

# DEMOCRACY, EPISTEMIC VALUE, AND POLITICAL EQUALITY: A NEW MODEL OF EPISTEMIC PARTICIPATORY DEMOCRACY\*

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## ABSTRACT

Participatory democracy is better off with a serious consideration of epistemic instrumental value and political equality. First, I argue that democracy is justified, in part, on its epistemic instrumental value. I also contend that the need to accommodate the epistemic value with the principle of equal political participation is only compatible with a standard of epistemic modesty which applies at the collective level, and not at the level of individual participation. Second, I explore the epistemic objections to direct democracy (as practiced in countries such as Switzerland and Uruguay), and argue that only a new model of participatory democracy would be consistent with the epistemic modesty standard required by my account of legitimacy. Third, I propose a set of institutions that have the aim of fostering, in a structural way, autonomous, informed, and public-oriented citizen participation. I contend that those institutions delineate a new model of epistemic participatory democracy. Finally, conclusions are presented.

## KEYWORDS

Epistemic participatory democracy, citizen-initiated direct democracy, democratic innovations, epistemic modesty, democratic legitimacy

## DEMOCRACY AND EPISTEMIC VALUE

When we ask whether democracy has an epistemic dimension, the question of how a democratic system manages the acquisition of knowledge emerges. *Knowledge*, here, will be considered as a justified true belief which is not caused by chance, and democracy will be understood as the equal allocation of voting rights to all adult citizens for collective decision-making. There are at least two general versions of the epistemic

conception of democracy. The first version is a purely epistemic conception. In this conception, the legitimacy of democracy is justified by its outcomes: it is argued that democracy instrumentally performs better than any other form of government or regime (Arneson, 2004). The second is a mixed conception: democracy is justified because it has good epistemic virtues in the long term and also because it honors procedural values such as equal treatment in the allocation of political rights and values such as freedom of choice and freedom of expression. In this second conception, the equal allocation of political rights is justified both by its epistemic virtues and because it honors the equal dignity and autonomy of citizens. Both dimensions are inherent and inseparable from the legitimacy of democracy.

The purely epistemic conception does not stand scrutiny. The legitimacy of a democratic regime cannot be grounded *only* in its epistemic value. If only the achievement of the best decision matters, or the best set of outcomes, then democracy would not be the best instrumental procedure, but the government of experts (or *epistocracy*, as Estlund famously labeled it). This is so because grounding legitimacy exclusively in the epistemic force of a political regime necessarily has two consequences. First, the epistemic standard is raised to the highest level: what is aimed for is the best conceivable outcome, not a good enough one. Second, the epistemic standard applies to individual participants and not only to collective decisions. These two consequences imply that if we could disenfranchise completely ignorant or morally-bject people, then the system would be wiser than one fully inclusive. If the task is to ensure the maximum probability of achieving the “best decision” or set of outcomes, then democracy would not be justified, since it is always possible to achieve better outcomes by excluding either fully ignorant or morally-depraved voters (Brennan, 2012b). The epistemic dimension alone has, therefore, an epistocratic drift.

Hélène Landemore (2013) explicitly defends a mixed conception, but questions the epistocratic drift of the epistemic dimension. She has argued that a fully inclusive procedure tends to reach better decisions in the long run than any alternative system of government. She grounds her argument on two theorems: the “diversity trumps ability” theorem (Hong and Page, 2001; 2004), which deals with the ability to find solutions to practical problems; and the “miracle of aggregation” or the “diversity prediction theorem,” which deals with empirical predictions (Hong and Page, 2012). In the first theorem, Hong and Page (2004) show that when the task is to solve a common practical problem, groups of people with

poorer average cognitive ability, but with greater cognitive diversity (in terms of perspectives and heuristic approaches), perform better than groups of people with a higher average cognitive ability but less cognitive diversity. The second theorem shows that larger groups whose members have diverse predictive models perform better than groups whose members have more homogeneous predictive heuristics. Since numbers are correlated with cognitive diversity, contends Landemore, an inclusive democratic procedure is the better choice.

The first theorem assumes a set of assumptions that are hard to extrapolate to democracy. First, it is unclear how the theorem justifies the participation of all on an equal footing –typical of democracy- rather than a system where experts listen to a large and cognitive diverse group of people. The “diversity trumps ability” theorem involves people with different cognitive perspectives and heuristics who share the same practical purpose and reach an innovative solution by gradual escalation (it is therefore assumed that participants communicate with each other). The achieved solution by gradual escalation is a kind of “Eureka” solution. But this model, hypothetically, can be implemented either by a democratic procedure, either by an expert system with consultation procedures, because the important thing in the model is not *who* makes the final decision, but *how* they get to it. Including more and more advisory participants is not exactly identical to deepening democracy.

There is also a second problem. One of the conditions of the theorem is that all participants “*are smart enough.*” But this raises the following question: what does it mean to be smart *enough*? The theorem does not specify a minimum threshold of intelligence, and Landemore assumes, perhaps for epistemic charity, that all people are located beyond that threshold. But charity is appropriate -or at least not so uncontroversial- for the solution of moral conflicts, not for the solution of complex technical tasks, the ones that are involved in the theorem. If the task is difficult and complex, introducing more and more people with unsophisticated but differentiated cognitive skills will not improve the performance of the group, no matter how diverse they are.

With the miracle of aggregation -or diversity prediction theorem- something similar happens. The theorem does not assert, without further specification, that it is always better to have larger and cognitive diverse groups in order to make better predictions. The theorem does not prove

that individual ability has no relevance in predictions, and that the prediction of the crowd is “always” more accurate than the one made by an individual or a group of experts. According to the theorem, the performance of the crowd is a function of individual ability *and* predictive diversity. And it can happen, in fact, that an individual or a subgroup guesses systematically better predictions than the crowd, since knowledge is not normally distributed in the crowd. The model itself doesn’t justify equal voting rights typical of democracy, because if one could discern those with the most accurate predictive models, then the crowd would be more successful under a scheme of aggregation in which the most competent have a higher weight than the less competent.

In short, the aim of anchoring the legitimacy of democracy *only* in the epistemic value of the procedure does not have enough support: beneath the clefts of the argumentative plot lurks the government of experts. Democratic legitimacy cannot be justified solely on the epistemic value of the procedure; the epistemic value must necessarily be modest (that is, it should aim, with a probability better than random, to achieve *enough good* decisions in the long run, even if they are not the best ones); and that standard of epistemic modesty is attributable to the collective level, not to the level of individual performance.

David Estlund (2008) also advocates a mixed conception of democratic legitimacy, but -like Landemore- also opposes the idea that the epistemic dimension itself has an epistocratic drift. His argument, however, is a bit more sophisticated. According to Estlund, the epistemic dimension of the procedure has priority over the value of equal treatment in political participation. Political equality (labeled “procedural fairness”), says Estlund, has only an *occasional* value: it appears where it is not possible to reach an agreement between reasonable people on the best outcome. Since any attempt to single out who are the experts raises reasonable objections, the justification of the political regime must necessarily rest, by default, on the value of equality of treatment, which displays equal voting rights for all adults. Democracy collapses therefore in an inclusive procedure because it is not possible to reach a reasonable agreement on who are the wise or the experts. This is the core of Estlund’s argument.

Now, if the government of experts is not justifiable because it cannot be subject to a reasonable agreement, we still might wonder whether the disenfranchisement of the unreasonable could be justified. Why not exclude those who defend slavery, terrorism, or embrace religious intolerance? Or, in a less radical –and widespread- way, why not suppress the voting rights of those who have committed serious crimes, or those

who lack basic intellectual skills (as children, or the insane)? Nothing in the argument of reasonableness opposes these exclusions. It is true that a test or exam of reasonableness would face huge practical obstacles in defining exactly where the line between the reasonable and the unreasonable lies, and how to track sincere preferences or judgments, given that most people will strategically conceal their true preferences. The technical hurdles of implementation would eventually exclude many reasonable people and enable many of the unreasonable, who would lie in their responses just to have more political power. However, these practical hindrances would not suffice to show that the equal allocation of rights – typical of democracy – would be acceptable for reasonable people. Only it would show that reasonable people will face hard barriers in choosing between a) a system that gives equal rights to every adult – even unreasonable ones – and b) a system that defines objective criteria for disenfranchising the unreasonable, because both schemes are subject to reasonable objections. And in the absence of uncontroversial evidence, it is always possible to argue that the epistemic damage caused by a democratic regime is greater than the one caused by a test of reasonableness (Brennan, 2012b).

Jason Brennan is right, therefore, in arguing that the epistemic dimension alone necessarily collapses in a government of experts. Neither Landmore nor Estlund succeed in their attempt to defeat the epistocratic drift on exclusively epistemic grounds. Democracy must necessarily rest also in the value of equal political participation, which is a source of value in itself and poses limits to the slope leading to epistocracy. However, once we introduce procedural equality in the formula, we are bound to moderate the epistemic commitment to a *satisficing* one (Simon, 1956): it is not necessary to reach the best set of outcomes: enough good decisions or outcomes would be an acceptable threshold. This also implies that the epistemic value required for achieving legitimacy only needs to reach a modest epistemic value “at the collective level”, regardless of how many people honor their individual epistemic duties at every voting opportunity.

It is useful to consider this possibility with an equivalent example that involves moral duties – instead of epistemic ones. Suppose an ambulance transporting a critically ill patient is stranded by a wrong maneuver of his driver, in a ditch in front of a bar. At the door of the bar, there are many people smoking and talking, and no one bothers to help release the

ambulance, although they are aware (they can hear the driver's shouts) that the patient's life is at risk. Yet, no one would be able to lift the ambulance alone; to release the ambulance the help of several people is needed. Suppose that people in the bar, at least, have the individual duty to show a willingness to cooperate, such that it signals a predisposition that could prompt the cooperation of others. Suppose, then, that all people have, at least, an individual duty to show a willingness to contribute, and a moral duty to help when others also show up or signal their good will. Assuming that the ambulance is so heavy that lifting it necessarily requires the help of "all" who are at the door of the bar, it can happen that some people cooperate while others not. If this happens, the outcome is a collective failure: none (or very few) cooperate and therefore the ambulance is not released and the patient ends up dying. A classic philosophical problem arises: no individual is fully responsible for the collective outcome, and from the standpoint of moral philosophy, it is still doubtful that individuals are responsible at all, since the individual duty to cooperate only appears if others cooperate.

For those who defend epistocracy or the government experts, it is natural to think that the epistemic track of democracy works equivalently to this example. Instead of a moral failure, the democratic regime would display an epistemic failure: voters would have incentives to free-ride in their epistemic duties and vote without adequate information (on epistemic free-riding see List and Pettit, 2004 and Elster, 2010). Epistemic failure is possible under the current democratic arrangements, as shown by the election of Donald Trump. However, the analogy may not be so accurate under different –and more democratic– institutions, as the ones I will develop below. The most appropriate way to put the example under suitable democratic arrangements is that of an ambulance, stranded in front of a bar, which requires the help of a certain number of people (but not all) to be lifted. Everyone has a duty to show up and be willing to cooperate, but if only some of them help, the ambulance will end up being released. The non-compliance by some people of the duty to show up and help would not be enough to stop the release of the ambulance. The free-riding behavior of some people is morally reprehensible, but despite this, we still get a morally acceptable outcome. I believe that the analogy can be extrapolated to epistemic cases, in particular, with the epistemic individual duties involved in a proper democratic regime. Although some people are grossly incompetent and fail to comply with the moral duty to "vote with enough information," a proper democratic regime can keep achieving good decisions or outcomes if enough people contribute with

their share of cognitive effort in the voting process and others take advantage of that effort. Thus, democracy can continue to display a modest epistemic value at the collective level although, at the individual level, many people breach their epistemic duties.

For sure there is a threshold beyond which the aggregation of ignorant votes would eventually frustrate the collective commitment to achieving sufficiently good decisions, just as the ambulance would not be released if the number of people who decide to help is not enough. I don't deny this possibility. But I contend that the equal allocation of voting rights, under the set of institutions proposed in this paper, which encourage the emergence of autonomous, well-informed, and public-oriented preferences, is far from that threshold. If we can preach, with a probability better than random, the achievement of good enough decisions at the collective level, then the procedure must be accepted, not for purely epistemic reasons, but for a host of reasons. We must also accommodate other values, such as equal dignity and freedom of choice, which put limits on the government of experts or epistocracy.

#### **EPISTEMIC MODESTY AND PARTICIPATORY DEMOCRACY: FRIENDS OR ENEMIES?**

Once we recognize that the legitimacy of democracy has an epistemic dimension that must be accommodated with equal political participation, a practical question emerges: under what specific institutions can democracy reach the threshold of epistemic modesty?

Most epistemic conceptions of democracy are reluctant to include as a necessary element of democratic legitimacy the mechanisms of direct democracy initiated from below, in the form of popular citizen initiatives. This reluctance is understandable for several reasons. First, surveys consistently show information poverty of the average voter, regardless of the context. Secondly, the way countries regulate institutions of direct democracy varies a great deal, and the few countries in the world that have citizen initiatives regulate them in idiosyncratic terms. To postulate a normative model for the rest of the world from political systems that exhibit very few countries with very different formats may be too demanding and perhaps a little extravagant. And thirdly, there is general agreement, of a practical nature, that political representation is a

necessary element of any democratic political regime: while a mass society cannot function without representative government schemes (at least for bureaucratic decision-making), a mass society can function perfectly well without direct democracy mechanisms. This consensus amounts to a kind of incompletely theorized agreement (Sunstein, 1999) that puts political representation in a privileged site from a pragmatic point of view. However, this pragmatic primacy quickly fuels the belief that political representation is also a sufficient condition of democratic legitimacy.

In this section I want to challenge the common belief that political representation is a *sufficient* element of democratic legitimacy. I want to argue that the principle of equal political participation that partly justifies the legitimacy of democracy demands citizen-initiated mechanisms of direct democracy with innovations I will develop further. And even more: I want to argue that, only with this set of institutions, democracy would be consistent with the parameter of epistemic modesty demanded by a mixed account of legitimacy. I will call “epistemic participatory democracy” this non-ideal model I want to single out as an intermediate alternative to pure representative democracy and classical forms of participatory democracy. But before proceeding to delineate the institutions of this new model, I want to explain why the citizen-initiated mechanisms of direct democracy, in countries that accept them, are faulty or out of order.

#### *Mechanisms “from below”: Switzerland and Uruguay*

There are two institutions of citizen-initiated mechanisms of direct democracy (or direct democracy “from below”): a) the citizen initiative, through which a number of citizens can demand to submit to popular vote a legislative bill or a constitutional amendment, and b) the abrogative referendum (or “reactive” referendums, or referendums “against” legal statutes), through which a number of citizens can demand that the government submit to popular vote a legal statute that has been approved by the Legislature and promulgated by the Executive (or an executive order issued by the Executive).

In Switzerland, there are two instruments of citizen-initiated mechanisms of direct democracy: the abrogative referendum and the other is the popular initiative. The abrogative referendum is a defensive weapon through which the citizenry can block a legal statute passed by the parliament that generates widespread opposition or controversy. Thus, Article 141 of the Swiss Constitution stipulates that within a hundred days

after the publication of the statute in the official gazette, if fifty thousand signatures are obtained, the statute has to be put to a popular vote. Since 2000, the government has 40 days (since the signatures are certified) to submit it to a popular vote (Schwartz et. al., 2011). Only the budget law cannot be attacked by this reactive mechanism (Altman, 2008).

The abrogative referendum transforms the dynamic of communication between representatives and citizens. Indeed, the threat that the citizenry could issue a reactive referendum compels parliamentary groups to approve moderate laws in order to avoid anyone being sufficiently annoyed to collect fifty thousand signatures. In fact, parliamentarians in Switzerland annually process hundreds of laws and over the course of a year, only two or three laws ever go to a popular vote. Thanks to this tool, people can avoid strategic manipulation of the agenda and veto any proposals that do not have popular support. Since laws are always passed with the latent threat of a possible referendum, legislators are often pressed to “cross” the borders of their partisan group and search for specific alliances with other parties or groups of civil society, thus promoting increased communication between the legislature and the public.

Uruguay has a similar instrument, but to activate a referendum there, 25% of signatures are required. The process of gathering signatures is implemented in two stages: in a first stage, 2% of registered voters present the proposal (within the 50 days after a legal statute or a decree comes into force). Once the proposal is received, the proponents of the proposal have 150 days to collect the signatures of 25% of voters (roughly equivalent to 500,000 people). On one-day a “pre-referendum” is held, where voters cast their “signature” or approval for the proposal. If 25% of signatures are gathered, then a referendum will be held within 120 days. Unlike the Swiss case, where the abrogative referendum can be used to veto tax laws (but not the budget law), the abrogative referendum in Uruguay cannot be used to veto tax laws nor laws that were approved under the President’s exclusive prerogative of legislative initiative (this includes the budget law).

Then we have the so-called popular or citizen initiatives, through which citizens can put forward a bill or a constitutional amendment. If the Legislature rejects it or doesn’t consider it within a certain period of time, the bill or the constitutional amendment is subjected to popular vote. In Switzerland, the popular initiative is only recognized at the federal level

for constitutional amendments (total or partial). Legal citizen initiatives are not permitted at the federal level. At the cantonal level, however, citizens can promote the popular initiative for new cantonal laws. This system generates, in practice, some dysfunctions because, at the federal level, people may still issue legislative proposals for partial modification of the constitution through popular initiatives, leading to a situation in which many policy proposals that could be legislated are introduced into the Constitution, turning it into a code of precise rules rather than a charter of abstract principles.

According to Article 139 of the Swiss Constitution, the citizenry needs to collect 100,000 signatures in order to propose a specific constitutional amendment. The Parliament receives the proposal, analyzes its validity, and once it is confirmed, the Parliament may either reject it, accept it, or omit considering it. Unity of subject matter is required, which means that an initiative must not include several different proposals. The purpose of this is to ensure that the clear will of the people can be expressed: without a single subject, the electorate might accept something with which they do not agree. Since 2000, some content limitations also exist: binding provisions of international treaties cannot be subjected to citizen-initiated referendums. If Parliament accepts the validity of the initiative, it must submit it to popular vote within 39 months (three years and three months). In addition to the popular initiative, the government may propose a counter proposal. The people, on the day of the vote, can say “yes” to the initiative and the counterproposal, can reject both, or can say “yes” to one and “no” to the other. As it is theoretically possible that both the citizen initiative and the counterproposal could be approved, people are asked what is called the “tiebreaker question,” in which they should answer which of the two proposals they prefer in the case both were approved (Ordás, 2012: 41). The initiative that receives an absolute majority of votes throughout the country *and* an absolute majority of votes in more than half of the cantons will come into force.

In Uruguay, unlike Switzerland, there is the citizen initiative for constitutional amendments and for legal amendments (regulated by legal statute 17,244, although it's not used). Unlike Switzerland, the number of signatures required for the first type of citizen initiative is 10% of voters (approximately 300,000 signatures), while the requirement for exercising the second is 25% (the signatures are collected as required by the abrogative referendum: 2 % of registered voters to put forward the initiative, a pre-referendum day held within a period of 150 days that wins 25% of signatures, and the referendum). The threshold for a legal popular

initiative is so demanding that the mechanism has become obsolete in practice (Lissidini, 2008: 40). As for the popular initiative for constitutional reform, once the collection of 10% of the signatures are certified, the Congress, in joint session, can make a counterproposal, which is subjected to a popular vote *with* the citizen's popular initiative. The referendum in this case is held concurrently with presidential elections. Finally, in Uruguay, there is a curious rule regarding citizen initiatives for constitutional amendments: voters can only vote "Yes." Those who wish to reject a proposal, must simply abstain from voting in the referendum. Those who vote "Yes" must represent an absolute majority of voters in the presidential election. In addition, voters must exceed 35% of the electoral roll (otherwise, the initiative is considered not approved). This system privileges the *statu quo* because voters who abstain for reasons of ignorance or uncertainty are counted as rejecting the initiative.

*Epistemic objections against citizen-initiated mechanisms of direct democracy*

One of the most common objections against citizen-initiated mechanisms of direct democracy underscores the lacking information of voters. In that vein, there are multiple surveys and studies that show the widespread ignorance of voters (see Delli Carpini and Keeter, 1996; Bartels, 2008; Caplan, 2008; Somin, 2013). Apparently, it is a kind of *rational* ignorance: citizens have inadequate incentives to invest time in acquiring information and learning, since their votes have a minimal ability to influence the outcome (Downs, 1957). In the case of citizen-initiated referendums, there are two features that aggravate the situation (Cronin, 1989): the absence of political parties and the complexity of the proposals. The first feature implies that voters don't receive adequate "signals" or "indications" (heuristic cues), as they are usually brought in by political parties when public offices are at stake. This happens because most referendum campaigns are sponsored by special interest groups that are motivated by specific issues or commitments. These groups are dissolved once the referendum ends. Since the interests and commitments of these groups are less known to the citizenry than the ideology of political parties, the signals they provide are less informative and probably

less reliable for voters than party signals (Gerber and Lupia, 1999: 148). To complicate matters, the policy proposals sponsored by popular initiatives are generally long, technical, and complex.

Now, the argument that voters are incompetent on average must face several reasonable objections. First, the fact that the average voter exhibits a very poor level of knowledge on key aspects of the political system is not sufficient to prove that citizens are incompetent. For example, it may happen that a voter knows, say, 20 facts in order to base his or her vote on a specific issue. But the question to ask is whether the full knowledge of these facts is necessary to issue a qualified vote. If only a subset of facts is enough, then the voter doesn't need to be fully informed (Lupia, 1994). When citizens can rely on political party's public statements around the issue at stake in the popular initiative, then they might be able to vote with enough knowledge, even if they are not able to answer a technical quiz on the matter. And the testimony of others, under certain conditions, is a perfectly valid epistemic route to found a judgment (Coady, 1992). When there are clear public statements around the issue and people can discern which political party is for or against the proposal, voters may vote with adequate knowledge even if they don't know the details of the proposals (Lupia, 1994).

Another of the most common epistemic objections to direct democracy "from below" raises the issue of collective irrationalities. It is argued from that perspective that if citizens were to vote on each and every political decision, then the set of enacted policies would cease to be internally consistent. People would pay too much attention to each specific issue without analyzing how these issues are interrelated (ideologically and performatively) with other issues or dimensions of public policy or on other policies. Phillip Pettit (2001, 2006, 2008, 2012) has strongly criticized popular initiatives on this basis. Pettit offers the following scenario of proposals submitted to a referendum: 1) whether to maintain the current level of tax burden, 2) whether or not to increase spending on defense and armed forces, 3) whether or not to increase spending on education, and 4) whether to approve or not an austere budget. All people agree that if we adopt an austere budget and maintain the current tax burden, then we cannot increase spending on education and defense at the same time. We are bound to choose just one from the list of proposals. Suppose that three groups of people vote for these specific issues in this way:

#### Table 1. Discursive dilemma

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<b>Voter</b>	<i>Keep tax burden level</i>	<i>Raise defense spending</i>	<i>Raise education spending</i>	<i>Conclusion: approve an austere budget</i>
A	Yes	Yes	No	Yes
B	Yes	No	Yes	Yes
C	No (Raise tax burden)	Yes	Yes	No (raise spending)
<b>Total</b>	2 Yes 1 No	2 Yes 1 No	2 Yes 1 No	2 Yes 1 No

Source: Pettit, 2008.

This is an example of the famous discursive dilemma (or paradox Poisson/Vacca): a majority vote to maintain current levels of tax pressure, a majority vote to increase defense spending, a majority vote to increase the spending on education, and a majority vote to pass an austere budget. But the collective outcome is inconsistent with individual judgments (nobody prefers the outcome, nobody defends it). What is more problematic: the outcome is untenable in practice, since the budget is not enough to implement both public policies (education and defense spending). The lesson offered in this example, Pettit says, is that individual rationality is no guarantee of collective rationality under a system of popular initiatives.

Pettit acknowledges that the assemblies and councils of ministers may also incur in collective irrationalities, but the small-scale scenario, in which participants discuss with each other many proposals at the same time, seems to overcome it (Schwartz, 1977). In particular, the danger of collective irrationalities is supposed to be avoided because representatives can exchange proposals or negotiate strategically with each other. If, for example, the participant A tells B that she will not vote to increase defense spending if B votes for raising the tax burden, then voter A can end up – for strategic reasons- accepting a second-best collective agreement that leads to a higher tax burden with an increased education budget. Or you can ask A to vote to increase education spending (and not defense) in exchange for a vote in a future issue that is of great interest to A. This type of strategic arrangements is much more difficult in large populations, because it is very costly, when not impossible, to learn about the preferences of others and negotiate exchanges of votes among such large groups.

However, Pettit forgets that the voting method (simultaneous or sequential) and the character of the alternatives (if they are simple or complex) are two crucial aspects. Pettit ignores the possibility that people

may uphold preferences on complex alternatives (alternatives that have two or more connected issues). It is perfectly plausible that participants uphold preference's profiles with these eight complex alternatives:

Table 2. Staggered voting on complex

**Table 2. Staggered voting on complex alternatives**

	<b>A</b>	<b>B</b>	<b>C</b>
1º	YYN	YNY	NYY
2º	YNY	YYN	NYN
3º	NYY	NYY	NNY
4º	NYN	NNY	YYN
5º	NNY	NYN	YNY
6º	NNN	NNN	NNN
7º	YNN	YNN	YNN
8º	YYY	YYY	YYY

If participants go along issue by issue in a staggered manner, voting firstly on one issue, secondly on another, and so on, the process would never lead to three “Yes” answers (YYY, the collectively irrational outcome). If voters begin first with the question of whether or not to maintain the current tax burden, and then immediately after, vote for another second issue, and then for the last one, the collective result would be Yes, Yes, No. If they start with the third question (whether to increase spending on education or not), and then vote on separate moments the other two issues, the result would be Yes, No, Yes. And if they start voting on whether to increase spending on defense or not, and then vote for the other two issues in the same way, the result would be Yes, Yes, No.. If participants vote issue by issue taking into account previous results, complex alternatives will be discarded in the successive ballots that include losers in each issue. The shorter time period between the votes on the issues, the more likely it is that more voters would take into account the dependence between issues and it is less likely that inconsistent

policies would emerge. This means that collective irrationality depends only on the fact that participants vote simultaneously on the three interconnected issues (or vote in a staggered way but separated by long time periods, so they are less likely to perceive the links between each question).

Collective irrationalities are also hard to occur if voters are asked to rank all the complex alternatives from the highest to the lowest, in order of preference and apply voting methods with multiple alternatives (such as Condorcet, Borda, Kemeny, Nanson, etc.). In our example, a Yes, Yes, No result would be the Borda and Condorcet winner. It is true that if the issues are numerous, the number of complex alternatives would expand exponentially, making the evaluation of them very costly in cognitive terms. The conclusion of all these scenarios should be clear: if you wanted to vote for two related issues, the most reasonable way would be to a) generate complex alternatives with all possible combinations of the two issues so that voters could order them hierarchically, and apply any ranked voting method, or b) implement two sequenced votes in a very short time emphasizing the interconnectedness of both issues. The easiest solution, of course, is to always vote for a singular question with two simple alternatives and let the representatives figure out the other related issues.

The risk of the emergence of collective irrationalities should also be assessed in line with other parallel dangers that sometimes can also display representatives when they have the monopoly of agenda setting: a) a dynamic of superfluous political rhetoric, characterized with grandiloquent phrases without practical implications (or worse, characterized by hate and hostility towards opponents), and b) myopia and resistance to change when innovation comes from civil society. Perhaps a dose of incoherence or irrationality is the price we have to pay for fostering innovation and co-creation in public policy. We must not forget that the relevant political knowledge is widely distributed in society and that means we cannot anticipate from where social innovations will come. Therefore, the system must remain open to all influences. This implies that the government has a duty not only to consult others from outside and be permeated to various sources of information, but also has the duty to establish channels through which civil society can itself submit ideas and innovative proposals to a popular vote.

Another argument against citizen-initiated referendums highlights citizen apathy: ordinary citizens do not have the time or interest to participate in complex and technical matters. If the electoral base of support of public policy is very low, democratic legitimacy is undermined (Le Duc, 2006). For example, if a bill put forward by a small minority of society (e.g. 1% to 15%) is approved by majority vote by a minority of society (say, 30% of the electorate), it is always possible to argue that the policy is not backed by the majority of society<sup>1</sup>.

One way to overcome this problem is to instantiate a hybrid system of democracy. Imagine a city council, with 10 councilors elected through a system of party lists under a proportional formula (e.g. D'Hont). For simplicity, we will consider that the relation between votes and seats is perfectly proportional. For example, there are 100 people, 60 vote for party A, and 40 vote for the party B. Consequently, the party A receives 6 seats, party B receives 4. Typically, *each seat is equivalent to one vote* in the council, *and every vote represents ten citizens*. Suppose now that an ordinary citizen, who voted for the party A, gathers ten signatures, which allows him in our example to pose a popular initiative. Suppose now that there is a system through which every citizen can ask for the “devolution” of their *share of political sovereignty*. We are supposing that the vote of a legislator equals ten citizens. So, if the share of ten percent of political sovereignty is given back to ten citizens, the vote of each councilor will no longer be one (1) but 0.9 (the result of subtracting ten percent from the whole value of political sovereignty in the hands of the council, and then distributing the remaining amount of political sovereignty on equal terms between councilors). The larger number of citizen voters will increasingly lessen the value of the councilor's votes. If all citizens vote, the vote of each councilor is void of value. Under such a system, we no longer need to worry about low voter turnout. From the point of view of democratic legitimacy, it is irrelevant how many people vote. If we believe that political representation is needed for ensuring a division of labor in society, then those who abstain from voting should be responsible of their

<sup>1</sup>Evidence shows that participation indeed is low and ranges between 30 and 45 percent. Nicholson (2003) also shows that the level of attention around the issues to be decided, systematically fluctuate with the number of issues brought to a vote. All things being equal, increasing the number of issues generates lower levels of political information, and consequently greater voter fatigue. Consistent with these results, Jackman and Miller (2004) study the referenda in Switzerland during the period from 1879 to 2000, and show that the greater the number of questions put forward to the popular vote, the lower the turnout.

abstention: the consequence being that their voice and vote will be represented by elected representatives.

Finally, an important stream of authors who stand up for deliberative democracy argue that citizen-initiated mechanisms of direct democracy are not up to the ideal that underpins the legitimacy of political decisions. Voting in referenda is “silent, anonymous and secret” (Fishkin, 2009: 79) and political communication in these scenarios is “mediated” by the elites (political and social). The most powerful voices have more opportunities (and money) to communicate their messages (Ackerman and Fishkin, 2002; Cohen and Fung, 2004). Now, Goodin and Niemeyer (2003; 2008) have studied the communication process and change of preferences in a deliberative poll in Australia. Briefly, they found that most of the changes in preferences among participants occurred in the first phase of the jury, that is, at the time when citizens were exposed to the information presented by experts. The deliberative stage between citizens did not cause major changes in attitudes and preferences of voters. This finding lead both authors to conclude that, rather than deliberating “face-to-face” with others, deliberating with oneself (which is merely a euphemism for individual thinking) and in the light of the information provided by experts, is what really makes a difference in promoting epistemically justified beliefs. I take these findings as proving that face-to-face deliberation with others, while convenient, is not the only route that leads to the acquisition of knowledge or -at least- epistemic justified beliefs. Since the views of experts can be communicated to a much wider audience than that involved in small groups (for example, through the mass media, or voter information guides), then we can seek to expand the scale of participation while trying to improve the quality of information behind a vote. An interesting solution in that vein is to use mini-publics in order to inform voters, as it has been done in the U.S. state of Oregon since 2009.

## THE INSTITUTIONS OF EPISTEMIC PARTICIPATORY DEMOCRACY

Democracy is justified, in part, on its epistemic value. The epistemic value applies at the collective level and must necessarily be modest

because we must accommodate the principle of equal political participation. This principle demands –this is my main point in the paper– citizen-initiated mechanisms of direct democracy but of a different kind from the traditional ones. The system must be structurally designed to promote the emergence of autonomous, informed, and public-oriented citizen preferences. The rudiments of such a set of institutions that can achieve such goals is outlined in this last section.

*A new regime of citizen vote*

I put forward some reforms in the voting system, aimed at improving the quality of information and encouraging the emergence of voters' autonomous and public-oriented preferences. My proposal includes three elements, each of which can be distinguished from the others and applied in its own terms, although all of them together have an internal coherence: a) a voter's public oath, b) facultative voting with public turnout, and c) new types of votes.

a) Voter's public promise

I propose that citizens (or residents) voters, before casting the vote in elections or referendums, should pronounce publicly (in front of a public official) the following statement: “I *publicly promise to cast my vote in a reflective judgment* [on the proposals of the candidates] *and exercise my citizen power with responsibility.*” And just in case someone refuses to pronounce that promise, then the voter should publicly pronounce the following dictum: “*I refuse to deliver the promise on grounds of conscientious objection.*” If she/he refuses to recite any of the two statements, then she/he is not entitled to vote.

First of all, I must say that it is not a very innovative proposal in its fundamental aspects. The democratic Constitution of Vermont in 1777 (as far as I know, the first modern democratic constitution in history) contains a similar formula that still exists in that local state, although in Vermont, the promise is mandatory, with no exceptions. I propose to recover this institution, which symbolically reflects the idea that citizens, in whose heads sovereignty lies, should also exercise political power responsibly. It does not seem morally consistent to demand social responsibility of representatives and not to demand the same of citizens when they choose the former.

The content of the promise is extremely thin, and is correlative to the traditional public oath, pronounced by elected officials, to obey the

constitution (a current promise in contemporary democracies which, by the way, I also believe should ideally be subjected to an exception for reasons of freedom of conscience). It is a statement that the citizen (or permanent resident) must pronounce in each instance of political participation, especially when binding decisions are at stake. The promise begins enunciating the phrase “I promise publicly,” which designates precisely the fact that it is a promise, and that promise is made in public and for the public. The content bracketed “I affirm that” is contemplated only in the case of those who refuse to pledge it, considering that the promise involves embracing a double moral standard (in this case, the statement is turned into an act of assertion). The statement is followed by the phrase “*cast my vote in a reflective judgment*” which refers to the importance of reflective thinking on the merits of the proposals or candidates. This reflective feature, of course, is generic, and includes instances in which people “reason together” with other instances in which people carry out an exercise of personal reflective thinking before issuing the vote. The formula therefore does not prejudge about which of these two ways of reflective reasoning takes precedence, but discards all those visions that consider that epistemic reflection is not necessary in order to cast a vote.

The statement that refers to the reflective judgment follows the bracketed phrase “on the proposals of the candidates,” which is in brackets because it only applies when choosing representatives. This content attempts to highlight the moral importance of reasoning on the policy proposals put forward by the candidates, an element that is easily despised in times dominated by plebiscitary rhetoric and image. When the task is to vote on a referendum, the content in brackets disappears.

Finally, the promise closes with the statement “and to exercise my citizen power responsibly.” This content vindicates the importance of accountability in the exercise of citizen power, without giving further information about what that responsibility entails. It is extremely thin content, which does not exclude any reasonable view of what responsibility means towards others or the common good. “Responsibility” is interpreted in different ways by those espousing a reasonable view of politics and distributive justice, and all of those interpretations are included. Those promulgating an unreasonable view of politics, instead, believe that it is legitimate to exercise power without

reflective thinking or consideration of how policies can affect others. These latter views are discarded.

As I said, the public utterance of the promise is mandatory, but can be exempted if the voter makes a public declaration of conscientious objection. I believe that promises cannot be imposed by force, because it would take away all the epistemic value of the public statement. If you make a promise under threats of retaliation, the promise will no longer have moral force because one of the conditions for the validity of epistemic beliefs -which comes from Kant- is that it should be embraced with autonomy and in full possession of mental capacities.

b) Facultative voting with public turnout (*civic voting*)

There is a heated debate in political philosophy around the voluntary or compulsory character of the vote (Lever, 2009). Proponents of the facultative vote often argue that voting is a kind of trust, an act of confidence that society places on each citizen, which therefore should be exercised with responsibility. Voting without enough information, therefore, is an morally irresponsible act that should be avoided (Brennan, 2012b). On the other hand, advocates of compulsory voting argue that political participation has an intrinsic value that should be promoted. Others highlight that facultative voting displays a pattern of low and declining voting turnout, which calls into question the democratic legitimacy of the election results, while others provide evidence of the elitist bias of optional voting (the data indicates that more educated and higher-income people participate under facultative voting than in compulsory voting). I will not delve into this debate. I think, in line with advocates of optional voting, that the vote must be exercised responsibly, and that it is immoral to vote without minimally adequate information. Compulsory voting systems yield signals that encourage uncritical participation, which is what the defenders of epistemic democracy want to conjure.

I do not want to neglect the importance of this debate, but I understand that both alternatives (compulsory vs. optional) are not the only options available. It is worth considering a third possibility: optional voting with public participation, or *civic voting*, as I will call it here. This new system can be very promising in light of an experiment that examines the strength of social control in the decision to vote or abstain (Della Vigna et. al, 2014). The experiment shows that the act of voting has indeed an intrinsic value for most people: people are largely motivated to vote because they value the act of voting in itself and because people want to

maintain a positive public image. People may vote not only because they honor something of intrinsic value, but also to avoid the embarrassment of acknowledging in public that they did not vote, or to avoid the psychological cost of lying to others. My intuition is that this “public image” does not only encourage voter turnout, it also promotes investment in cognitive efforts for an informed vote, thereby strengthening the public-oriented or sociotropic insight of the vote. I propose, based on these considerations, the creation of an online public record of individual voter turnout, in order to both encourage voter participation and strengthen the incentives for pro-social behavior, while guaranteeing freedom of choice and the secrecy of the vote.

c) New types of votes

In contemporary democracies it is assumed that abstention (i.e. not voting for any of the available alternatives) has no epistemic value, not even of a second order. It is assumed the system gains nothing in knowing if those who abstain from voting did so because they did not have enough information, because they suspended judgment on the matter, because they rejected all alternatives, because that day they had other priorities than voting, because they rejected the democratic order, or because they liked all alternatives or candidates and remained indifferent about them. Abstention amounts, in this view, as a kind of missing data, from which we cannot infer any epistemic attitude. However, as obvious as that the reasons that lead to abstention may be heterogeneous, it is equally obvious that some of those reasons convey valuable information, although the reasons not expressed as a preference for candidate A, B or C. For example, if I think that both A and B are bad candidates, and no other alternative is available, I may consider it reasonable to abstain from voting for any of them. And it can happen, in fact, to be true that both A and B are bad candidates in light of any reasonable evaluation standard. The system treats my abstention on an equal footing with those who abstain from voting out of laziness, or conformism. It should be obvious that this represents a poor way of processing epistemic beliefs and judgments of the people. A democratic system should attempt to be sensitive to the reasons of abstentions, because some of those reasons are epistemically valuable to the rest of society.

An efficient democratic system in epistemic terms should allow the possibility not only to vote for the candidate (or party) A, B or C, but also the opportunity to vote for a “rejection of all candidates” and/or? to cast vote in abstention or suspension of judgment (I neither reject nor accept any candidate or alternative). If these options are available, then it will be possible to distinguish, in practice, between “turnout,” abstention, and the act of voting “for” or “against” a candidate. Compulsory voting systems that do not give the opportunity to cast a vote of total rejection or a vote of abstention (or suspension of judgment), and that allow only a vote “for” a candidate, are systems that restrict freedom of choice, because some reasonable options (the suspension of judgment, or the rejection of all candidates) are excluded from the menu of alternatives. For the same reason, voluntary voting systems that do not allow the possibility to cast a vote of total rejection or a vote of abstention also restrict the freedom of choice of people, because those who uphold those preferences can only choose not to turnout or cast a null vote to express their preferences, but the system records them indiscriminately along with the abstentions of those who are pleased with any candidate, with those who reject the whole democratic order, and with those who did not turnout because they honored other activities, among other reasons to abstain from turnout.

To sort out these problems, I believe that the voting system should combine the following features:

First, there should be an irrebuttable legal presumption through which the legal system presumes that those who do not turnout render their conformity to whatever the outcome of elections or referendum is. This assumption amounts, indeed, to changing the *statu quo* by default. In the current system, the default option uncovers only “uncertainty” regarding the reasons of those who of abstain from voting. We cannot presume anything specific from abstention, although we are always trying to gauge the intentions of abstainers. My proposal aims to give, by default, a legal irrebuttable meaning to the behavior of not going to the polls, by setting a conclusive presumption (*iure et de iure*). The idea of an absolute presumption or *iure et de iure* makes sense from the moment the system would allow voting by mail (for those who, for reasons of disability or temporary residence, are unable to attend the polling station), the “vote of total rejection” and the “abstention vote” (or “suspension of judgment” vote). With these options available, it may be justified to interpret -from the behavior of not going to the polls- an absolute presumption of conformity with the outcomes of the elections. Since those who hadn’t turnout could have voted by email or could have voted to suspend

judgment or to reject all the candidates, then we may legitimately assume that they accept or agree with the conclusion of the vote.

Our democratic arrangements should take advantage of the “second order” epistemic value of suspension of judgment. The current arrangement only allows the expression of preferences based on “stubborn” beliefs about A, B or C, and mistreats suspensions of judgment equating them with ignorance, full rejection of all candidates, full rejection of the political order, laziness, or indifferent conformity with all candidates. Clearly, such a system is not suitable for the intelligent aggregation of judgments or epistemic attitudes. Even when suspension of judgment is based on ignorance (for example, because the citizen feels incompetent to assess the available evidence and therefore prefers not to take sides on any alternative), his/her cognitive attitude deserves much more credit than if he or she blindly decides to support a particular option. Suspension of judgment is a responsible epistemic attitude, even when it is founded on ignorance, and that epistemic attitude has a clear moral force: it expresses the idea that the agent values autonomy and informative rigor in evaluating the evidence and therefore rejects blind deference to opinion leaders<sup>2</sup>.

Once we decide to recognize the informative value carried by suspensions of judgment and preferences of full rejection, practical difficulties appear. It should be noted that an attitude to abstain from taking sides in an issue of whether someone is competent or incompetent to rule, should not count the same way in political representation, as a belief that contains informative force on the matter. An agnostic attitude or a preference to reject all candidates should not be treated in the same way as preferences that specifically support candidates, they don't give any solution to the urgent need society has to establish a political authority, capable of promoting collective action. If they give me a set of options to choose from, and I don't choose anyone (or reject all) in a context in which there is an urgent collective need to choose one, my abstention (or full rejection) may have some critical epistemic value, but the instrumental need to choose one option justifies giving more value or weight to the votes of those who select a single option, relative to those who abstain or

<sup>2</sup>This account of democratic arrangements deliberately opposes Gramsci's position that our most vital duty in life is to “take sides” on any matter and that agnosticism is to be hated (Gramsci, 1918).

reject all options. Moreover, if a significant percentage of people decide to cast a vote of abstention or full rejection, and these abstentions (or rejections) are translated proportionally into legislative seats, a vacuum of power would emerge. For example, if 51% decide to cast a vote of abstention, and these abstentions were translated into 51% of seats, it is obvious that it will be impossible for any governing coalition to reach an absolute majority of member votes, only bills that require the support of an absolute majority of members present could be approved, and only if quorums are set below that threshold. In the hypothetical extreme, if everybody decides to cast a vote of abstention, we would have a scenario of a total vacuum of power. Such a scenario could perhaps have some valuable meaning from the perspective of political equality, but it is obvious from an instrumental epistemic dimension that this turns out to be absurd: in complex societies like those we are used to live in, a situation of a total vacuum of power is never justified, not even in the unthinkable circumstances in which every citizen, with full autonomy, abdicates from the existence of the state. The task of providing public goods and maintaining social peace would still demand the establishment of political authority even in a society of state deniers.

However, these considerations don't prevent us to design systems in which the abstention votes and full rejection votes are translated somehow into a lower layer of political representation –relative to other kind of votes- in order to take advantage of the epistemic force that they carry. We may think on different formulas to achieve that goal, and one could be:  $E\% = \sqrt{Vr\% + Vs\%}$ , which means that the percentage of empty seats ( $E\%$ ), representative of abstentions and full rejections, is equivalent to the square root of the sum of the percentages of both kind of votes (abstentions and rejections). If the number includes decimals, then it is rounded down, if the figure is less than 0.5, and rounded up if it is higher. The resultant amount of seats is split between the two kinds of votes through the D'Hondt system.

Empty chairs, I believe, can have an instrumental epistemic effect on the quality of public policies: politicians will always be aware, in their deliberations, of the percentage of society that remain agnostic or reject the full list of parties. Moreover, empty chairs can also have more direct practical effects, since it will be softer or harder, depending on the amount of empty seats, to achieve an absolute majority of member's votes. Empty seats corresponding to votes of abstentions should be taken as abstentions, and those corresponding to full rejection votes should be taken as votes of rejections in the legislative plenary.

Under this system it may happen, as a hypothetical case, that a very high percentage of the population with voting rights (over 50%) reject “all” candidates. In that case, it is clear that whoever ends up winning the election would lack any democratic legitimacy. A remedy to deal with these situations could involve establishing the need to convene new elections with new candidates within a reasonable period of time. However, a rejection higher than 50% of the population would express not only a general dissatisfaction with political parties, but it should also be interpreted as an indicator of the malfunctioning of democratic structural arrangements. So when the votes of full rejection exceed 50% of the population (counting in this percentage those who conform to whatever election outcome by not going to the polls), the system should automatically (within a reasonable period, e.g. one month) hold elections for a constituent assembly. The constituent assembly shall, within a reasonable time period (e.g. four months), reform the constitution. Meanwhile, the incumbent government will remain in power but will not be able to pass any legislation without a 2/3 majority of the members. I think this is how we can deal with these kinds of abnormal situations.

*A new way of regulating abstentions and absences in the legislative procedure*

What is the appropriate regime of abstentions in legislative assemblies? The point of departure is the acknowledgement that, since an assembly is composed of a large number of people, subjected to a division of labor in specific topics, the fact that some of them suspend judgment and refrain from taking sides on an issue doesn't necessarily indicate defending the *statu quo*. Abstention in an assembly should instead be considered equivalent to deferring judgment to other legislators, who do have a firm conviction for one of the sides.

In many informal assemblies, decisions are taken by the method of non-objection, or non-opposition (see Urfalino, 2006). Under this method, the President of the Assembly (or any other participant) makes a proposal, and if nobody objects it, then it is approved. By default abstentions are equated as *de facto approvals*, and only explicit objections, if any, are publicly aired. Insofar abstentions are counted as confirmation votes, it may be the case that a large majority of people suspend judgment on the issue and the proposal ends up being approved with the real support of a

few people. Why is this regime commonly accepted in many political bodies while it is rejected in formal official legislatures? If a supermajority cast a vote of abstention, the only obvious thing to infer from that fact is that the supermajority couldn't take sides on the issue. Inferring the rejection of the proposal is not epistemologically justified. It may be reasonable to assume, then, that in such situations, the only inference we can draw is that lawmakers need more time to evaluate the arguments and evidence of both sides at stake and to consider other possible alternatives, in order to increase the probability of selecting the best side. This argument, then, justifies considering abstentions -when the number of them exceed a certain threshold- as a delay device.

In the light of these considerations, I propose the following regime of abstentions in legislative assemblies. If abstentions exceed a certain minority threshold (e.g. 1/3) then the Legislature should call a panel of experts in a reasonable period of time. After hearing from the experts, legislators will proceed to vote again on the issue, but this time abstentions will be considered as "yes" or approval votes. If in the first voting stage, abstentions exceed an absolute majority threshold (i.e. more abstentions than the sum of "yes" and "no" votes) then the Legislature must call a citizen's assembly recruited by lot (and which will work in a similar way to the British Columbia Citizen's Assembly in 2004) in a reasonable period of time. This citizen's assembly must hear the different expert views on the issue, deliberate together, and finally vote on the issue (yes, no or abstention). Once a vote is cast, and a majority of citizens vote for "yes" or "no," then the Legislature should again consider the proposal and vote accordingly, taking into consideration the recommendation of the citizen's assembly. In this second stage, legislators could not cast a vote for abstention. In the hypothetical case of a majority of citizens in the assembly casting a vote of abstention then the legislators can cast again a vote of abstention in the second voting session, and if a majority of legislators do indeed abstain, then the issue is put to a plebiscite. I think this is the way we should regulate abstentions in a legislative assembly.

As for absences, I understand that a modern Legislature should have no quorum. Simply, it should act under the legal presumption that those who are absent reject the proposal being considered. This presumption should come as no surprise. If someone is a representative, at least she has the moral duty to listen or to hear the complaints addressed by citizens or their representatives. Hence, there is a moral duty to "be present" not in a necessarily physical way (occupying the seat in the assembly) but in a communicational sense. Such a regime would lead to virtual forms of

“being present” that I understand have not yet received adequate parliamentary regulation. If we understand that governments have the moral duty to “listen” to complaints and arguments, then to be absent -in the communicative sense of the term- is to be interpreted as the rejection of the proposals. To be sure, this regime will not prevent legislators from being absent for strategic reasons, but it will considerably reduce them.

In this regard, it would be good to contrast this proposal to the thinking of Jeremy Bentham (1791), who believed that absence of legislators is to be interpreted as an attitude of suspension of judgment. The thought of Bentham makes sense when you consider that British legislators cannot abstain from voting nor cast a vote of abstention, and only their absence can have the effect of an abstention. But if we believe that attending (and therefore being present) is a moral duty and that legislators should be able to be present and cast a vote of “abstention” from voting, then we can devise a system by which (unjustified) absences are automatically counted as “nays” for violating the duty to “listen” to complaints or arguments.

#### *Innovations for citizen-initiated mechanisms of direct democracy*

As I argued above, I think that citizen-initiated mechanisms of direct democracy, as used in Switzerland and Uruguay, should be re-thought when thinking about a new model of epistemic participatory democracy. First, like Switzerland, I think it is important to ban plebiscites or the call for a popular vote “from above,” unless the call for a popular vote is due to a majority of abstentions in the Legislature as explained above. Second, like Uruguay, I believe that the system should include both the popular initiative for constitutional amendments, the abrogative referendum (or referendum “against” laws) and also the popular “legal” initiative. It would be better if all these mechanisms had a constitutional status. Unlike Uruguay, however, I understand that the call (in any of the mechanisms) should never be held concurrently with a general election for representatives. There should be an explicit prohibition in that regard.

Some restrictions are in order, however. Third, the popular initiative for legal reform and the abrogative referendum, regarding taxes and budget bills, should include a very demanding threshold for the gathering of signatures (e.g. 25% or 30%). On other matters, both mechanisms should have more permissive thresholds, between 3% and 8% (3% for abrogative

referendums and 8% for legal initiatives). It is important at this point to underscore that the wording should be very precise, to avoid what happens in some countries (as in Mexico), where the law forbids any referendum on any matter affecting “income and expenses,” so virtually no meaningful reform can be put forward to a referendum.

Fourth, citizen initiatives for constitutional reform should also contain a demanding threshold (25% or 30%) of signatures, to be collected within a reasonable time frame (e.g. 160 days) or to be collected -as in Uruguay- in a kind of a “pre-referendum” day once a minimum percentage of signatures (2 or 5 %) has been certified.

Fifth, for all types of referendums, there should be a quorum of electoral participation: in the case of abrogative referendums and initiatives of legal reform, the quorum should be 30%, whereas in the case of referendums for constitutional reforms, quorums should be more demanding (45%).

Sixth, there should be a rule that sets a limit on the number of issues that can be voted and the type of links that bind these issues together, to avoid collective irrationalities. Thus, in the case of initiatives for partial constitutional amendments, the proposals may include many issues only if they respect “the unity of matter.” In the case of legal reform initiatives or referendum against laws, the rule of the “single issue” applies, which means that voters are asked just one single question in each referendum.

Seventh, to prevent the proliferation of initiatives (with the consequent accumulation of topics and issues), it may be sound to set a temporary restriction on only two proposals that have gathered signatures on a given election year. This means that the first two proposals that have reached the required threshold of signatures cancel the possibility of gathering signatures for the rest of pending proposals. Other proposals should wait for the following year in order to start gathering signatures again. In that way, a temporary restriction of one constitutional reform initiative per year, and two referenda and popular initiatives laws against constitutional reform per year would be sound.

Eighth, it is important to introduce institutions that promote informed voting and freedom of choice. In the case of Switzerland and Uruguay, it is interesting to see that when an initiative for constitutional reform is launched, the government can put forward a counterproposal. However, the same does not happen with initiatives for legal reform or abrogative referendums. Concerning abrogative referendums, neither Swiss nor Uruguayan citizens can raise a counterproposal. We believe this restriction favors manipulation of the agenda by the government. An interesting way

to sort out this limitation is to convene a citizen assembly (following again the British Columbia Model), within the period from the validation of signatures to the day of the popular vote, and with the task of drafting a citizen counterproposal by a majority vote (see Altman, 2014). Another way is allowing for the possibility of raising a counterproposal if this is supported by a more demanding threshold of signatures (e.g. 8% if the call for an abrogative referendum requires 3%).

Ninth, the arrangement of the electoral calendar in popular initiatives should not be in the hands of the government (as it is in Switzerland for initiatives for constitutional reform), in order to avoid the strategic manipulation of electoral cycles (Schwartz, Bächtiger and Lutz, 2011). The constitution should include time constraints to ensure that elections are held within a stipulated period since the signatures are gathered (e.g. 40 days for cases of referendum against laws and initiatives of legal reform, and one year for initiatives of constitutional reform).

A key innovation, the tenth item, is aimed at improving autonomous, informed and public-oriented preferences in popular referendums. At this point, it is appropriate to highlight the Oregon State experience here. The Oregon's "*Citizen's Initiative Review*" is an assembly of 24 citizens drawn by lot (since 2011) with the legal task of making recommendations –after due deliberation and hearing of expert's views- for citizens on how to vote (for or against). The idea of this mechanism is to try to overcome pathologies that are common in traditional mechanisms of direct democracy: poor information, high complexity of the matters at stake, group-interest bias, among others. The assembly or jury address the proposal that is to be put to popular vote in two or three days, hear the arguments and evidence that are put forward by defenders and complainants, and then reach an informed decision. This decision will be translated in the official voter information guide. It is intended that uninformed voters, before casting their vote in the ballot box or electronic machine, can read clearly the conclusions reached by the assembly of citizens, as well as the main reasons behind those conclusions. Studies show that this mechanism significantly improves the information of voters: those who had read the reports of the jury answered more correctly (in fact, two times more than those who hadn't read them\_ (Report on citizens' initiative review in Oregon, 2013: 26-28, Gastil and Knobloch, 2010). I believe, however, that the Oregon system can be significantly

improved in epistemic terms. First, jurors should be able to vote in case of disagreement (in Oregon, they are required to reach a “consensus statement”). On the other hand, I believe that the final decision of the jury should be reflected in the back of the ballot (and not in an information voter guide), with the following information: number of jurors who approved the initiative or proposal and its central argument, and number of jurors who disagree with the initiative or proposal and its central argument. It would be sound to hold citizens juries in all types of referenda (although it may be advantageous to convene a larger assembly for the initiatives for constitutional reform).

Eleventh, the incumbent Legislature will be able to repeal an approved referendum only with a supermajority of member’s votes. If new elections are held, then the new Legislature is able to repeal by majority vote only referenda that have been passed in precedent legislative mandates. These are cautions that should be considered in order to avoid legal instability while keeping our democratic commitments safe.

Another important innovation, the twelfth item, involves the creation of a citizen Commission (formed by representatives of the promoters of each initiative) that will have special powers of access to public information, to call public hearings and have legal standing in judicial proceedings concerning the implementation of approved referendums. All those powers are aimed at preventing the executive branch from circumventing or betraying the spirit of the referendum by issuing fraudulent regulations or by not regulating the implementation of conditions of the decision.

Thirteenth, there should be a law that makes it mandatory that a televised public debate on the issue at stake be done the day before the popular vote, in which both sides of the issue are represented.

And finally, fourteenth, as explained when addressing the epistemic objections to direct democracy, the introduction of an hybrid regime of democratic decision-making, through which the votes of representatives are counted concurrently with citizen’s votes (of an infinitesimal value) should be considered. At least it doesn’t seem sound to neglect it, for there are strong epistemic reasons to that kind of regime.

### Conclusions

I have argued that democracy draws part of its justification from the epistemic task of reaching good enough decisions. But democracy cannot rely solely on such a justification without collapsing into a government of experts or an epistocracy. The need to accommodate the epistemic

dimension of democracy with the principle of equal political participation puts limits on the democratic epistemic goal or task: the goal is to achieve in a structural way, with a probability better than chance, good enough decisions at the collective level. This standard must be accommodated with the institutions that regulate citizen participation in decision-making. Neither pure representative democracy nor current democratic arrangements of citizen-initiated mechanisms of direct democracy are up to that task. My claim is that they both fall short of the epistemic modesty standard required for democratic legitimacy. The remedy proposed is a new model of –what I have called– epistemic participatory democracy, aimed at encouraging in a structural way the emergence of autonomous, informed and public-oriented preferences in citizen participation. This goal is achieved by introducing some democratic innovations: a new regime for citizen voting, a new form of regulating abstentions, a new legislative procedure regime, and a new system of citizen-initiated direct democracy.

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