

TORINO TALK ON DELIBERATIVE DEMOCRACY

The first experiments with deliberative democracy were probably the Athenian institutions in the fifth and fourth centuries B.C. There were three of these, and I shall talk about all of them. I begin with the best-known, the *ekklesia* or popular assembly. Throughout the fifth century B.C., the assembly deliberated and decided on all political issues. The system was not a democratic one by our standards, as women and slaves were excluded. Yet it had many of the features of a democracy in our sense of the term. It was certainly not an oligarchy, since all adult male citizens *could* participate. Many of them *did* participate, perhaps on average 6,000 out of 30,000.

I want to present you with two contrasting views about the Athenian democracy. Here is what Pericles said in his eulogy of Athens:

Our public men have, besides politics, their private affairs to attend to, and our ordinary citizens, though occupied with the pursuits of industry, are still fair judges of public matters; for, unlike any other nation, we regard the citizen who takes no part in these duties not as unambitious but as useless, and we are able to judge proposals even if we cannot originate them; instead of looking on discussion as a stumbling-block in the way of action, we think it an indispensable preliminary to any wise action at all. (Thucydides, II.40).

Note the idea that even citizens who lack the capacity to *originate* proposals are able to *evaluate* them. A deliberating body might, in fact, have either of two functions: coming up with good ideas and judging the ideas proposed by others.

More than two thousand years later, James Madison offered a radically different assessment:

Sixty or seventy men may be more properly trusted with a given degree of power than six or seven. But it does not follow that six or seven hundred would be proportionably a better depository. And if we carry on the supposition to six or seven thousand, the whole reasoning ought to be reversed. The truth is that in all cases a certain number at least seems to be necessary to secure the benefits of free consultation and discussion, and to guard against too easy a combination for improper purposes; as, on the other hand, the number ought at most to be kept within a certain limit, in order to avoid the confusion and intemperance of a multitude. In all very numerous assemblies, of whatever character composed, passion never fails to wrest the sceptre from reason. Had every Athenian citizen been a Socrates, every Athenian assembly would still have been a mob. (*Federalist* #55.)

Madison's argument, unlike many other arguments against direct democracy, does not rest on the idea that political decisions ought to be left to the best, who are necessarily few in numbers. Rather he assumes that even if all Athenians had been wise as individuals, they would have made poor decision-makers if assembled in a large body. The reference to "a mob" governed by "passion" makes it clear why he thought this to be the case. Let me note, by the way, that when the Athenian assembly made its most mob-like decision, the decision to execute the eight generals who had failed to rescue survivors after a sea battle, Socrates happened to preside the assembly. He refused to put the proposal to a vote, on the grounds that a collective trial was contrary to the law, but was overruled by the mob.

Madison wrote these words in 1788, to advocate the ratification of the constitution just proposed by the Federal Convention. That body had in theory 55 members, although they never all met at the same time. The number is not far from the "sixty or seventy" that, according to Madison, is a better number than either "six or seven" or "six or seven thousand". The idea seems to be that whereas a small number of individuals would combine to promote their own *interest*, a very large number would yield to *passion*. Between these two extremes, what Madison called "the mild voice of reason" (*Federalist* # 42) might prevail.

I shall return to these questions. First, however, I need to clarify the topic of my talk. I shall discuss phenomena that fall under the headings of both democracy and deliberation. As I shall explain shortly, I distinguish among three forms of democracy. I shall not offer a formal definition of deliberating, except to say that it takes the form of offering *arguments* and *reasons* for or against a policy proposal. The arguments may address either the normative or the causal premises of the proposal. To offer an example, against the proposal of a basic unconditional grant to all citizens one person might argue that it is unfair to ask working citizens to subsidize those who do not want to work, and another that it would not have the effect that its defenders claim it would. Each of these arguments might be met by rebuttals, and those again by counter-rebuttals.

A democratic body need not be deliberative. Rousseau wanted laws to be adopted without prior deliberation, because he thought communication among the voters would enable demagogues to distort the expression of the general will. In some forms of representative democracy, voters have elected their deputies with bound mandates and thus eliminated the point of deliberation among representatives.

Conversely, a deliberating body need not be democratic. Many such bodies are made up of experts, for instance constitutional courts or governing councils of central banks. Although the lessons from these bodies may be relevant to the analysis of democratic deliberation, I shall not refer to them again in this talk. The institution of the jury is more relevant. In its modern form, the jury is certainly a deliberating body. It can hardly be said to be democratic, however. To the extent that jurors are selected by lot, it has a representative aspect, but it is diluted by peremptory challenge of jurors by the parties. Although Tocqueville thought that the American jury was part and parcel of American democracy, his main argument was that it served as a training school for political democracy. I shall return to his claim.

The Athenian jury differed in several respects from the modern one. It was much larger, containing at least 500 members and in important cases as many as 2,500. They were chosen at random from a list of individuals who were to some extent self-selected, but the litigating parties could not influence their composition. In many cases, they judged what we would think of as political matters, and not merely legal issues. An important kind of case was the *graphe paranomon*, an accusation for having made an illegal proposal in the assembly even if the proposal had been passed. Finally, the jurors were discouraged, Aristotle tells us, from deliberating among themselves. They listened to the speakers for the accusation and the defense, and voted by secret ballot over the proposals made by the two sides. We may think of this as a form of deliberative democracy on grounds of the political nature of many cases, the representative nature of the jury, and the fact that jurors made up their minds after listening to adversarial arguments.

I shall consider three kinds of democratic regimes. First there is *direct democracy*, as in the Athenian assembly, in many Swiss cantons, and in the New England town meeting. Second, there are the various forms of *representative democracy* based on elections. To these categories I would add the *citizens' assembly*, whose members are chosen by lottery in the population at large. Historically, the Athenian body of *nomothetai*, or lawgivers, an institution created in the fourth century B.C., is the only important example. They were chosen at random from the same lists that were used to select the jurors. Like the jurors, they served only for one day.

In the contemporary world, citizens' assemblies have been established on an ad-hoc basis several times. I shall describe three instances.

In China in 2005, 250 persons chosen by lottery in the municipality of Zeguo deliberated over one day on the merits and demerits of 30 projects for public works, with the mandate of recommending ten of them for implementation. The ten projects - apparently chosen in a public vote - were approved by the Popular Congress of the region, and several are now being realized.

In Greece in 2006, 153 persons in the municipality of Kourasi, who were volunteers among 1275 citizens chosen by lottery, deliberated for two hours to select the PASOK candidate for the elections of mayor. The candidate who emerged as the winner in the second round of the primaries, which were held by secret ballot, lost by a small margin in the final election.

The most ambitious project was realized over a period of ten months in British Columbia in 2004. 160 citizens were chosen at random to recommend a new electoral system. In January and February they met every other weekend to be instructed in the properties of various electoral systems. In May and June, some fifty popular meetings were held in the province to discuss the various options, each meeting including some of the 160 citizens. In October and November, they met again six times before recommending, by secret ballot, the adoption of the single transferable vote. In the following referendum on the proposal it obtained 57% of the votes, 3% less than it needed to be written into law.

After these historical observations I shall address the normative dimension of the question. *Is deliberative democracy a good thing?* Before I discuss the conditions under which it might be desirable, there is a prior issue that has to be clarified: *good for what?* I shall only discuss whether deliberative democracy is a good system for deciding on matters of public policy. I shall exclude another possible aim, namely the education of the citizens. Tocqueville asserted that although he was not sure whether a civil jury was good for the litigants, he was confident that it was good for the jurors. This may indeed be so, but only on the condition that the jurors believe that their task is to make good decisions. If they were to be told that the main justification for their work as

jurors was its impact on their own character, they would not be motivated to approach the task with *the degree of seriousness* that is a condition for this impact to be produced. Similarly, the adoption of citizens' assemblies or other forms of deliberative democracy can be justified only by an argument that these procedures *produce better decisions* than institutions that are either non-democratic or non-deliberative. The education of the citizens may be a desirable side effect, but cannot be the motivating aim of the institutions.

A deliberative body can have three tasks, ranked from the most to the least ambitious. At one extreme, it may be authorized to make binding decisions and laws. This was the situation of the three Athenian institutions: the assembly, the jury, and the nomothetai, with the exception stemming from the fact that the graphe paranomon allowed the jury to nullify decisions by the assembly. This was also the case in the primary election of PASOK, where the choice of candidate by the citizens' assembly was final.

In modern democracies members of a parliament are often aware of the fact that even if they adopt a law, it may be struck down by judicial review. This awareness may induce them to adopt laws that will please the voters, but which the legislators themselves do not wish to have promulgated. They will engage in make-believe deliberation and offer arguments that they do not believe in. Such tactics are of course common in assemblies, but usually for the purpose of achieving a legislative aim.

A less ambitious task is that of making recommendations to another body, which then has to vote them up or down without the power to make changes. Among the contemporary cases, the one from British Columbia falls in this category. It is not clear to me whether the Popular Congress in China had the power to modify the recommendations by the citizens' assembly.

The second body may or may not itself be allowed to deliberate before voting. In *Oceana*, James Harrington advocated a system that would ban both discussion and the making of counterproposals in the voting body. He cites Sparta as a precedent, but some scholars now believe that the Spartan decision-making body was in fact allowed to deliberate, although not to make counterproposals. Harrington's argument for his bicameral proposal is interesting. He wanted the first assembly to be an elite body whose members would have better causal understanding of the issues, and the second to be a more representative one with better normative claims. Whereas Tocqueville thought that democracies had a sound normative foundation but poor cognitive capacities while the opposite was true of aristocratic regimes, Harrington argued that his system would be virtuous on both counts.

The least ambitious task would be that of a consultative body, whose opinions and recommendations might or might not be taken into account by the deciding body. For all I know, this may have been the case in China. In some cases, workers' councils within firms have had a similar status. The management was free to listen to or ignore their recommendations. Some proposals for corporatist government also fall into this category.

Earlier, I said that deliberation will not produce good decisions unless the participants are motivated to take their task seriously. I believe that a mere consultative role will fail to focus the minds of the participants to the proper degree. Whether they *decide* or *propose to another body that votes* on their proposal is, by comparison, less important. Because the voting body cannot amend their proposals, they have an influence on the outcome that will make them grapple with their task.

Strength of motivation is only the first condition for successful deliberative democracy. Another condition is that the motivation be *public-spirited*. A third condition is that the participants be *well informed*.

Earlier, discussing Madison, I distinguished among three motivations: interest, passion and reason. What interest and passion mean, is reasonably clear. By reason, again following Madison, I have in mind a concern with "the rights of [others] or the good of the whole" (*Federalist* # 10). Public policy has to be designed with the common good in mind, while also respecting individual rights. The question is how one can design a deliberative body so as to minimize the impact of interest and passion on the decisions, and to enhance that of reason. As we have seen, Madison argued that the size of the deliberative body was an important factor, but there are other questions as well. The most important ones are perhaps the issue of *closed versus public debates* and of *secret versus public voting*.

The method traditionally used to minimize the role of personal or group interest, namely publicity of the debates, also tends to stimulate the vanity and other passions of the participants. As Madison said later about the debates behind closed doors at the Federal Convention, "had the members committed themselves publicly at first, they would have afterwards supposed consistency required them to maintain their ground, whereas by secret discussion no man felt himself obliged to retain his opinions any longer than he was satisfied of their

propriety and truth, and was open to the force of argument ». By stimulating the desire to appear consistent in the eyes of the public, publicity lowers the quality of deliberation. At the same time, as Jeremy Bentham relentlessly emphasized, publicity prevents the participants from promoting their own interest, or at last from doing it too crudely and visibly. As an American judge later put it, “Sunlight is the best disinfectant”.

As I just mentioned, publicity of the debates does not prevent arguments and proposals that are ultimately rooted in interest. Although publicity forces the participants to propose impartial arguments for their view, there are so many notions of impartiality that most speakers will be able to find one that also suits their interest. Thus at the Federal Convention in Philadelphia, both the small and the large states were able to make impartial arguments for the views they favored on the representation of the states in the Senate. The small states based their claims for equal representation on the equality of the *states*, whereas the large states argued for proportional representation as the only solution consistent with the equal influence of all *individuals*. It seems likely that these impartial arguments were, to some extent, hypocritical.

Deliberation behind closed doors has two distinct effects. On the one hand, as Madison said, it improves the quality of argument. On the other hand, it has a tendency to transform arguing into interest-based bargaining. One can avoid the second effect if the interests of the participants *have no purchase* on the issues to be decided. In the case of British Columbia, it is hard to imagine that any members of the Citizens’ assembly had a personal interest in any particular voting system. By contrast, one can easily imagine that the 250 Chinese citizens had different interests in the 30 projects that were under discussion, and voted as a function of their interest. The fact that their vote seems to have been public may of course have counteracted any such tendency.

As this last remark implies, the choice between publicity and secrecy applies to voting as well as to debates. The main argument for public voting is that it eliminates the kind of hypocrisy that takes the form of arguing for one option and voting for another. The main argument for secret voting is that it eliminates any scope for threats and bribery in the voting process and reduces the dangers of conformism. It should be added, however, that if the participants are chosen by a lottery and interact only for a short time, these risks are likely to be less important than if they are elected by a constituency and have a long tenure. As with members of a jury, they will be drawn from the population at large and return to it once they have done their job. A drawback is of course that compared to elected politicians they will have less opportunity to learn on the job and to improve their knowledge and skills.

Another advantage of choosing the participants by a lottery is that it tends to produce diversity, which in turns tends to improve the quality of decisions. Whereas electoral systems often produce an assembly in which lawyers are overrepresented and farmers and workers underrepresented, selection by lottery will produce a more diverse group. Suppose, for the sake of argument, that representatives chosen by elections are on average more competent *as individuals* than those chosen by a lottery from the population at large. The latter may nevertheless perform better *as a group*. In his recent book *The Difference*, Scott Page shows that under specific conditions one can prove a more general form of the following statement:

Suppose that in a group of 1000 individuals you choose the 100 who are most competent and ask them to solve a given problem. Alternatively, you might choose 100 individuals at random, and ask them to solve the same problem. The second group will *always* perform better than the first.

This sounds wonderful, and perhaps it is. A problem, on which little progress has been made so far, is how to identify whether the conditions under which the theorem holds are satisfied in any given case. Among the Athenian nomothetai and among the members in the 2006 Greek primary assemblies, the element of self-selection may have reduced the diversity of the final body so much that the conditions failed to obtain. To ensure sufficient diversity, one might have to *make participation compulsory* for those chosen by the lottery, as it is, in principle at least, for jury service.

Hence we see that random choice of participants could have two distinct desirable effects. For one thing, it improves the quality of decisions by ensuring greater diversity. For another, random choice protects the participants against pressure by ensuring anonymity. *The arguments will be better, and only arguments will count*. The procedure might, therefore, have some of the properties of the “ideal speech situation” described by Jürgen Habermas.

It is not easy to speculate in the abstract concerning the optimal size of a deliberative body. If deliberation is to take the form of a discussion *among* the participants, the body cannot be very large. The Federal Convention, with its 55 delegates, provides a model of this case. If it takes the form of a discussion *before* the

participants it could be quite large. The Athenian juries, which had up to 2,500 members, provide a model of this case. The body could also be quite large if the discussion takes place among a self-selected subset of the participants, all of whom have the right to vote. The French Constituent Assembly of 1789-1791, which had 1200 delegates, provides a model of this mixed case. Although most delegates spoke up at least once during these two years and about one fifth at least three times, the debates were dominated by about 80 speakers.

Any of these models might function well. There is, however, a general problem, first identified by Bentham, that counts against large bodies. It stems from what is called, in the technical literature, "informational free riding". The larger the body, the greater is the tendency for each member to rely on the efforts of other members to inform themselves about the issues. Since information is a public good, there will be a tendency for too little of it to be produced, and the tendency will be more marked if the assembly is large. For this reason, Bentham warned Louis XVI that an assembly of 1200 delegates might be too large.

I conclude with a warning and on a note of mixed skepticism and optimism. We should be wary of drawing any conclusions from the experiments with citizens' assemblies, *precisely because they are experiments*. In an experimental situation, participants will often be highly motivated because they are at center of everybody's attention. It is not clear, however, that the extraordinary level of commitment demanded, for example, by the British Columbia experiment could be sustained if this mode of decision-making were to become a routine procedure. As Oscar Wilde is reported to have said, the problem with socialism is that there are only seven evenings in the week. Attempts to realize deliberative democracy through citizens' assemblies on a large scale might run into the same problem. Yet the Athenian nomothetai seemed to have functioned well for the greater part of a century. It might be worthwhile to look closely at how they managed to do so.