Emphasis in facilitation placed on the importance of independence of judgment			Provides a deliberative voting cue to wider public	Places the decision in the hands of a small deliberative body
Obstacle to Democratic Social Relations	Priority Panel	Design Conference	Citizens' Assembly	Citizens' Initiative Review	Policy Jury
Role of money in politics; unequal political efficacy	Direct public consideration of problems with limited special interest lobbying	Seal of approval counter-balances special interest pressure	Provides alternative voting cue and information to outmuscle paid advertising		Circumvents electoral process
Technical and legal details not understood	Ample time provided to understand complexities			Analysis provided to public in clear language	Ample time provided to understand complexities
Segmentation of media and selectivity bias	Exposure to materials and advocates offering a wide range of perspectives			Providing public with a credible third-party source of information	Exposure to materials and advocates offering a wide range of perspectives
Partisan and cultural divides frame issues	Participants' experience framed as opportunity to act as citizens, capable of transcending conventional lines of political difference			Voters get to see a trans-partisan analysis	Circumvents electoral process

*Implementation and Interfacing with Government Institutions.* The first question concerns how to bring about these reforms. The clearest lesson of past processes is to use existing electoral imperatives to one's advantage. Those random assemblies that have been created, along with the other prominent participatory reforms alluded to earlier, came

about because a particular political party saw an advantage in empowering the public. In countries like Brazil and India, such empowerment pairs with mass mobilization to create a large constituency that takes part in elections partly in appreciation for its expanded influence over local policy. In the Canadian case of the Citizens' Assembly, a party used the deliberative process as an effective campaign pledge that it was willing to deliver once voted into office. It bears mentioning that in the case of the Assembly, it was a right-of-center party that saw the advantage in deliberative reform.

The Oregon CIR case would appear the lone exception to this pattern, in that its proponents directly lobbied a sitting (and divided) legislature to win passage of its process. Considerable compromise went into the legislation to make it acceptable to a legislature strapped for funds, and the CIR remains an unfunded entity that relies on (and, fortunately, receives) private philanthropic financing. Even when it came up for renewal in 2011, it won bipartisan support because both members of both major political parties saw it as a valuable remedy to the status quo.

Regardless of whether championed by the political left, the right, or a trans-partisan coalition, deliberative processes such as these likely benefit from implementation that links them to preexisting processes. As a counterfactual, imagine if the verdict of a criminal jury were not subject to appeal, or if juries assembled in extra-legal settings. The strength of the jury comes partly from the fact that judges call them into being and can, when necessary, review and overturn their verdicts. Moreover, the legislative process itself sets the laws by which juries (via their judges) frame the cases that come before them.

In this same way, the five processes we advocate interlock with existing structures. This provides reassurance to those who want to maintain checks-and-balances even for citizen deliberation. But in a more subtle way, it also provides reassurance to those who believe in—or even work inside of—existing legal and political institutions.

In principle, all five of these random assemblies could operate concurrently and provide meaningful citizen input for every stage of the initiative process. What if fewer than all random-assembly processes could be implemented at once? Priority Conferences and Citizens' Initiative Reviews would likely enhance the deliberative quality of initiative elections in virtually all circumstances, since multiple policy issues nearly always compete for legislative attention. Citizens can almost always be expected to benefit from knowledgeable peers' insights on legislative proposals. Other random-assembly procedures are more likely to contribute meaningfully to citizen empowerment when applied to particular kinds of issues. For example, a Design Panel would be especially useful for recommending revisions to a poorly drafted initiative, a Citizens' Assembly is ideal for addressing issues on which the legislature has a conflict of interest (e.g., term limits and campaign reform),<sup>77</sup> and a Policy Jury is probably best suited to addressing issues on which the wisdom of mass majority opinion is suspect, such as the civil rights of minorities.

*The Legal Content of Ballot Measures.* Nonlawyer participants of random assemblies face challenges in dealing with the legal content of the measures they draft or review. Studies of nonlawyer legislative representatives and research on the Oregon CIR have

highlighted several types of legal information that nonlawyer citizens require in order to make informed decisions about ballot measures. This information includes the policy objectives of the measure; nonlegal alternative means of pursuing those objectives, and reasons for choosing lawmaking rather than those alternatives; an explanation of the nature and likely effects—including unintended effects—of the measure, and the nature and effects of relevant existing laws; how the measure and relevant existing laws apply to particular factual scenarios; definitions of legal terms in the measure and in relevant existing laws; factors courts will consider in interpreting the measure; and bases for legal challenges to the measure, including constitutionality.<sup>78</sup>

The experience of the Oregon CIR suggests that during deliberation, the most effective means of furnishing this legal information to participants is to have lawyer- and social scientist-witnesses present the information in plain language to the participants in two stages.<sup>79</sup> First, near the beginning of the event, these witnesses present to the participants as much of the legal information described above as possible.<sup>80</sup> Then, later in the deliberation, after participants have had an opportunity to practice applying the legal rules of the measure to hypothetical fact patterns, discover previously unforeseen consequences of those rules, and reflect on the measure as one of several policy approaches, the expert witnesses return to answer further legal questions. We believe that assembly participants who receive legal information through this two-stage process will be more likely to craft ballot measures that are consistent with existing law and do not yield unintended legal consequences. Further, we believe that participants in assemblies that review measures will be more likely to oppose measures that are inconsistent with laws in force or that give rise to unintended effects.

If a legally problematic measure does issue from a democratic-deliberative body, however, what is the best way to address the measure's legal infirmities? If enough citizens can be persuaded that the legal problems need attention, another ballot measure could address those problems through amendment or repeal. If the problematic measure is a statute or regulation, the legislature might be persuaded to amend or repeal the measure.<sup>81</sup> However, costs, delay, and institutional barriers reduce the effectiveness of initiative and legislative processes as checks on legally problematic measures. Accordingly, legal infirmities of ballot measures are often addressed in the courts. Kenneth P. Miller concludes that, on balance, US courts have acted effectively to strike down or limit ballot measures that violate constitutional law.<sup>82</sup> If assembly participants believe that their measure is legally sound and has been targeted baselessly in the courts, Mathew Manweller contends that the measure is more likely to be upheld if the participants intervene in the litigation to advocate on behalf of the measure because attorneys general often oppose ballot measures and may not vigorously defend them.<sup>83</sup>

*Training for Deliberation.* Another concern addresses a problem observed in the study of the Oregon CIR's inaugural sessions in 2010.<sup>84</sup> In the Oregon case, the first author of this article and other members of the research team found that the professional advocates who argued for and against specific ballot measures were ill prepared for the type of discussion undertaken at the CIR. More accustomed to freewheeling public forums,

press conferences, and the rapid-fire sound bites of paid advertising and mediated debates, advocates at times could not present their arguments as effectively as their best evidence and reasons would have permitted.

With this problem in mind, random assembly convenors should offer training for advocates well in advance of any event. At a minimum, advocates need a clear overview of the process that lets them know what they need to do to be prepared for sustained debate. More advanced workshops could include training in effective argumentative style, including how to link claims and values to evidence and how to appropriately use emotion in a deliberative process. Former citizen panelists may help in this process, offering advice on what they appreciated or would like to have seen done differently in prior advocate presentations.<sup>85</sup>

What the CIR model featured that others should emulate is a commitment to training the citizen deliberators. In the case of the CIR, the first of five days was spent almost entirely in readying participants for the unusual task that awaited them. One critical aspect of that training that could be improved on concerns how to decipher evidence. Citizen panelists would be aided by exercises showing how to identify the strength or weakness of a claim and recognize misleading or unverifiable claims. A brief lesson on reading statistical reports could also highlight simple tricks for misrepresenting data graphically. If specific reports will prove crucial to the advocates' debate, panelists might also get stronger information about how and by whom those reports were produced. Such training cannot equalize panelists' ability to scrutinize arguments and evidence or raise it to that of the most trained policy analyst, but such training can go a long way toward empowering panelists to make their own independent judgments about advocates' various claims during the course of a deliberative event.

*Co-optation of Assemblies by Powerful Interests.* An important objection to these proposals is that random assemblies could be co-opted by powerful interests. Such co-optation might occur, for example, through elites' bankrolling these expensive deliberative processes or exercising a disproportionate influence over the choice of experts and other sources of information provided to assemblies. We believe that assemblies can be designed to safeguard against such co-optation, as the Oregon CIR demonstrates. For example, the statute authorizing the CIR prevents powerful interests from gaining control over the commission that runs the process by requiring that eight of the eleven commissioners be citizens who served on prior citizen panels or as moderators of those events.<sup>86</sup> The statute further prohibits financial contributions to the CIR fund from political action committees, for-profit corporations, unions, and "any other source the [CIR] commission determines might be used to transfer moneys from" those three categories of institutions.<sup>87</sup> In addition, the statute requires that CIR hearings give "equal time...to proponents and opponents of a measure" and that experts who present information to the panel consist of two chosen by measure proponents and two, chosen by the CIR commission, who oppose the measure.<sup>88</sup> Moreover, in the context of CIR deliberations, attempts to exercise outside or special influence on panelists has a considerable risk of backfiring, as panelists in the 2010 and 2012 panels

have embraced the restrictions against lobbying them outside of their public meetings.<sup>89</sup> Thus, random assemblies have been and can be designed to substantially reduce the risk of their co-optation by elites.

## Conclusion

We end where we began, with the view that the random-sample assembly has returned to us as a viable democratic reform. One can doubt the veracity of our memories of the ancient Greek assemblies or write them off as a cultural aberration, but one cannot likewise dismiss the emergence of new processes like the Citizens' Assemblies or the Citizens' Initiative Review. These innovations should give hope to those who want to see more deliberative democratic reforms and chasten those critics who dismiss such ideas as utopian.

If we are close to implementing more widely reforms such as these, it becomes imperative that we inventory and examine the wider array of possibilities. In that spirit, we have provided five illustrations of how different random assemblies could operate, and we have shown how each meets the criteria for democratic deliberation and can remedy the deficiencies of initiative and referendum elections to bring them closer to the deliberative democratic ideal.

Together these proposed reforms constitute a "real utopia," a set of feasible alterations to existing institutions that make substantial strides toward increasing citizens' capacity for self-government and reducing the influence of elites over direct democratic processes.<sup>90</sup> Our random-assembly proposal embodies several features of what Archon Fung and Erik Olin Wright have called "empowered participatory governance." These include empowering citizens to participate directly in political processes; adopting a practical, problem-solving stance toward institutional reform; improving the deliberative quality of citizens' policy discussions; delegating key policy tasks to citizens while preserving a supervisory role for the state; and designing assemblies to function as "countervailing powers" that thwart the deleterious influence of elites on initiative electoral communication.<sup>91</sup> Within Wright's schema of real-utopian models of social transformation, our proposal exemplifies "symbiotic metamorphosis," an "evolutionary adaptation" of institutions "on the terrain of the state."<sup>92</sup> Although elites participate in our proposed assemblies, they do so under constraints that prevent them from unduly influencing the policy discussion and that substantially augment citizens' autonomy. The assemblies we propose are thus likely to yield meaningful, near-term democratic reforms, while holding out the promise of more profound citizen empowerment in the long run.

The accounts of random assemblies presented here constitute just five particular models, and one can expand much wider the array of possibilities. It is our hope that further experimentation—not just with ideas but with real institutions—will clarify the suitability of these different designs for different cultural and political contexts.

If we had to choose one such process as a top candidate for immediate reform, the Design Panel might be the logical choice. The fact that initiative proponents would foot its bill in exchange for permitting sensible revision to draft ballot measures has a

direct appeal to legislators, who would like to see better legislation put before the public but believe they cannot afford to pay for better deliberation. Its novelty brings it to the top of the list, but at the same time, it bears some resemblance to the negotiations that happen in some jurisdictions between ballot measure proponents and public officials or party organizations. The difference here is that the lay public enters that process, which seems fitting since that same public ultimately has to vote. Far from a revolutionary overhaul of electoral institutions, processes such as this follow the belief that a more deliberative democracy lies nearer the horizon than even its advocates might have dared to imagine.

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49. Miller, *Direct Democracy and the Courts*, 101–23; Matthew Manweller, *The People Versus the Courts: Judicial Review and Direct Democracy in the American Legal System* (Bethesda, MD: Academica Press, 2005), 8.
50. That citizens prioritize information about policy objectives and consequences of ballot measures is evident from studies reporting voters' (or prospective voters') reasons for supporting or opposing ballot measures. See, e.g., Robert J. Blendon, Tami Buhr, Tara Sussman, and John M. Benson, "Massachusetts Health Reform: A Public Perspective from Debate through Implementation," *Health Affairs*, 27, no.6 (2008): w561; Mark Baldassare, *PPIC Statewide Survey: Californians and Their Government, September 2004* (San Francisco: Public Policy Institute of California, 2004), 4–6, accessed 27 January 2012, [http://www.ppic.org/content/pubs/survey/S\\_904MBS.pdf](http://www.ppic.org/content/pubs/survey/S_904MBS.pdf); Mark Dicamillo and Mervin Field, "Health Related Propositions," *Field Poll* 2147, 31 October 2004, accessed 27 January 2012, <http://www.field.com/fieldpollonline/subscribers/RLS2147.pdf>; House Committee on Government Operations, Subcommittee on Commerce, Consumer, and Monetary Affairs, *IRS Administration of Tax Laws Relating to Lobbying: Hearings*, 95th Cong., 2d Sess., 1978, pt. 1: 256, 263. These priorities also appear in the transcripts of deliberations of the 2010 Oregon Citizens' Initiative Review.
51. Gastil et al., "When Good Voters Make Bad Policies"; Philip L. Dubois and Floyd Feeney, *Lawmaking by Initiative: Issues, Options, and Comparisons* (New York: Agathon Press, 1998), 121–22.
52. Thomas E. Cronin, *Direct Democracy: The Politics of Initiative, Referendum, and Recall* (Cambridge, MA: Harvard University Press, 1989), 238; David B. Magleby, *Direct Legislation: Voting on Ballot Propositions in the United States* (Baltimore, MD: Johns Hopkins University Press, 1984), 136–37. However, recent research describes higher voters' guide reading rates than those reported by Cronin and Magleby. See Peter Brien, "Voter Pamphlets: The Next Best Step in Election Reform," *Journal of Legislation* 28 (2002): 101–03.
53. See, e.g., Center for Governmental Studies, "Democracy by Initiative." Philip L. Dubois and Floyd Feeney, *Lawmaking by Initiative: Issues, Options, and Comparisons* (New York: Agathon Press, 1998), 172–73; David B. Magleby, "Let the Voters Decide?" 40.
54. California Commission on Campaign Financing, *Democracy by Initiative: Shaping California's Fourth Branch of Government* (Los Angeles: Center for Responsive Government, 1992), 199–201; Daniel H. Lowenstein, "Campaign Spending and Ballot Propositions: Recent Experience, Public Choice Theory and the First Amendment," *UCLA Law Review* 29 (1982): 519–47; Betty H. Zisk, *Money, Media, and the Grass Roots* (Newbury Park, CA: Sage, 1987), 264.
55. Lyn Carson and Brian Martin, *Random Selection in Politics* (Westport, CT: Praeger, 1999).
56. Josiah Ober, *Mass and Elite in Democratic Athens*, 54–55.
57. Ernest Callenbach and Michael Phillips, *A Citizen Legislature* (Berkeley, CA: Banyan Tree Books, 1985).
58. Bruce Ackerman and James S. Fishkin, *Deliberation Day* (New Haven, CT: Yale University Press, 2004). See also Gastil's linked assemblies and forums in *Democracy in Small Groups*, and Dahl's "minipopulus" in *Democracy and Its Critics*, 340.

59. Burnheim, *Is Democracy Possible?* 106–24.
60. Justin Levitt, “Weighing the Potential of Citizen Redistricting,” *Loyola of Los Angeles Law Review*, 44 (2011): 534–37.
61. Ethan J. Leib, *Deliberative Democracy in America: A Proposal for a Popular Branch of Government* (University Park, PA: Pennsylvania State University Press, 2004), 12. Two interesting details in this proposal are its substantial compensation and its mandatory quality (akin to jury service, which serves as Leib’s most proximate inspiration). For a similar but less-detailed proposal, see Simon Threlkeld, “A Blueprint for Democratic Law-making: Give Citizen Juries the Final Say,” *Social Policy* 28, no. 4 (1998): 5–9.
62. Kevin O’Leary, *Saving Democracy: A Plan for Real Representation in America* (Stanford, CA: Stanford University Press, 2006).
63. For a description and detailed results, see “Citizens’ Assembly on Electoral Reform—Improving Democracy in B.C.,” 2004, accessed 27 January 2012, <http://www.citizen.sassembly.bc.ca/>. See also Mark E. Warren and Hilary Pearse, *Designing Deliberative Democracy: The British Columbia Citizens’ Assembly* (Cambridge: Cambridge University Press, 2008).
64. John Gastil and Katie Knobloch, *Evaluation Report to the Oregon State Legislature on the 2010 Oregon Citizens’ Initiative Review* (Seattle, WA: University of Washington, 2010). Katherine R. Knobloch, John Gastil, Justin Reedy, and Katherine Cramer Walsh, “Did They Deliberate? Applying an Evaluative Model of Democratic Deliberation to the Oregon Citizens’ Initiative Review,” *Journal of Applied Communication Research* (in press).
65. Katherine R. Knobloch, John Gastil, Robert Richards, and Traci Feller, *Preliminary Evaluation Report to the Oregon State Legislature on the 2012 Oregon Citizens’ Initiative Review* (State College, PA: Pennsylvania State University, 2012).
66. These designs are extensions of ideas developed originally in John Gastil, “Giving Power to Public Voice: A Critical Review of Alternative Means of Infusing Citizen Deliberation with Legal Authority or Influence,” in K. O’Doherty and E. Einsiedel, eds., *Publics and Emerging Technologies: Cultures, Contexts, and Challenges* (Vancouver: University of British Columbia Press, 2013), 11–26.
67. Any number of these processes could combine and interlock, in the same way that the Priority Conference can lead to convening a Citizens’ Assembly.
68. An archive of documents and reporting on this process is available at the Center for Deliberative Democracy at <http://cdd.stanford.edu/polls/california>.
69. This process was suggested by an observer at Oregon CIR who wanted to create such a design review process for the city of Boston.
70. One alternative would allow the legislature to simply adopt the proposed legislation, though this would risk the public viewing the Assembly as a tool of the legislature, rather than a conduit to a broader public vote.
71. This idea comes from Jerry Brito, “Running for Cover: The BRAC Commission As a Model for Federal Spending Reform,” *Georgetown Journal of Law and Public Policy* 9 (2011): 131–56.
72. This comes from Ned Crosby’s design for the CIR and similar processes in his book, *Healthy Democracy: Empowering a Clear and Informed Voice of the People* (Edina, MN: Beaver’s Pond Press, 2003).
73. This is discussed in more detail in Gastil, *By Popular Demand*.
74. Gastil and Knobloch, *Evaluation Report to the Oregon State Legislature on the 2010 Oregon Citizens’ Initiative Review*, 19–20.
75. The Oregon process limits selection to the registered voter lists, but a process could expand the franchise to include all persons *eligible* to register. Creating such a list poses technical

- challenges, but juries in the United States draw names from databases that include both registered voters and people with driver's licenses.
76. The Oregon process includes political party registration in its stratification, but many states do not register voters by party. Using party identity and other attitudinal measures increases the risk of strategic behavior on the part of potential participants, who may provide false attitudinal information to skew the attitudinal balance of the sample.
  77. Peter Levine, Archon Fung, and John Gastil, "Future Directions for Public Deliberation," *Journal of Public Deliberation*, 1, issue 1 (2005): article 3, 5, accessed 16 February 2013, <http://www.publicdeliberation.net/jpd/vol1/iss1/art3>.
  78. See Robert Richards, "What Do Citizen Lawmakers Need to Know?" *Slaw.ca*, 5 August 2010, accessed 27 January 2012, <http://www.slw.ca/2010/08/05/what-do-citizen-lawmakers-need-to-know/>.
  79. This intervention by legal experts parallels the use of such experts—in the form of "hir[ing] legal counsel" and "submit[ting] their measures to legislative coun[sel]"—by ballot-measure proponents, as described in Manweller, *The People Versus the Courts*, 66. The expert intervention we describe is intended to recreate for deliberation participants the access to expert legal advice offered by legislative counsel to official legislators who are not lawyers. See Richards, "What Do Citizen Lawmakers Need to Know?"
  80. The lawyers' role is to furnish legal knowledge, while the social scientists' role is answer questions about empirical effects of laws. For example, during the first deliberation of the 2010 Oregon CIR, two social scientists—the director of the Oregon Criminal Justice Commission and a professor of criminology at Portland State University—testified about empirical research concerning the effects of a ballot measure and similar laws.
  81. Manweller, *The People Versus the Courts*, 71.
  82. Miller, *Direct Democracy and the Courts*, 154–55, 184–85. However, other scholars argue that the frequency with which courts invalidate ballot measures evinces bias. See, e.g., Manweller, *The People Versus the Courts*, 220.
  83. Manweller, *The People Versus the Courts*, 76–78.
  84. This discussion is adapted from Gastil and Knobloch, *Evaluation Report*, 45–47.
  85. The organizers of the CIR tried to do this in 2012, and some of the presenters at those CIR panels were better prepared. The problem may, in the end, be less one of organizers failing to offer training and more one of advocates doubting that they need the training—or resisting the very idea of deliberation, as happened with one of the initiative sponsors in 2012. See Jeff Mapes, "Sponsors of Oregon Tax Measure Won't Participate in Citizen Review Panel," *The Oregonian*, 30 July 2012, accessed February 16, 2013, [http://www.oregonlive.com/mapes/index.ssf/2012/07/sponsors\\_of\\_oregon\\_tax\\_measure.html](http://www.oregonlive.com/mapes/index.ssf/2012/07/sponsors_of_oregon_tax_measure.html).
  86. *Oregon Revised Statutes*, sec. 250.137(1).
  87. *Ibid.*, sec. 250.147(2).
  88. *Ibid.*, sec. 250.139(6).
  89. To influence the CIR's judgments, the interest groups need to produce information that the panel can review and verify during its public sessions, and this is done most effectively during the time allotted to those parties.
  90. Wright, *Envisioning Real Utopias*.
  91. Archon Fung and Erik Olin Wright, "Thinking about Empowered Participatory Governance," in Archon Fung and Erik Olin Wright, eds., *Deepening Democracy: Institutional Innovations in Empowered Participatory Governance*, 3–44 (London: Verso, 2003); Wright, *Envisioning Real Utopias*, 160–67.
  92. Wright, *Envisioning Real Utopias*, 304–05.

93. The US federal government's ExpertNet wiki platform is a recent example. See Wendy R. Ginsberg, *The Obama Administration's Open Government Initiative: Issues for Congress* (Washington, DC: Congressional Research Service, 2011), 26–27.
94. See, e.g., Bowler and Donovan, *Demanding Choices*, 55–58.
95. On the systematic distortion of beliefs in initiative elections, see Chris Wells, Justin Reedy, John Gastil, and Carolyn Lee, "Information Distortion and Voting Choices: Assessing the Origins and Effects of Factual Beliefs in an Initiative Election," *Political Psychology* 30 (2009): 953–69. For a broader theoretical account of the power and speed of such distortions, see Dan M. Kahan, Donald Braman, Geoffrey L. Cohen, John Gastil, and Paul Slovic, "Who Fears the HPV Vaccine, Who Doesn't, and Why? An Experimental Study of the Mechanisms of Cultural Cognition," *Law and Human Behavior* 34 (2010): 501–16.
96. Diana C. Mutz, *Hearing the Other Side: Deliberative Versus Participatory Democracy* (Cambridge: Cambridge University Press, 2006).

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