

# Citizens' Juries and Deliberative Democracy

Graham Smith<sup>1</sup>

*University of Southampton*

Corinne Wales

*Southampton Institute*

In the face of widespread dissatisfaction with contemporary democratic practice, there has been a growing interest in theories of deliberative democracy. However theorists have often failed to sufficiently address the question of institutional design. This paper argues that recent experiments with citizens' juries should be of interest to deliberative democrats. The practice of citizens' juries is considered in light of three deliberative democratic criteria: inclusivity, deliberation and citizenship. It is argued that citizens' juries offer important insights into how democratic deliberation could be institutionalized in contemporary political decision-making processes.

---

The growing interest in forms of deliberative democracy indicates, on the one hand, a widespread dissatisfaction with aspects of our contemporary political practices and, on the other hand, a reflective awareness that alternative practices are plausible options for us. Within contemporary democratic theory, there is an emerging concern with the growing difference and distance between the subjectivity, motives and intentions of citizens and the political decisions made in their name.<sup>2</sup> The activities, backgrounds and interests of political representatives are seen as far removed from the lives and perspectives of citizens. Although periodic elections act as 'a continuous discipline on the elected to take constant notice of public opinion',<sup>3</sup> the mandate that representatives enjoy extends over a period within which citizens have very little impact on decisions made in their name. The principal-agent form of representation, so dominant within liberal democracies, rests on the fact that the political representative is able to deliberate and decide *for* others.<sup>4</sup> But, critics contend that the lack of presence or 'voice' of the politically marginalized, such as women and ethnic minorities, in political decision making means that their interests and perspectives are systematically excluded or at least not adequately addressed. As Phillips argues, 'when policies are worked out *for* rather than *with* a politically excluded constituency, they are unlikely to engage with all relevant concerns'.<sup>5</sup>

Clearly political activity and influence extends beyond voting, and contemporary society is marked by a plurality of interest groups and associations. However such pluralism is undermined by the social and economic imbalances inherent within society. Expressions of economic power and social influence undermine, to a large extent, the assumption of political equality on which representative forms are frequently defended.<sup>6</sup> As Beetham argues: 'The freedoms of speech and association not only provide the guarantee of a more extensive political activity than the vote;

they are also the means whereby the inequalities of civil society are transmitted to the political domain'.<sup>7</sup>

The inequality inherent within civil society and political institutions is taken to undermine the apparent neutrality of widely-used social choice mechanisms, such as voting, opinion polling and the market, which embody the liberal principle that the role of democracy is to aggregate individuals' pre-given preferences into a collective choice.<sup>8</sup> Not only are such social choice mechanisms subject to strategic manipulation,<sup>9</sup> but by taking preferences as given and incorrigible, aggregation processes fail to recognize that preferences, interests and values are shaped and constrained by the political, social and economic context in which individuals find themselves – numerous social forces shape an individual's sense of what is possible. Preferences are not exogenous to institutional settings. As Sunstein argues: 'preferences are not fixed and stable, but are instead adaptive to a wide range of factors ... The phenomenon of endogenous preferences casts doubt on the notion that a democratic government ought to respect private desires and beliefs in all or almost all contexts'.<sup>10</sup> Hence, decision-making procedures should not only be concerned with aggregating preferences, but also the nature of the processes through which they are *formed*. All institutions 'shape' how judgements are made. But liberal institutions are not designed to encourage engagement and the testing of preferences and value orientations – citizenship is a passive affair which, it is argued, leads to 'a moral and political "de-skilling" of the electorate and the spread of cynical attitudes about public affairs and the notion of a public good'.<sup>11</sup>

In such a climate, the very legitimacy of liberal forms of political authority, grounded on the neutrality of procedures, is challenged. As Warren argues:

... rules and procedures always have normative purposes, and the authority they carry depends on these. They are never neutral, and our decision to abide by them cannot be neutral. We hold rules as authoritative (or lacking in authority) because of the normatively significant work they do. If the rules and procedures produce normatively questionable outcomes, then they tend to lose their authority.<sup>12</sup>

Deliberative democratic theory has evolved in response to the perceived weaknesses of liberal democratic theory and practice and offers a challenge to, and a critical perspective from which to judge, contemporary liberal representative institutions.<sup>13</sup> Although there is a recognition that a division of political labour is necessary, given the complexity of contemporary political, economic and social conditions,<sup>14</sup> deliberative democracy offers the possibility of a different *form* of that division; one in which increased opportunities for citizen participation are taken to be both feasible and desirable and where citizen engagement forms part of an ongoing critical dialogue upon which more legitimate forms of political authority can be grounded. As Benhabib argues:

According to the deliberative model of democracy, it is a necessary condition for attaining legitimacy and rationality with regard to collective decision making processes in a polity, that the institutions in this polity are so arranged that what is considered in the common interest of all results from processes of collective deliberation conducted rationally and fairly among free and equal individuals.<sup>15</sup>

Deliberative democracy particularly concerns itself with the *process* through which political decisions are made. As with liberal theories, deliberative democrats are

interested in creating institutions that will resolve conflict, but recognize that in the process of engagement, preferences and value orientations can be transformed.<sup>16</sup> At its heart, a deliberative polity promotes political dialogue aimed at mutual understanding, which 'does not mean that people will agree, but rather that they are motivated to resolve conflicts by argument rather than other means'.<sup>17</sup> Hence, what is fundamental to democratic dialogue is 'deliberative' as opposed to 'strategic' or 'instrumental' rationality. In contrast to the strategic manipulation and manoeuvring that is often characteristic of contemporary politics, we can describe a collective as *deliberatively* rational 'to the extent that its interactions are egalitarian, uncoerced, competent, and free from delusion, deception, power and strategy'.<sup>18</sup>

Why then should we value deliberative democracy? Deliberative democracy promises more trustworthy and legitimate forms of political authority, more informed decisions and a more active account of citizenship. Legitimate forms of authority and decision making rest on two aspects of deliberative democratic theory: inclusivity and the nature of democratic dialogue. Inclusivity relates to both presence and voice: in principle all citizens are entitled to participate in the process of political dialogue and have an equal right to introduce and question claims, to express and challenge needs, values and interests.<sup>19</sup> Voices should not be excluded; parties have an equal right to be heard.

Democratic deliberation encourages mutual recognition and respect and is orientated toward the public negotiation of the common good. Miller stresses the 'moralising effect of public discussion': the reciprocal requirement to put forward reasons and to respond to challenges will tend to eliminate irrational preferences based on false empirical beliefs, morally repugnant preferences that no one is willing to advance in the public arena, and narrowly self-regarding preferences.<sup>20</sup> Participants orientate themselves towards the common good and preferences held on purely self-interested grounds become difficult to defend in a deliberative context: 'we have good reason to expect the deliberative process to transform initial policy preferences (which may be based on private interest, sectional interest, prejudice and so on) into ethical judgements on the matter in hand'.<sup>21</sup>

Taken together, inclusivity and the nature of democratic dialogue offer the basis for more legitimate and trustworthy forms of political authority. As Manin contends, it is 'necessary to alter radically the perspective common to both liberal theories and democratic thought: the source of legitimacy is not the predetermined will of individuals, but rather the process of its formation, that is deliberation itself'.<sup>22</sup> Along similar lines, Gutmann argues: 'the legitimate exercise of political authority requires justification to those people who are bound by it, and decision making by deliberation among free and equal citizens is the most defensible justification anyone has to offer for provisionally settling controversial issues'.<sup>23</sup> Democratic legitimacy and trust in authority is generated by an ongoing context of critical scrutiny and opportunities for discursive challenge.<sup>24</sup>

Democratic deliberation not only has the potential for institutionalizing more legitimate and trustworthy forms of political authority, but it also promises more informed judgements. Deliberation has the ability to lessen 'bounded rationality': 'the fact that our imaginations and calculating abilities are limited and fallible'.<sup>25</sup> Deliberation offers the conditions whereby actors can widen their own limited and

fallible perspectives by drawing on each other's knowledge, experience and capabilities. Fearon argues that this increases the odds of good judgements emerging for two reasons: it might be 'additively' valuable in the sense that one actor is able to offer an analysis or solutions that had not occurred to others; or it might be 'multiplicatively' valuable in that deliberation could lead to solutions that would not have occurred to the participants individually.<sup>26</sup>

Finally, deliberative democracy offers a more active account of citizenship, one that recognizes that political engagement has the potential to transform the values and preferences of citizens in response to encounters with others.<sup>27</sup> There is a long tradition in democratic theory in which emphasis is placed on the 'educative' potential of participation and deliberation which 'broaden the viewpoints of citizens beyond the limited outlook of their private affairs'.<sup>28</sup> Implicit within deliberative democracy is a commitment to a particular sort of disposition of citizens towards other perspectives, one of mutual respect.<sup>29</sup> As Warren argues:

... democracy works poorly when individuals hold preferences and make judgements in isolation from one another, as they often do in today's liberal democracies. When individuals lack the opportunities, incentives, and necessities to test, articulate, defend, and ultimately act on their judgements, they will also be lacking in empathy for others, poor in information, and unlikely to have the critical skills necessary to articulate, defend, and revise their views.<sup>30</sup>

Thus we have three emergent criteria from deliberative democratic theory with which to judge political arrangements: inclusivity, deliberation and citizenship.<sup>31</sup>

## Toward Deliberative Institutions

The question remains for deliberative democrats as to how democratic dialogue can be institutionalized. In turn this raises questions about whether deliberative democracy should be seen as an alternative to liberal representative democracy, based on a complete restructuring of liberal political institutions, or whether it points to the reform and supplementation of representative structures. It is a fair criticism that writing on deliberative democracy generally remains highly abstract and theoretical – that it generally fails to engage in the more 'messy' task of institutional design. For example, much of the work in this area concentrates on the 'constitution' of deliberative democracy – the rights and principles that are the necessary conditions for the emergence and sustenance of democratic dialogue and judgement.<sup>32</sup>

Beyond the discussion of constitutional rights and principles, a number of approaches to the 'institutionalization' of democratic deliberation can be distinguished. The first is largely sceptical toward the institutions of the state, celebrating the public sphere of civil society as the natural location of deliberative politics.<sup>33</sup> Dryzek is representative of a number of deliberative theorists who are concerned that deliberative democratic institutions attached to the state would be systematically undermined or subverted by powerful actors, 'undertaken with co-optation of potential troublemakers in mind, or as a veneer for decisions reached independently by conventional political means'.<sup>34</sup> In the face of such manipulation, Dryzek argues that incipient designs ought to be developed in the public sphere, independent from, and in confrontation with, state power. That a rejuvenated civil society and reinvigorated public spheres are a necessary component of deliberative politics

is unquestionable, especially with respect to the development of democratic citizenship. However, the institutions of the state cannot simply be side-stepped.

Where theorists have reflected on the possible structure of deliberative decision-making institutions, a number of different approaches can be discerned. For example, Cohen and others have suggested the supplementation of representative government with secondary associations – the establishment of a deliberative associative democracy.<sup>35</sup> Other recommendations include the institutionalization of group representation<sup>36</sup> and the need for processes of deliberation to legitimize majoritarian decision rules.<sup>37</sup> However, such work will be of limited value unless practical examples of deliberative arrangements can be institutionalized and assessed. As Bohman argues in a recent survey article on deliberative democracy, 'there is still a surprising lack of empirical case studies of democratic deliberation at the appropriate level and scale'.<sup>38</sup>

A small number of such empirical case studies have begun to emerge, typically assessments of mainstream institutions. So, for example, Mansbridge develops an analysis of town meetings and workplace democracy;<sup>39</sup> both Hunold and Young, and Forester, have developed deliberative criteria to judge different aspects of the planning process;<sup>40</sup> Elster has made an historical comparison of the deliberative settings of constitution-making processes;<sup>41</sup> and Chambers has revisited the language-rights politics of Quebec.<sup>42</sup> Such studies are illuminating, but perhaps more valuable insights are to be gained from investigating the development of innovative democratic institutions such as citizens' juries, deliberative opinion polling, mediation and consensus conferencing.<sup>43</sup> It is from the analysis of such innovative democratic designs that we are likely to learn more about the feasibility of institutionalizing opportunities for democratic deliberation and the strengths and weakness of deliberative theory. Certainly the rhetoric of advocates of citizens' juries resonates with the insights of deliberative democrats. It is commonly argued that citizens' juries afford the opportunity for informed deliberation and active citizenship and are a potential mechanism for overcoming the growing cleavage between 'the privileged "decision makers" and the "administrators", the majority of the population'.<sup>44</sup>

### **Citizens' Juries: Innovative Deliberative Institution?**

A citizens' jury brings together a group of randomly chosen citizens to deliberate on a particular issue, whether it is the setting of a policy agenda or the choice of particular policy options. Over a number of days participants are exposed to information about an issue and hear a wide range of views from witnesses, who are selected on the basis of their expertise or on the grounds that they represent affected interests. With trained moderators ensuring fair proceedings, the jurors are given the opportunity to cross-examine the witnesses and, on occasion, call for additional information and witnesses. Following a process of deliberation amongst themselves, the jurors produce a decision or provide recommendations in the form of a citizens' report. Typically, the sponsoring body (a government department, a local authority or other agency) is required to respond, either by acting on the report or explaining why it disagrees with it. Although there are obvious differences, analogies are often drawn with legal juries: 'in common with the legal jury, the

citizens' jury assumes that a small group of ordinary people, without special training, is willing and able to take important decisions in the public interest'.<sup>45</sup>

Citizens' juries have been promoted and run since the 1970s in both the USA by Ned Crosby of the independent Jefferson Institute<sup>46</sup> and in Germany by Peter Dienel at the Research Institute for Citizen Participation, University of Wuppertal. Juries in the USA have attracted media attention, but as yet appear to have had little direct influence on the political decision-making process.<sup>47</sup> In Germany, where juries are known as 'planning cells' (*Planungszellen*), government bodies and agencies have commissioned the Research Institute to run planning cells, providing financial support and agreeing to take into account their recommendations and judgements in future decision-making processes.<sup>48</sup> Whereas Crosby tends to promote single juries of between 12 and 24 people, Dienel often runs a number of planning cells, each containing 25 citizens, concurrently and/or in series. To date, the largest project involved 500 citizens from all over Germany.

Inspired by such innovative democratic practice, the Institute of Public Policy Research (IPPR), the King's Fund Policy Institute and the Local Government Management Board (LGMB) have advocated the use of citizens' juries in the UK, each independently sponsoring a series of pilot projects typically in conjunction with health authorities and local government.<sup>49</sup> The pilot juries have all consisted of between 12 and 16 citizens. The new Labour administration has shown some interest in these pilot projects, initiating a series of women's juries<sup>50</sup> and offering the process as a potential mechanism for reinvigorating interest in local politics and overcoming cynicism towards, and distrust of, local authorities.<sup>51</sup>

### *Inclusivity*

Ideally, deliberative democratic arrangements entitle each citizen to participate in decision-making processes. Citizens' juries cannot fulfil this ideal and it is difficult to envisage an institutional design which could practically instantiate such a principle. However, citizens' juries approximate the ideal by aiming for a broadly representative jury selection which is able to draw on a wide range of experiences and backgrounds.

The idea of 'inclusivity' rather than 'representativeness' is used here as a criteria of analysis to avoid conceptual and practical confusion. We have already seen that deliberative democrats often point to the principal-agent nature of representation in liberal democracies as a source of political alienation and democratic deficit. It is often argued, in contrast, that citizens' juries aim to realize the 'microcosm' model of representation.<sup>52</sup> The logic of this form of representation is proportionality: a decision-making institution 'should be an exact portrait, in miniature, of the people at large, as it should think, feel, reason, and act like them'.<sup>53</sup> However, there are both conceptual and practical problems with this account of representation. First, no selected jury can accurately mirror all the standpoints and views present in the wider community.<sup>54</sup> Secondly, there is a danger of creating false essentialisms. Are, for example, women jurors expected to represent all women in the wider community, elderly jurors, all other elderly citizens?<sup>55</sup> Thirdly, does this entail that individual citizens are unable to represent the interests of others who do not share

the same characteristics; an 'assumption that people cannot empathise across lines of difference'?<sup>56</sup> Finally, it raises a question as to whether jurors are chosen as representatives for others with similar characteristics, interests and values or as citizens who, whilst reflecting on their own values and experiences, are also open to the possibility of transformation in light of their reflections and deliberations with other participants.

Such problems emerge in Burnheim's conception of 'statistical representation' where the individuals chosen within a representative sample are taken to be representatives of particular interests.<sup>57</sup> This emphasis on representation may undermine the democratic ideal of the inclusive jury. As Abramson argues in a discussion of legal juries: 'In the end, what is at stake is whether we want jurors to understand their task primarily in terms of deliberation or representation'.<sup>58</sup>

We do not want to encourage jurors to see themselves as irreconcilably divided by race, selected only to fill a particular racial or gender slot on the jury. Yet we do want to encourage jurors to draw upon and combine their individual experiences and group backgrounds in the joint search for the most reliable and accurate verdict. The difference is subtle but real.<sup>59</sup>

The use of stratified random sampling in the UK and USA is thus controversial, but seems to be necessary where the jury process involves so few individuals (between 12 and 24). Such small numbers of citizens will also likely have a negative impact on the variety of backgrounds and experiences that jurors are able to draw on. In contrast, in Germany, Dienel uses a simple random selection process for his planning cells – each citizen, then, has an equal chance to be selected for the jury. Because of the higher number of citizens involved – planning cells are run concurrently and/or in series – no voice or perspective can claim to be *systematically* excluded from the process.<sup>60</sup> However, there remain problems for the inclusion of small minority populations which may require mechanisms to ensure their presence, otherwise deliberations will not be able to draw on their particular experiences and knowledge. This caveat aside, Dienel's approach, understood as equality of opportunity to participate and deliberate, avoids many of the tensions within the smaller jury processes developed in the UK and USA and, in many ways, transcends the issue of representation defined in terms of either the principal/agent or the microcosm model.

The composition of the jury is not the only important issue with regard to inclusiveness. Two further problems arise. First, before any citizens are actually selected, there is a prior problem of deciding upon the appropriate population from which the jury is to be drawn. The relevant constituency entitled to participate is not always obvious and the impact of this on deliberations is far from clear.<sup>61</sup> The logic of citizen's juries is such that the population from which citizens are to be drawn should be appropriate to the nature and scale of the issue in question. This corresponds with the deliberative insight that the legitimate constituency of deliberation may cut across existing boundaries of political authority,<sup>62</sup> which in itself may cause some problems for potential sponsors such as local authorities.

Second, questions of presence and voice also extend to the selection of witnesses. We shall have more to say about this in the next section on deliberation, but procedures need to be in place such that all groups potentially affected by the decision have the opportunity to present evidence for the jury's consideration.

## *Deliberation*

Do citizens' juries create conditions which promote unconstrained, open and reasoned dialogue? Organizers of citizens' juries are well aware that any accusation of bias or manipulation is one of the most damaging criticisms that can be made of the process. Concern about the effects of bias does not centre only on the process of deliberation between citizens. Well before citizens have been selected, decisions have been taken on the subject for discussion: a 'charge' (or question) has been framed and relevant information and witnesses have been selected. There is a danger that even before citizens are directly involved, issues, information and witnesses might be mobilized out of the process. Such a problem is recognized by Crosby who argues that 'the aim of the staff in setting the charge is to frame a question which is satisfactory to the sponsors of the project, fair to the parties affected by the issue, and which will provide a framework within which jurors can make good judgements. These goals are not easy to meet simultaneously'.<sup>63</sup>

The stage *prior* to any jury deliberations is thus fundamental to the overall fairness of the process. Experiments with *complete* juror control of the process have found that participants, in the initial stages, do not have enough of an overview on a subject to deal competently with setting the charge, agenda organization or witness selection.<sup>64</sup> In practice, advocates of the jury process recommend that a steering group consisting of 'stakeholders' be established to develop the question, select witnesses and set the agenda. This may be time consuming, yet the very integrity of the whole citizens' jury process is dependent on decisions made at this point. However, the composition of the stakeholder group itself creates a series of problems to which there are no easy and obvious answers. Stakeholders are likely to be 'self-selecting' – where organizations lack resources, or where affected interests have not been able to organize, the likelihood of access to this initial stage of the process is minimal. Imbalances of power and resources in society will be replicated in the initial decision making process which may lead to the exclusion and marginalization of certain types of knowledge and experience.<sup>65</sup>

In the UK, this problem has been partially addressed by bringing together lay people to look at the charge in pre-jury focus groups: 'the presence of a wider range of people than just members of the organising authority can bring a degree of independent scrutiny to the planning process'.<sup>66</sup> Also, rather than complete control, juries are instead given the power to alter the charge and call new witnesses *as* they deliberate and learn about the issues under consideration – usually up to half a day's space is allocated towards the end of the process.<sup>67</sup>

Once the jurors have come together, there are a number of features of the process which appear to foster democratic deliberation and an orientation toward the common good. To fulfil the ideals of deliberative democracy, citizens should develop a disposition of mutual respect toward the perspectives of other participants. In many of the juries run in the UK, time is set aside at the beginning to draw up 'rules of conduct' which typically emphasize the need to respect and listen to the arguments of others. The worth of this exercise was noted by the organizers of the Association of British Insurers' jury on genetic testing, who stated in their debriefing session that the jurors 'produced some excellent rules, and felt a clear sense of

ownership often referring each other back to them throughout the four days'.<sup>68</sup> Davies and Sang, who have facilitated juries for the King's Fund, also use this technique to create 'a Jury culture of mutual respect for the individuals present, encouraging an appreciation of difference for everyone involved'.<sup>69</sup>

Although publicity is fundamental to citizens' juries – the citizens' report is designed to explain the jury's judgements and recommendations and is publicized widely<sup>70</sup> – only a small number of observers (including media representatives) are present during plenary sessions when witnesses provide evidence and are questioned, and when jurors deliberate amongst themselves. Thus publicity is limited and some deliberation in small groups occurs entirely away from the public gaze. This is particularly important if jurors are not to be seen as 'representatives' of particular interests or groups and are to be encouraged to alter their positions in light of new evidence and reasoned arguments.<sup>71</sup>

We have already raised a concern that the small size of one-off juries (as in the USA and UK) limits the range of different perspectives and experiences that citizens can draw on. However, the small size of the jury and the time that jurors spend together both appear important for enhancing the deliberative quality of the process. An environment is created where stable expectations and relations of trust can be fostered between participants, so essential for mutual understanding.<sup>72</sup> Dynamics of large assemblies tend to differ markedly. As Elster argues: 'In a large assembly, it is not possible to pursue an argument in a coherent and systematic fashion. The debates tend to be dominated by a small number of skilled and charismatic speakers ... who count on rhetoric rather than argument'. In comparison, in a small jury setting, 'one is more likely to observe the substance and not only the form of deliberation. The small size reduces the scope for demagoguery and allows all speakers to be heard'.<sup>73</sup> Suspicion of strategic action on the part of citizens is also lessened given that the jury process 'does not represent an opportunity for advancement, promotion or re-election' for those involved.<sup>74</sup>

This 'face-to-face' interaction of jurors, made possible by the small number of participants, is often celebrated: 'The face-to-face nature of debates is seen as a way of drawing people into the political process, enabling them to think not as isolated, anonymous individuals, but as citizens, working together via dialogue and consensus for the "common good" of society'.<sup>75</sup> However it is important to remember Mansbridge's warning: 'In moments of genuine conflict, face-to-face contact among citizens encourages suppression of that conflict'. There may well be 'face-to-face temptations to false unanimity',<sup>76</sup> but unlike the small-town meetings that Mansbridge has analysed, in juries there are marked differences between participants which lessens the pressure to conform.<sup>77</sup>

Quite clearly there is an important role here for the moderator in facilitating the discussions, encouraging an ethos of mutual respect and guiding decision-making processes. Questions have been raised by some jurors as to whether, on occasion, moderators push for consensus amongst the jurors at the expense of allowing participants to understand and work through their differences.<sup>78</sup> There must be space for disagreement built into the process: even though juries accommodate majority/minority decisions, an expectation of consensus can create a barrier to critical dialogue with particular perspectives dominating the agenda and defining

the consensus.<sup>79</sup> Most moderators are alert to the manner in which deliberations can be dominated by confident and outspoken individuals and to the fact that, for some citizens, speaking in front of between 12 and 25 fellow citizens is intimidating. Dialogue not only occurs in full jury sessions, but also in smaller group settings where there is often a rotation of participants.

Importantly, there is growing empirical evidence emerging that the deliberative process has a significant effect on both the citizens involved and the decisions and judgements made by the jury. We shall discuss some of these findings below, but it is clear that there is a marked difference between the pre-deliberative preferences of citizens which would have been aggregated within existing social choice mechanisms and their preferences and judgements after the process of deliberation. The detailed and informed nature of the conclusions and recommendations of many of the pilot juries in the UK differed from the results of non-deliberative consultation mechanisms and, on a number of occasions, appear to have affected the sponsors' policies and spending priorities.<sup>80</sup>

### *Citizenship*

In contrast to a passive understanding of citizenship that is dominant within contemporary democracies, it is argued that citizens' juries reassert the importance of a more active form of citizenship. As IPPR argues, citizens' juries could have an important part to play in the 'development of democratic practice built on active citizenship. They offer the opportunity to bring into the public domain experience and judgement too often excluded from it, and to enhance the quality of deliberation'.<sup>81</sup> Do the actions and attitudes of participants offer support to this idea of active citizenship?

Given that citizens spend around four days in the company of others from different social backgrounds, reflecting on a variety of evidence and experiences, it should not be a surprise that this affects the preferences and values of participants. Crosby has collected empirical data to support the belief that 'jurors almost always change their minds during the sessions, as they become more involved with the issues'.<sup>82</sup> The UK experience supports these findings: questionnaires before and after juries highlight changes in jurors' attitudes. There is also emerging evidence that some jurors are more civically active long after the jury process has ended.<sup>83</sup> Dienel frequently argues that citizens tend to develop a different attitude towards the world after participating in a process of reflection on their own and others' values and experiences. 'Surveys of those who have taken part in completing a [planning cell] all show that participation in this kind of process does have an effect on the individual's sense of purpose'.<sup>84</sup> Both the changes in preferences and attitudes during and beyond the jury process are important, since this offers empirical backing for the theoretical claims made for the transformative power of democratic deliberation.

One of the important factors that facilitates attitudinal change is likely to be political efficacy – the extent to which citizens feel confident in their abilities to participate and to influence decision-making processes and policies.<sup>85</sup> Moderators are key figures in building up this confidence, although perhaps most important is the practice of drawing up a pre-jury contract between the independent facilitating

organization, the commissioning body and the jurors. Under the conditions of this contract, the commissioning body is bound to either act on the jury recommendations or to give reasons why it has decided not to act.<sup>86</sup> This not only increases the democratic legitimacy of the decision-making process, but also gives jurors the sense that their deliberations will be taken seriously.

Those who have witnessed citizens' juries are frequently impressed by the commitment shown by participants. As Lenaghan and Coote stress: 'right from the start ... we were deeply impressed – as were most other observers – with the level of competence with which jurors tackled their task'.<sup>87</sup> A South Somerset councillor affirms this positive judgement: 'the jurors have spent more time considering this issue in an unbiased and deliberative way than most councillors have'.<sup>88</sup> Such impressions can only encourage confidence and trust in the decision-making capacities of ordinary citizens.

### **Lessons from Citizens' Juries?**

How does the practice of citizens' juries stand up to deliberative democratic ideals? What can we learn about the institutionalization of democratic deliberation from the small number of pilots and experiments? Institutional design is a developmental process and reflections on these experiments might offer insights into alternative arrangements for engaging citizens in decision-making processes.

It is difficult to imagine a fully inclusive institutional design wherein all citizens have the right to engage in political decision-making processes. Citizens' juries offer one approximation of that ideal and aim to achieve a broadly representative jury through a random sampling procedure. However, as we have argued, there is a tension between representation and democratic deliberation. It is important that those chosen are not seen simply as representatives of their social groups, rather that deliberation should progress with participants able to reflect and draw on a diversity of backgrounds and experiences. Moreover, it is clear that the process of deliberation itself can also be subverted by prior decisions on the choice of charge, relevant information and witnesses. It is thus essential that the facilitators and organizers of juries are seen to be independent. Where biases or strategic manipulation by more powerful actors in the initial stage can be minimized, juries offer a conducive environment for deliberation and the development of a more active ethos of citizenship.

So what role for citizens' juries and other innovative democratic designs? At one extreme we might imagine a 'jury democracy', at the other juries are seen as an expensive irrelevance. In many ways, Burnheim's vision of 'demarchy' can be seen as a logical progression from innovations such as citizens' juries, with positions of authority decided through random sampling procedures.<sup>89</sup> However, as we argued earlier, there are problems with his conception of statistical representation. At the other extreme, critics have contended that citizens' juries are a charade – decision makers will simply cherry-pick decisions, use juries to validate unpopular judgements, selectively fulfil recommendations, or else ignore findings completely when the judgement is unfavourable. The practice of drawing up a pre-jury contract partially counters such objections. Where a citizens' jury has been constituted and the relevant institutions respond to recommendations (whether positively or

negatively), the democratic legitimacy of the decision-making process is increased. Citizens' juries might then be understood as part of a democratic, critical authorization process that enhances the legitimacy of political decision making.

The recognition that citizens' juries should not simply be judged in isolation, but as part of a wider democratic process is important. Citizens' juries are not a panacea for all contemporary democracy's ills and need to be understood in a wider institutional and political context. At a minimum, citizens' juries should be seen as a potential supplement to representative institutions, a way of bringing informed citizens' perspectives into the decision-making process. However, there is need for imaginative and creative thinking about possible relationships with both existing institutional forms and other innovative democratic designs such as referenda, deliberative opinion polls and mediation. At the very least citizens' juries offer valuable insights for deliberative democrats into how citizens might be afforded meaningful deliberative opportunities to engage with decision-making processes.

(Accepted: 9 May 1999)

### About the Authors

**Graham Smith**, Department of Politics, University of Southampton, S017 1BJ, UK.

**Corinne Wales**, Faculty of Social Medicine, Southampton Institute, Southampton S014 0YN, UK.

### Notes

- 1 We would like to thank Susan Stephenson, David Owen and James Connelly for their comments and suggestions, as well as participants at the MANCEPT and ECPR conferences where a version of this paper was presented.
- 2 See, for instance, C. Offe and U. Preuss, 'Democratic Institutions and Moral Resources' in D. Held, *Political Theory Today*. Cambridge: Polity, 1991; B. Barber, *Strong Democracy*. Berkeley: California Press, 1984; A. Phillips, *The Politics of Presence*. Oxford: Oxford University Press, 1995.
- 3 D. Beetham, 'Liberal democracy and the limits of democratisation', *Prospects for Democracy: Political Studies Special Issue*, 40 (1992), p. 47. See also B. Manin, *The Principles of Representative Government*. Cambridge: Cambridge University Press, 1997.
- 4 H. Pitkin, *The Concept of Representation*. Berkeley: University of California Press, 1967, pp. 42–3.
- 5 Phillips, *The Politics of Presence*, p. 13. See also J. Squires, 'Rethinking representation: between liberalism and the cultural politics of difference', paper presented at the Political Studies Association Annual Conference, York University (1995), p. 12.
- 6 A. Arblaster, *Democracy*. Buckingham: Open University Press, 1987, p. 76.
- 7 Beetham, 'Liberal democracy and the limits of democratisation', p. 48.
- 8 Phillips, *The Politics of Presence*, p. 149; D. Miller, 'Deliberative democracy and social choice', *Prospects for Democracy: Political Studies Special Issue*, 40 (1992), p. 54.
- 9 Miller, 'Deliberative democracy and social choice', p. 59.
- 10 C. Sunstein, 'Preferences and politics', *Philosophy and Public Affairs*, 20 (1991), p. 5.
- 11 Offe and Preuss, 'Democratic institutions and moral resources', p. 165.
- 12 M. Warren, 'Deliberative democracy and authority', *American Political Science Review*, 90 (1996), p. 55.
- 13 Deliberative democracy has also been termed discursive and communicative democracy. However, there is no consistent usage of the terms which would suggest that they represent distinct positions. The account offered here is a general 'characterization' of the main elements of deliberative democratic theory. For a useful typology, see R. Blaug, 'New theories of discursive democracy: a user's guide', *Philosophy and Social Criticism*, 22 (1996), 49–80.
- 14 D. Held, 'Democracy: from city state to a cosmopolitan order?', *Prospects for Democracy: Political Studies Special Issue*, 40 (1992), 10–39; D. Beetham, 'Liberal democracy and the limits of democratisation',

- 40–53. The recognition that a division of political labour is necessary separates deliberative democracy from some conceptions of direct democracy.
- 15 S. Benhabib, 'Toward a Deliberative Model of Democratic Legitimacy', in S. Benhabib (ed.), *Democracy and Difference*. Princeton: Princeton University Press, 1996, p. 69.
  - 16 Miller, 'Deliberative democracy and social choice'; Phillips, *The Politics of Presence*.
  - 17 M. Warren, 'The Self in Discursive Democracy' in S. White (ed.), *The Cambridge Companion to Habermas*. Cambridge: Cambridge University Press, 1995, p. 181. There is some disagreement within deliberative democratic theory as to the status of consensus: for some it acts as a regulative ideal of deliberation; for others, the stress on this ideal can act as a barrier to critical dialogue – more powerful interests are liable to dominate the agenda and the definition of consensus.
  - 18 J. Dryzek, 'Green reason: communicative ethics and the biosphere', *Environmental Ethics*, 12 (1990), p. 202. Habermas captures the concept of an understanding-oriented deliberative or 'communicative' action by setting it against strategic action. Both types of action are social action characterized by meanings 'as intended by the actor or actors' which are 'orientated' in that they take 'account of the behaviour of others'. The orientation of strategic action is towards success, that is 'the appearance in the world of a desired state, which can in a given situation, be causally produced through goal-oriented action or omission'. As such, strategic action follows the rules of rational choice, and impacts on the decisions of rational 'opponents'. Habermas argues that competent speakers can themselves tell when they strategically attempt to influence causally a hearer's action, when they use means such as deceit, manipulation and coercion to bring about compliance. Communicative action, in contrast, is defined by actors oriented 'not through egocentric calculations of success but through acts aiming towards reaching understanding'. J. Habermas, *The Theory of Communicative Action, Volume One*. Cambridge: Polity, 1981, pp. 279–86.
  - 19 Benhabib terms these the principle of universal moral respect and the principle of egalitarian reciprocity. S. Benhabib, *Situating the Self*. Cambridge: Polity, 1996, p. 29.
  - 20 Miller, 'Deliberative democracy and social choice', p. 61.
  - 21 Miller, 'Deliberative democracy and social choice', p. 62.
  - 22 Manin, 'On legitimacy and political deliberation', *Political Theory*, 15 (1987), pp. 351–2.
  - 23 A. Gutmann, 'Democracy, Philosophy, and Justification' in Benhabib, *Democracy and Difference*, p. 344.
  - 24 Warren, 'Deliberative democracy and authority', p. 55.
  - 25 J. Fearon, 'Deliberation as Discussion' in J. Elster (ed.), *Deliberative Democracy*. Cambridge: Cambridge University Press, 1998, p. 49.
  - 26 Fearon, 'Deliberation as Discussion', p. 50.
  - 27 K. Baynes, 'Democracy and the Rechtsstaat: Habermas's Faktizität und Geltung' in White, *The Cambridge Companion to Habermas*, p. 216; I. M. Young, 'Communication and the Other: Beyond Deliberative Democracy' in Benhabib, *Democracy and Difference*, pp. 126–8.
  - 28 Manin, 'On legitimacy and political deliberation', p. 354; C. Pateman, *Participation and Democratic Theory*. Cambridge: Cambridge University Press, 1970.
  - 29 A. Gutmann and D. Thompson, 'Moral conflict and political consensus', *Ethics*, 101 (1990), 79–82; T. McCarthy, 'Kantian constructivism and reconstructivism', *Ethics*, 105 (1994), p. 62.
  - 30 M. Warren, 'What should we expect from more democracy?', *Political Theory*, 24 (1996), p. 242.
  - 31 For an alternative set of deliberative criteria based on the ideals of 'competence' and 'fairness', see O. Renn, T. Webler and P. Wiedemann (eds), *Fairness and Competence in Citizen Participation*. Dordrecht: Kluwer, 1995.
  - 32 For example, J. Habermas, *Between Facts and Norms*. Cambridge: Polity, 1996; Benhabib, *Situating the Self*; Gutmann and Thompson, *Democracy and Disagreement*. Cambridge MA: Belknap, 1996; J. Cohen, 'Deliberation and Democratic Legitimacy' in A. Hamlin and P. Pettit (eds), *The Good Polity*. Oxford: Basil Blackwell, 1989.
  - 33 C. Calhoun (ed.), *Habermas and the Public Sphere*. Cambridge MA: MIT Press, 1990; Habermas, *Between Facts and Norms*; Benhabib, 'Toward a Deliberative Model of Democratic Legitimacy'.
  - 34 J. Dryzek, 'Ecology and discursive democracy: beyond liberal capitalism and the administrative state', *Capitalism, Nature, Socialism*, 3 (1992), p. 34.
  - 35 J. Cohen and J. Rogers, 'Secondary Associations and Democratic Governance' in J. Cohen and J. Rogers (eds), *Associations and Democracy*. London: Verso, 1995; J. Cohen and C. Sabel, 'Directly deliberative polyarchy', *European Law Journal*, 3 (1997), 313–42. For sceptical remarks on the deliberative potential of associative democracy, see the responses in Cohen and Rogers, *Associations and Democracy*.

- 36 I. M. Young, *Justice and the Politics of Difference*. Princeton NJ: Princeton University Press, 1990; Phillips, *The Politics of Presence*.
- 37 Manin, 'On legitimacy and political deliberation', p.359; Habermas, *Beyond Facts and Norms*, p. 304. For sceptical comments on the interplay of deliberation and majoritarian decision rules, see S. Chambers, 'Discourse and Democratic Practice' in White, *The Cambridge Companion to Habermas*, p. 255.
- 38 J. Bohman, 'Survey article: the coming of age of deliberative democracy', *Journal of Political Philosophy*, 6, 4 (1998), p. 419.
- 39 J. Mansbridge, *Beyond Adversarial Democracy*. Chicago IL: University of Chicago Press, 1983.
- 40 C. Hunold and I. M. Young, 'Justice, democracy and hazardous siting', *Political Studies*, 46 (1996), 82–95; J. Forester (ed.), *Critical Theory and Public Life*. Cambridge MA: MIT Press, 1985.
- 41 J. Elster, 'Deliberation and Constitution Making' in J. Elster (ed.), *Deliberative Democracy*. Cambridge: Cambridge University Press, 1998.
- 42 S. Chambers, *Reasonable Democracy*. Ithaca NY: Cornell University Press, 1996.
- 43 A small number of such assessments have begun to emerge. See, for example, Renn *et al.* (eds), *Fairness and Competence in Citizen Participation*; J. Fishkin, *Democracy and Deliberation*. New Haven: Yale University Press, 1991; *The Voice of the People*. New Haven: Yale University Press, 1995.
- 44 P. Dienel, 'Contributing to Social Decision Methodology: Citizen Reports on Technology Projects' in C. Vlek and G. Cvetkovich (eds), *Social Decision Methodology for Technical Projects*. Dordrecht: Kluwer, 1989, p. 133. See also J. Stewart, E. Kendall and A. Coote, *Citizens' Juries*. London: Institute of Public Policy Research, 1994; Coote and Lenaghan, *Citizens' Juries: Theory into Practice*. London: IPPR, 1997.
- 45 A. Coote and D. Mattinson, *Twelve Good Neighbours*. London: Fabian Society, 1997, p. 4.
- 46 Ned Crosby has copyright of the term 'citizen's jury'.
- 47 N. Crosby, 'Citizen Juries: One Solution for Difficult Environmental Questions' in Renn *et al.*, *Fairness and Competence in Citizen Participation: Trustworthy democratic facilitation*, manuscript. Minneapolis: Jefferson Center, 1996; 'Creating an authentic voice for the people', paper presented at the Midwest Political Science Association (1996); Stewart *et al.*, *Citizens' Juries*.
- 48 P. Dienel, 'Contributing to Social Decision Methodology: Citizen Reports on Technology Projects'; P. Dienel, 'Das "Bürgergutachten" und seine Nebenwirkungen' (transl. Corinne Wales as 'The "Citizens Report" and its wider effects'), *Forum für Interdisziplinäre Forschung*, 17 (1996), 113–35; P. Dienel and O. Renn, 'Planning Cells: a Gate to "Fractal" Mediation', in Renn *et al.*, *Fairness and Competence in Citizen Participation*; J. Stewart *et al.*, *Citizens' Juries*.
- 49 For a discussion and evaluation of some of these pilots, see Coote and Lenaghan, *Citizens' Juries: Theory into Practice*; D. Hall and J. Stewart, *Citizens' Juries in Local Government: Report from the LGMB on Pilot Projects*. Luton: LGMB, 1997; S. McIver, *An Evaluation of the King's Fund Citizens' Juries Programme*. Birmingham: Health Services Management Centre, 1997; R. Kuper, 'Deliberating waste: the Hertfordshire Citizens' Jury', *Local Environment*, 2 (1997), 139–53.
- 50 Speech given by Joan Ruddock at the IPPR Symposium on citizens' juries and other methods of public involvement (July 1997). See C. Delap, *Making Better Decisions*. London: IPPR, 1998, pp. 20–1. So far, two pilot women's juries have been run.
- 51 Department of Environment, Transport and the Regions, *Modernising Local Government: Local Democracy and Community Leadership*. London: DETR, 1998, p. 25.
- 52 Crosby, 'Citizens' Juries: One Solution for Difficult Environmental Questions', p. 160.
- 53 John Adams, quoted in Pitkin, *The Concept of Representation*, p. 60.
- 54 Pitkin, *The Concept of Representation*, p. 80.
- 55 A. Armour, 'The Citizens' Jury Model of Public Participation: A Critical Evaluation' in Renn *et al.*, *Fairness and Competence in Citizen Participation*, p. 180.
- 56 Squires, 'Rethinking Representation', p. 13.
- 57 Burnheim, *Is Democracy Possible?* Cambridge: Polity, 1985.
- 58 J. Abramson, *We, The Jury*. New York: Basic, 1994, p. 141.
- 59 Abramson, *We, The Jury*, p. 11.
- 60 Although Dienel does not use a quota system, random selection appears to generate a range of citizens quite similar in characteristics to those chosen by Crosby. See Stewart *et al.*, *Citizens' Juries*, pp. 23–4. On this issue, deliberative opinion polling has an advantage over juries in that around 300 citizens are brought together to deliberate. However, citizens are not engaged in collective decision making – rather their post-deliberative votes are aggregated. See Fishkin, *Democracy and Deliberation and The Voice of the People*.

- 61 Fishkin contends that: 'Amazingly little serious work in political theory has been done on this problem'. See Fishkin, *Democracy and Deliberation*, p. 78.
- 62 Benhabib, 'Toward a Deliberative Model of Democratic Legitimacy', p. 70.
- 63 Crosby, 'Trustworthy democratic facilitation', p. 161. In the UK, one of the major critics of citizens' juries, the Association for Community Health Councils for England and Wales, has argued that health authorities may well manipulate the process, 'where questions are set and witnesses chosen ... in order to influence the jury's decision'. See McIver, *An Evaluation of the King's Fund Citizens' Juries Programme*, p. 69.
- 64 Crosby, 'Trustworthy democratic facilitation', pp. 18–19.
- 65 B. Wynne, 'May the Sheep Safely Graze? A Reflexive View of the Expert-Lay Knowledge Divide' in S. Lash, B. Szerszynski and B. Wynne (eds), *Risk, Environment and Modernity: towards a New Ecology*. London: Sage, 1996. See also Hunold and Young, 'Justice, democracy and hazardous siting' – they argue that such problems can be countered if the deliberative criteria of inclusiveness and equality of resources are respected.
- 66 McIver, *An Evaluation of the King's Fund Citizens' Juries Programme*, p. 68. In the pilots run by the King's Fund all the charges put to lay people for consideration were changed in some way.
- 67 This freedom can create tensions between juries, moderators and the sponsoring body. See Stewart *et al.*, *Citizens' Juries*, p. 22.
- 68 Noted by Jo Lenaghan after the ABI jury (14–19 November 1997).
- 69 S. Davies and B. Sang, 'Perfect strangers' (manuscript). London: King's Fund Policy Institute, 1997, p. 15.
- 70 On the importance of publicity in the design of democratic institutions, see D. Luban, 'The Publicity Principle' in R. E. Goodin (ed.), *The Theory of Institutional Design*. Cambridge: Cambridge University Press, 1996.
- 71 Elster, *Deliberation and Constitution Making*, p. 109.
- 72 Diemel and Renn, 'Planning Cells', p. 137.
- 73 Elster, *Deliberation and Constitution Making*, p. 107.
- 74 Diemel, 'Das 'Bürgergutachten' und seine Nebenwirkungen', p. 114.
- 75 Stewart *et al.*, *Citizens' Juries*, p. 10. See also Fishkin, *Democracy and Deliberation*, pp. 92–3.
- 76 Mansbridge, *Beyond Adversarial Democracy*, pp. 276–7.
- 77 S. Moscovici and W. Doise, *Conflict and Consensus*. London: Sage, 1994.
- 78 The drive toward some notion of consensus or at least a decision outcome by strong moderation was clearly evident in a jury observed by one of the authors. The subsequent evaluation report of one black juror, who throughout the proceedings had tried to express some misgivings, conveys her feelings of marginalization: 'I would have liked to hear other ethnic minorities' views in the Jury. As I am the only black female it was hard to get my views across ... the minorities have no significant [voice] in the final decisions' (from juror evaluation form, ITC Jury, 1997). In the Camden Jury, the evaluation reports revealed that some jurors felt they were being 'pushed towards an agreement' (Camden Jury evaluation form, 1997).
- 79 I. M. Young, 'Communication and the Other: Beyond Deliberative Democracy' in Benhabib, *Democracy and Difference*, p. 126; Mansbridge, *Beyond Adversarial Democracy*, p. 5.
- 80 McIver, *An Evaluation of the King's Fund Citizens' Jury Programme*, pp. 51–6; Coote and Lenaghan, *Citizens' Juries: Theory into Practice*, pp. 15–22.
- 81 Stewart *et al.*, *Citizens' Juries*, p. 5.
- 82 Stewart *et al.*, *Citizens' Juries*, p. 25. For similar findings in deliberative opinion polling, see Fishkin, *The Voice of the People*, p. 168.
- 83 McIver, *An Evaluation of the King's Fund Citizens' Jury Programme*, pp. 58–9; Coote and Lenaghan, *Citizens' Juries: Theory into Practice*, pp. 65 and 89–90.
- 84 Diemel, 'Contributing to Social Decision Methodology', p. 10.
- 85 Pateman, *Participation and Democratic Theory*.
- 86 This practice was originally developed by Diemel. See Stewart *et al.*, *Citizens' Juries*, pp. 47.
- 87 Coote and Lenaghan, *Citizens' Juries: Theory into Practice*, pp. 88–9.
- 88 Hall and Stewart, *Citizens' Juries in Local Government*, p. 14.
- 89 Burnheim, *Is Democracy Possible?*