

RENEWING DEMOCRACY

IN THE DIGITAL AGE



NO
JOBS ON
A DEAD
PLANE

NO LINKS ON
OIL
PIPELINES

WOLFE



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LETTER FROM THE CO-CHAIRS

Dear Reader,

In recent years, the supposed death of liberal democracy has been hailed by critics both within and outside the democratic world. The values that have come to define liberal democracy—open, diverse, and tolerant societies; individual, minority, and majority rights; rule of law and democratic constraints on power—are lamented as luxuries of prosperous societies in times of peace. Today, as we stumble through the turbulence of the 21st Century, the appeal of “strong men” promising effective government compels a disillusioned and fearful public to relinquish the hard-fought gains of liberal democracy, allowing these authoritarian leaders to dismantle its institutions. The actions necessary to manage the COVID-19 pandemic such as limiting freedom of movement, canceling elections and introducing technology that compromises people’s privacy, are dangerous tools for dictators, but can even put the most well-meaning policymakers on a slippery slope toward authoritarianism.

It is true that even before the COVID-19 pandemic, democracies, and indeed, other forms of governance faced significant challenges in adapting to the dramatic changes of the past two decades. If many democratic systems were performing better in the eyes of their citizens, particularly on the central issues of opportunity, equality, and identity, their legitimacy would be greater and their institutions better placed to tackle the crisis. In the aftermath of the current crisis, the performance of different forms of governance will be assessed and compared. As of this writing, it is too early to tell how democracy will fare.

Nevertheless, we hold the position, based both on principle and on the evidence of long historical experience, that liberal democracy as a system of governance is fundamentally superior to non-democratic systems in at least three important ways:

1

VALUES – The rule of law, freedom of speech, expression, and association, respect for diversity, and other democratic values are essential features of healthy societies.

2

PROCESS – Democratic processes and institutions, including universal access to the ballot, representative legislative bodies, independent judiciaries, the free press, and an open public square, all enable a more transparent and inclusive political system that is both necessarily deliberative and, ultimately, more effective than authoritarian regimes.

3

OUTCOMES – Democratic systems produce prosperity that is, on aggregate, greater and more widely shared across society. They are also more peaceful, both internally and externally, amongst each other.

All three axes are increasingly, and often falsely, being called into question. Whether drawing strength from internal weakness or rising inequality, stoked by white nationalists or internet trolls, or emboldened by Russian meddling in political affairs or by the Chinese model of governance, the adversaries of democracy appear to be on the march.

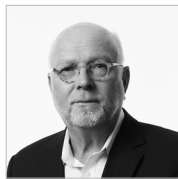
Meanwhile, the populations of democratic societies seem dispirited and increasingly skeptical both of their institutions and their collective futures. Indeed, democratic societies face severe challenges in addressing both growth and equity in the economy, in adapting to new technologies, norms, and mindsets, in navigating stark social, cultural, and demographic changes, and in responding to rising global challenges ranging from nuclear proliferation to climate change. Many of these challenges, of course, extend far beyond the control of the nation-state, and democracy alone is not a panacea, nor is its success or stability assured.

Yet, the apparent pessimism of 2019, and now 2020, appears as misplaced in the other direction as was the euphoria of 1989, perhaps significantly more so. Democracies are remarkably resilient political and value systems capable of significant change, and we believe that democratic reform can help build more inclusive, equal, and prosperous societies that are more responsive to the concerns of their citizens. The Berggruen Institute Future of Democracy program has conducted a three-year comprehensive study and related series of convenings regarding pathways for democratic reform that may strengthen democratic values, institutions, and outcomes. Our particular focus has been on strengthening democratic institutions and processes as an expression of democratic values, precisely because institutions form the enabling environment necessary for public policy to respond to the great challenges of this century.

This executive report includes a discussion both of the context of the seeming crisis in democracy and of a framework in “citizenship democracy” for responding to growing calls for change, civic empowerment, and inclusion that will ultimately enable better outcomes for citizens. Concrete reforms meant to strengthen democracy’s ability to both live up to its values and deliver for its peoples are further outlined in sections on rebuilding social cohesion, renewing the public square in the Digital Age, and renovating democratic institutions. Related proposals are developed in more detail in the appendix.

This report thus represents both a capstone of a transnational, multi-stakeholder project and the launch of a new conversation around reforms in critical areas within diverse societies. The ideas and recommendations presented herein do not necessarily reflect a consensus of those who participated in the project, nor do we believe that they offer a comprehensive agenda for the renewal of liberal democracy. We offer them as contributions to the ongoing debate about how to protect and reform our democracies in the belief that they will inform the much-needed process of innovation and reform. We hope you will join us in this conversation and this vital program of work in 2020 and beyond.

Sincerely yours,



Nathan Gardels



Anthony Giddens



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Renewing Democracy in the Digital Age Project

March 2020

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LIST OF MEETINGS

**MARCH 25-26,
2019**

**Social Cohesion +
Public Square
Working Group Meeting**
London, United Kingdom

**MAY 1,
2019**

**Social Media + Democracy
Working Group Meeting**
Palo Alto, California, USA

**MAY 12-14,
2019**

**Social Cohesion +
Public Square
Working Group Meeting II**
Madrid, Spain

**JUNE 30-JULY 3,
2019**

**Future of Democracy
Working Group Meeting**
Bellagio, Italy

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THE CRISIS OF LIBERAL DEMOCRACY

That there is a crisis of liberal democracy in the West has become nearly an axiom¹. Depending on context and politics, this widespread sentiment often gets expressed viscerally with a single name or term. For those on the left—and what remains of the center—it can go by ‘populism’, ‘nationalism’, the ‘far-right’, ‘Brexit’, ‘Boris’, ‘Trump’, ‘Bolsonaro’, ‘Orban’, and on and on. For those on the right, common terms include ‘socialism’, ‘globalism’, ‘elitism’, ‘Bernie’, ‘Corbyn’, ‘AOC’, and so on.

Of course, the crisis of democracy can be measured in far more than just partisan rhetoric. It has been documented in study² after study showing long-term trends of declining democratic participation, dissatisfaction with and declining membership in traditional parties³, increasingly deadlocked legislative chambers⁴, increased polarization⁵, declining trust in politics and politicians⁶ (and, indeed, authorities of all types), and an overall declining belief in democracy.⁷

The crisis has a series of complex and interrelated causes, many of which emerge from outside democratic politics. These causes include the dislocations (and maladaptations) of globalization, deindustrialization, technological change, regional economic disparities, demographic shifts and immigration,

rapid social and cultural change⁸, the rise of China and Asia, the Global Financial Crisis, and the very global nature of the system today. There is a complexity of stressors on the system.

The failure to sufficiently respond to these challenges—whether in creating and retaining high-quality jobs, in addressing critical social areas like education, healthcare, immigration, and the breakdown of the family, or in responding to emergent crises like the COVID-19 pandemic and climate change—has contributed to strong dissatisfaction and led to questions about the viability of representative democracy itself. The situation would not be so acute, and the divisions in our society would not be so deep, had our democracies delivered better results for citizens over the last few decades.⁹

Economic disruption has led to the erosion of the working class and rural communities and, more recently, the middle class. We are also seeing levels of income and wealth inequality not seen since the Gilded Age.¹⁰ Growing inequality and the concentration of wealth have become manifest features of the current model of capitalism, particularly in the United States, where the Gini Coefficient rose by 20% between 1980 and 2016.¹¹ In part, this is a result of moderate income growth for the

¹ See, for example, Yascha Mounk, *The People vs Democracy* (Cambridge MA: Harvard University Press, 2018); Larry Diamond, “The Global Crisis of Democracy,” *Wall Street Journal*, 2019-05-17; David Runciman, *How Democracy Ends* (New York: Basic Books, 2018).

² Freedom House, *Freedom in the World 2019 Report, Democracy in Retreat* (February 2019), pp 1-9, 16-23; Michael A. Weber, *Global Trends in Democracy: Background, U.S. Policy, and Issues for Congress*, Congressional Research Service, pp 6-30 (Updated October 17, 2018).

³ Nienke Derksen et al., *Increasing Youth Voter Turnout*, London School of Economics and Political Science (December 2018), p 4, <http://www.lse.ac.uk/PBS/assets/documents/Increasing-Youth-Voter-Turnout.pdf>; R. S. Flickinger and D. T. Studlar, “The Disappearing Voters? Exploring Declining Turnout in Western European Elections,” *West European Politics*, 15 no. 2 (1992), 1-16; Miki Caul and Mark Gray, “The Effects of Declining Group Mobilization,” *Comparative Political Studies*, 33 no.9 (2000), 1091-1122.

⁴ Beth Reinhard, “GOP Faces Challenge to Its State Legislature Dominance,” *Wall Street Journal*, September 30, 2016, <https://www.wsj.com/articles/gop-faces-challenge-to-its-state-legislature-dominance-1475276819>.

⁵ Sarah Binder, *Polarized We Govern?*, (Washington DC: The Brookings Institution, 2014).

⁶ Yascha Mounk, *The People Vs. Democracy: Why Our Freedom Is in Danger and How to Save It* (Cambridge, MA: Harvard University Press, 2018).

⁷ Amanda Taub, “How Stable Are Democracies? ‘Warning Signs Are Flashing Red,’” *New York Times*, November 29, 2016, https://www.nytimes.com/2016/11/29/world/americas/western-liberal-democracy.html?_r=0; Roberto S. Foa and Yascha Mounk, “The Signs of Deconsolidation,” *Journal of Democracy* 28, 1 (January 2017).

⁸ David Goodhardt, *The Road to Somewhere: The Populist Revolt and the Future of Politics* (London: C Hurst and Co, 2017); Ronald Inglehart and Pippa Norris, *Cultural Backlash*, (New York: Cambridge University Press, 2019); Daron Acemoglu and James A. Robinson, *Why Nations Fail* (New York: Crown Business, 2012).

⁹ See Arlie Hochschild, *Strangers in their Own Land* (New York: The New Press, 2016) for an evocative portrait of these sentiments.

¹⁰ *World Inequality Report 2018*, <https://wir2018.wid.world/files/download/wir2018-summary-english.pdf>; J. Hacker and P. Pierson, *Winner-Take-All Politics* (New York: Simon and Schuster, 2010).

¹¹ Juliana Horowitz et al. 2020. “Trends in Income and Wealth Inequality,” Pew Research Centre, <https://www.pewsocialtrends.org/2020/01/09/trends-in-income-and-wealth-inequality/>.

middle class over the past 30 years compared to increases in the cost of living.¹² Meanwhile, during the period of 1980 to 2017, average national income remained flat in Western Europe and declined in Southern Europe.¹³

Rural and industrial areas, once the heartland of thriving manufacturing and agricultural economies, have been hit particularly hard by a combination of globalization and technological as well as demographic change. This period experienced rising unauthorized immigration across the West, with estimates in Europe reaching as high as 4.8 million and 10.7 million in the United States.¹⁴ Seemingly uncontrolled migration, from the perspective of critics, during a period when the fortunes of the middle and working classes are stagnating, has helped give rise to anxiety and resentment toward both the migrants and the governments who have failed to control their borders. These economic, social, and civic tensions and dislocations have proven fertile grounds on which populists on the left and right have sown the politics of hate, identity, and division that has led to an ever-increasing polarization of the democratic debate in many of the mature democracies.

Since the Global Financial Crisis over a decade ago, these tensions have become more acute and politics ever more polarized. The embrace of austerity politics by the Right and

an anti-austerity agenda by the Left has compounded the polarization of political debate. Policymakers have exacerbated the divide by failing to come up with new ideas for addressing the challenges of 21st-century digital capitalism.¹⁵ A search for these new ideas is needed now more than ever.

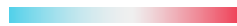
While these divisions fall along predictable political lines and reflect somewhat familiar demographic profiles¹⁶, some emergent characteristics of these cleavages reflect new features of the division. Rather than a simple traditional Right-Left polarity, these newly salient divides are between young and old, urban and rural, graduates and non-graduates, and cosmopolitan and locally-rooted (the so-called battle between the “somewheres” and the “anywheres”¹⁷). In many countries, these new cleavages are aligning along political lines leading to political polarization that often expresses itself as deep hostility, particularly but not exclusively online. Indeed, within the institutions of democracy we have witnessed a radical transformation of parliamentary and democratic cultures. Where once compromise and the ability to work across the aisle or build multi-party coalitions was admired, today this is commonly viewed as a betrayal or failure. This is increasingly a view shared by political leaders themselves as well as the most active and vocal supporters of political parties.¹⁸

Western democracies are still the most free in the world...

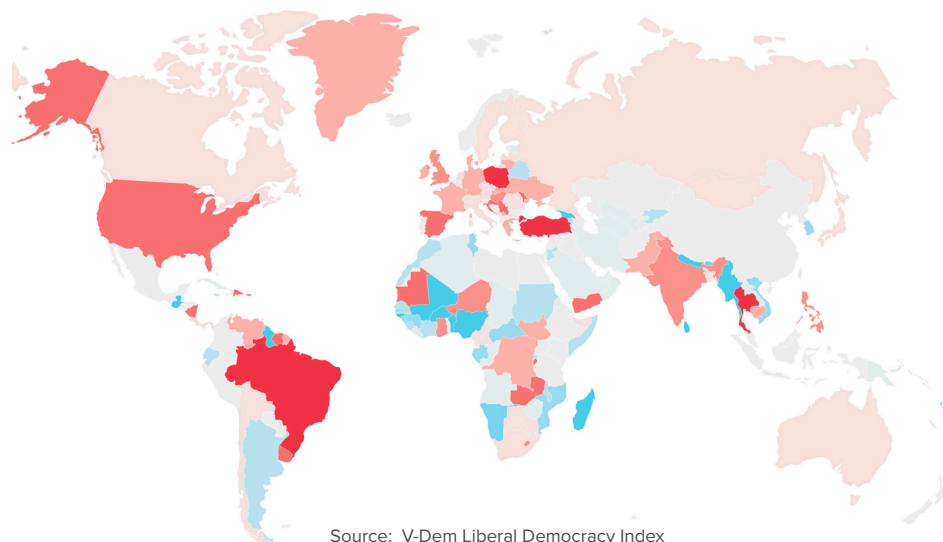
But they're less free than they were in 2012

Democracy score change, 2012-2017

Became more democratic



Became less democratic



¹² *Growth in Prices Compared to Earnings, 1990-2018*. U.S. Bureau of Labor Statistics.

¹³ World Inequality Database, 1980-2017, February 5, 2020, <https://wid.world/>.

¹⁴ Pew Research Center, “How European and US Unauthorized Immigrant Populations Compare,” Accessed November 14, 2019, <https://www.pewresearch.org/fact-tank/2019/11/13/how-european-and-u-s-unauthorized-immigrant-populations-compare/>.

¹⁵ Martin Moore, *Democracy Hacked* (London: One World Publications, 2018).

¹⁶ Francis Fukuyama, *Identity: The Demand for Dignity and the Politics of Resentment* (New York: Farrar, Strauss and Giroux, 2018).

¹⁷ David Goodhart, *The Road to Somewhere: The Populist Revolt and the Future of Politics* (London: C Hurst and Co, 2017).

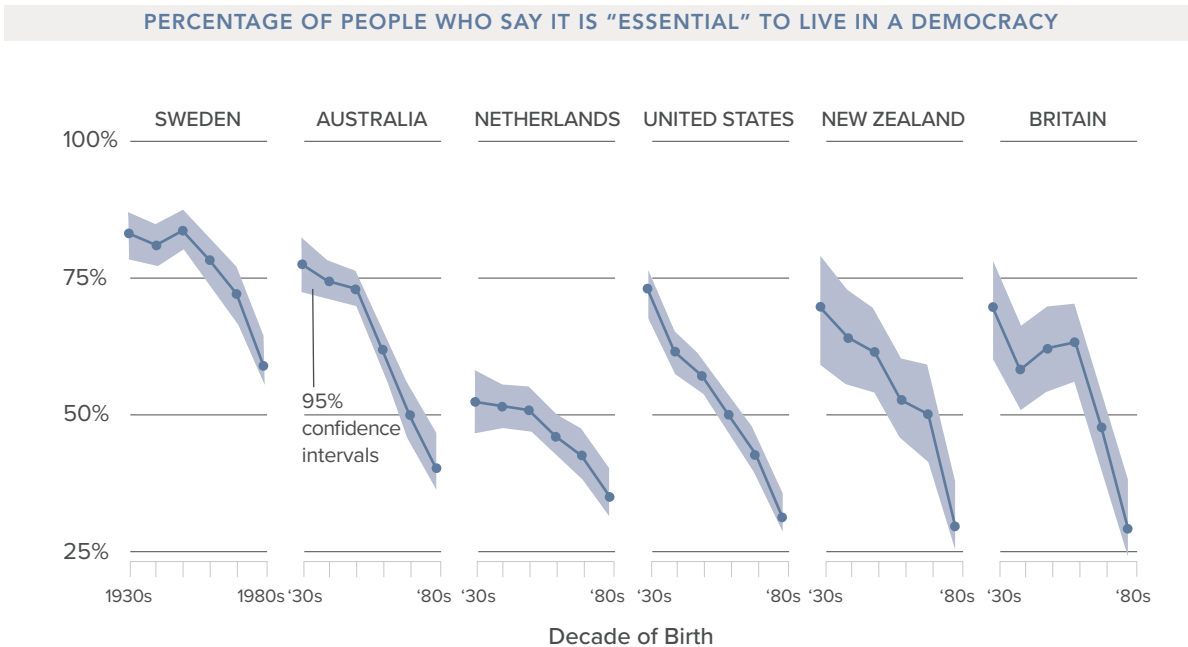
¹⁸ Jonathan Haidt, *The Righteous Mind* (New York: Pantheon Books, 2012).

Parallel to the polarization and fragmentation of the political debate, our communities have also witnessed a marked decline in their sense of shared civic and social bonds.¹⁹ Many of the civic institutions that used to keep communities connected, such as churches and religious institutions, the Boy Scouts and Girl Guides, Trade Unions, and so forth, are in decline or have suffered their own crises of legitimacy due to scandal.²⁰ Almost one-third of Americans report knowing none of their neighbors,²¹ and two-thirds never connect or spend time with them socially. It appears we have also allowed our digital devices to fill the void, further deepening the problem. The evidence is mounting that time spent immersed in the Twitter-sphere makes us less informed, more biased, less optimistic, and more anxious.²²

In this new context, diverse members of society often agree on the need for things to “change” yet have strikingly different conceptions of what type of change is needed or how to achieve it. These differences do not simply reflect the traditional divide between Left and Right, which has been largely

managed with stability since the Post-War era via traditional party-systems. Rather, the current differences are more akin to the proliferation of (often radical) political options that accompanied the Industrial Revolution (such as the Luddites) or other periods of severe dislocation.²³ Political institutions, which had once been able to effectively function under more stable conditions, are now increasingly unable to manage this fragmented reality.

A vicious cycle of ever-increasing political paralysis has emerged: the inability of democracies to solve increasingly intractable challenges has exacerbated social divides, and these societal cleavages, in turn, inhibit the democratic process from reaching consensus and taking action. As a result, the challenges themselves are further exacerbated, thus inflaming existing divides even more and eroding the necessary consensus or compromise to move forward. The ultimate result is a weakening of the ability of democracies to act and of the legitimacy of democracy as an effective form of governance.



Source: Yascha Mounk and Roberto Stefan Foa, “The Signs of Democratic Deconsolidation,” *Journal of Democracy* | By *The New York Times*

¹⁹ “According to a recent YouGov survey, some 30% of American millennials say that they are ‘lonely.’ More than 20% report that they have no friends; 25% claim to have no close ones. Many even insist that they have no ‘acquaintances.’ For even younger people, in so-called ‘Generation Z,’ the figures are even bleaker.” Matthew Walter, “The Crisis of American Loneliness,” *The Week*, August 2019.

²⁰ This trend was most famously documented by American political scientist and Harvard University professor of public policy, Robert Putnam in *Bowling Alone: The Collapse and Revival of American Community* (New York: Touchstone Books by Simon & Schuster, 2001), and many trends have continued to worsen since he published that work. See, for example, Charles Murray, *Coming Apart: The State of White America, 1960-2010* (New York: Crown Forum, 2013); Yuval Levin, *A Time to Build: From Family and Community to Congress and the Campus, How Recommitting to Our Institutions Can Revive the American Dream* (New York: Basic Books, 2020).

²¹ *2018 Social and Demographic Trends Survey*, Pew Research Center, February 5, 2020, <https://www.pewresearch.org/fact-tank/2018/04/25/7-demographic-trends-shaping-the-u-s-and-the-world-in-2018/>.

²² Sherry Turkle, *Alone Together, Why We Expect More from Technology and Less from Each Other* (New York: Basic Books, 2017); Sherry Turkle, *Reclaiming Conversation: The Power of Talk in a Digital Age* (New York: Penguin Press, 2015); Nicholas Carr, *The Shallows: What the Internet Is Doing to Our Brains* (New York: W. W. Norton & Company, 2011).

²³ Yaneer Bar-Yam et al., “US Social Fragmentation at Multiple Scales,” *Journal of the Royal Society*, 16 (2019).

As calls for decisive action and leadership mount, populists with authoritarian sympathies have stepped into the void. For people reacting with fear at the unrelenting pace of change in their lives, authoritarians have a compelling message.²⁴ Populists play on a notion of agency with their slogans to “take back control.” They implicitly offer protection, order, and traditional hierarchy—hence the appeal of a wall or of making one’s society “great again.” Their appeals are often grounded in nationalism and nativism, such as Germany’s AfD slogan of “Germans First.” These leaders ride the wave of anxiety to elected office and then disparage and attempt to dismember the institutions that got them there.

The declining legitimacy of representative democracy is also impairing the international system, not only because of the rise of nationalism promoted by emergent autocrats, but also because it has become harder for nations to collaborate. This is a crucial factor, given that many of the issues confronting our societies transcend the boundaries of the nation-state. Major challenges—including immigration and border control, terrorism and cybersecurity, tax evasion and financial regulation, and climate change and conflict resolution—are all global challenges that extend far beyond the borders of the nation state. These challenges, therefore, require global solutions from global institutions or global coalitions.

Yet, as trust in political representatives declines, so too does their ability to broker international agreements on behalf of their constituents. Often when they have done so, such agreements are met with suspicion, and the policymakers along with their plans are rejected back home. The last decade has seen very little progress internationally but plenty of setbacks, including fumbled referendums in Greece and the United Kingdom, the hostile response received by the United Nations Global Compact on Migration, repeated failures at reaching a Brexit deal, rejected free-trade agreements, and the like. Faced with significant internal, domestic turmoil and lacking the requisite political capital, even those political representatives who want to are now largely unable to make new international or global commitments.²⁵

Nevertheless, despite the seemingly dire state of democratic societies, reports of the death of democracy are wrong. As we will argue, the move toward authoritarianism is at odds with both the wishes of the majority and long-term trends, which together indicate that a very different kind of reform is needed. We need to renew the legitimacy of democracy and rebuild our civic architecture, and, in so doing, become a more resilient society both nationally and globally. Indeed, the challenges of the times demand it, and citizens are already pioneering new solutions in line with those aims, solutions that can be learned from, complemented, and scaled.

We need to renew the legitimacy of democracy and rebuild our civic architecture, and, in so doing, become a more resilient society both nationally and globally. Indeed, the challenges of the times demand it, and citizens are already pioneering new solutions in line with those aims, solutions that can be learned from, complemented, and scaled.

²⁴ Cristobal Kaltwasser and Cas Mudde, *Populism. A Very Short Introduction* (Oxford: Oxford University Press, 2017).

²⁵ Bruce Jones and Torrey Taussig, *Democracy and Disorder* (DC: Brookings Institute, 2019).

LEFT: Washington D.C., United States - 15 March 2019. U.S. Congresswomen Ilhan Omar speaking at the 2019 climate strike in front of the U.S. Capitol building. Eri Wilson / Shutterstock.com
RIGHT: Sao Paulo, Brazil - 30 September 2018. Public demonstration of the 2018 Brazilian elections in favor of presidential candidate Jair Bolsonaro. Luciano Marques / Shutterstock.com



THE NEW PARADIGM: CITIZENSHIP DEMOCRACY

The narratives surrounding democracy “in crisis” are missing one of the important drivers. While it is true that democracies are failing to effectively manage emergent global challenges, thus throwing into question their competency, this alone is not the explanation for democracy in decline. Nor is the rising threat of authoritarianism and illiberal democracy that has emerged in response. These forces hostile to democracy are taking advantage of a general frustration with the current system that has not adapted to the evolved society it attempts to govern. Our theory of the case is as follows:

We are living through a paradigm shift from a limited notion of democracy to a fundamentally deeper one in which people want and expect more agency and control.²⁶ The current breakdown in the democratic system is a result, in part, of the inability to keep up with a pent-up demand for participation and agency. The process of selecting political leaders every few years may remain a necessary condition, but it is no longer a sufficient condition for a government to assert that it is by and for the people. Our institutions must respond to this demand by finding ways to both absorb and respond to the various ways citizens want to participate in their own democracy.

This hypothesis is well in line with the observed historical trends. Indeed, the demand for increased agency and participation is perhaps an inevitable feature of democratic systems. More voice and choice has always begotten the desire for yet more voice and choice. We have seen this trend since the emergence of democracies in the Anglo-American contexts in the 18th and 19th centuries, with the gradual expansion of suffrage from a privileged elite of land-holding white men to eventually all adults in society. Indeed, most democratic systems first adopted some form of indirect suffrage, but over time, many such institutions have been replaced with mechanisms for direct popular election. During the 20th century, the use of electoral colleges for presidential elections has been replaced by more direct forms of election in Finland, Brazil, Argentina, Paraguay, Chile, and France, among others. Where such systems are still in use—such as the United States—the calls for their abolition are gaining ground in line with earlier reforms such as the direct election of the U.S. Senate.²⁷

Democracy as it is currently conceived effectively functions on a consumer level: individuals “purchase” (i.e. vote) for candidates who, in turn, “sell” them on a given set of policies, values, or symbols. Candidates are largely engaged in a branding and marketing exercise to increase their votes.²⁸ The shelf-life of this product lasts a number of years (depending on the given terms of a jurisdiction) before shopping season begins again. During the intermediary period between elections, purchasers have limited obligation or opportunity to engage in democratic governance.

²⁶ Yochai Benkler, *The Wealth of Networks: How Social Production Transforms Markets and Freedom* (New Haven: Yale University Press, 2007).

²⁷ The effort to pass the National Popular Vote bill to abolish the electoral college has succeeded in 40 legislatures in 24 states. “Status of National Popular Vote Bill in Each State,” National Popular Vote, January 5, 2020, <https://www.nationalpopularvote.com/state-status>.

²⁸ Joseph Schumpeter, *Capitalism, Socialism, and Democracy* (Urbana-Champaign: University of Illinois Press, 1942).



LEFT: Ireland - 25 May 2018. Sticker from the referendum campaign in Ireland when first exit polls indicated a large Yes victory. lonndubh / Shutterstock.com
CENTER: Paris, France - 31 March 2017. Emmanuel Macron campaign posters for the 2017 presidential election. Guillaume Destombes / Shutterstock.com
RIGHT: Rome, Italy - 15 February 2020. Five Star Movement rally. Alberto Zanardo / Shutterstock.com

In today's society where individuals have an endless array of customized choice on demand, the old paradigm of periodic "purchasing" of a political party or candidate will no longer suffice. The ability for new and different ways to engage and participate politically has expanded exponentially, powered by the Internet. Not only does this technology allow us to stay abreast of political developments in real time and to connect to our elected representatives instantaneously, it also allows us to find our political tribes—or allows us to create new tribes—and mobilize around issues of shared concern overnight.²⁹ We sign petitions, go to rallies, march in protests, donate time and money to causes, and debate online. These activities, which have been episodically part of our political landscape for decades, have gone from being a bug to becoming a feature. Democracy must adapt to be responsive to these feedback mechanisms. Through institutional reform we can harness this participatory impulse in the service of governance and, in so doing, restore the credibility and resilience of the system.³⁰

In addition, this institutional reform must be matched with skills and capacity-building within the civic body to engage constructively across diverse values, beliefs, and world-views. The atomized agency of the individual is not built for constructive civic engagement. Individual agency is expressed and motivated by "what I want", whereas civic agency requires compromise and negotiation in an environment of constraints. Living up to the responsibilities of citizenship in a democracy that relies on greater participation requires discipline and skills—both individual and collective—that must be learned and practiced over time.

Finally, this new democracy must be supported by a renewed public square.³¹ The new public square is largely digital, and the corruptibility of that space presents significant challenges to the constructive, informed engagement that this new democracy will require. While digital platforms have increased the opportunities for political engagement and feedback to our institutions, they also enable the distribution of conspiracy theories and misinformation by nefarious forces looking to deepen divisions and sow chaos. The public square required by a functional democracy built on broad engagement, must adequately and honestly inform citizens who feel free to engage in dialogue without persecution or threats to their well-being.³²

As ambitious as this reform and renewal sounds, the reality is that this is already an age of great democratic innovation and experimentation and digital technology is playing a key role. From the Liquid Democracy movement in Northern Europe to the Five Star Movement in Italy to Emmanuel Macron's *En Marche* campaign in France and to the rise of other parties and policies that defy the traditional left-right spectrum, politicians and citizens alike are trying new approaches to democracy. Notable experiments include the use of a citizens' assembly in Ireland during the debate on abortion and the use of online participatory tools in Germany, the United States, Iceland, Finland, and Estonia to drive policymaking.

Similarly, a new intensity of activism enabled by technology and seeking redress on both specific issues (from Left or Right) or broader trends has been visible on the streets, online, and in the halls of power. Movements like #MeToo, Black Lives

²⁹ Cass Sunstein, *Republic.com 2.0* (Princeton: Princeton University Press, 2007); Cass Sunstein, *#Republic: Divided Democracy in the Age of Social Media* (Princeton: Princeton University Press, 2017).

³⁰ Beth Noveck, *Smart Citizens, Smarter State: The Technologies of Expertise and the Future of Governing* (2015).

³¹ By "public square", we mean the civic space that provides the context in which citizens operate to fulfill their civic duty. It is where they gather information, engage in dialogue, and make and express decisions.

³² Michela Palese and Alan Renwick, *Doing Democracy Better: How can Information and Discourse in Election and Referendum Campaigns in the UK be Improved* (London: University College London, 2019).

Matter, the Women’s March, the Climate Strike, the Extinction Rebellion, the Tea Party, or the Pro-European Union marches in the United Kingdom, among others, have harnessed the power of technology to unleash potent and resilient forms. These examples of citizen advocacy are reminiscent of the activism of the 1960s and have radically changed the parameters of the debate in much of the democratic world—even as their participants still sometimes struggle to cement this activism directly into public policy.³³

The system must evolve to absorb the participatory impulses of today’s society. Democracy, in this new paradigm, should be seen to be far more than just a set of political processes, norms, and laws. Citizenship democracy is an embedded system and, indeed, a social compact to live up to one’s duty to engage collectively for the good of the community. In the pages that follow we will put forward several illustrative examples of institutional reforms as well as new

program ideas and mechanisms for revitalizing the public square and social cohesion, reforms that we believe will foster the emergence of this new paradigm. This transformation can help overcome our social divisions and renew a sense of solidarity and social cohesion by empowering communities of fate to work together to manage the challenges they face.

Of course, while much of the focus of this report is on the “inputs” to democracy, it is clear that for faith and trust in democracy to be restored, we cannot depend alone on the mechanisms of democracy itself: we must work to ensure that the “outputs” of the system are better for our citizens. As outlined in the first section, there are a number of real crises affecting the lives of constituents which institutional reform alone will not address. We will need new ideas to promote equality of opportunity, ensure high quality education and healthcare for all, tackle the challenge of climate change, and promote tolerant and inclusive societies. That said, we believe that the ideas presented herein will help create resilient and cohesive societies that are better able to manage these challenges, in part because of renewed belief in the legitimacy of political governance.

The fate of democracy is not yet decided, but this is not the first challenge it has faced. Many eras can rightly claim to have faced—and overcome—their own democratic crises. Defined comprehensively as a system of values, a way of life, and a constantly evolving experiment, democracy is inherently flexible and resilient. It can be challenged and even destroyed, but it can also be re-imagined, renewed, and rebuilt. As the great educator John Dewey wrote, “democracy needs to be reborn every generation.” Both those of us in the community of democracies and those in the community of those who believe in democracy now have the privilege of that opportunity.

³³ Jeremy Heimans and Henry Timms, *New Power: How Power Works in Our Hyperconnected World, and How to Make it Work for You* (New York: Random House, 2018).

LEFT: Indianapolis, Indiana, United States - 28 September 2019. Man carries sign promoting human rights in Black Lives Matter movement. Roberto Galan / Shutterstock.com
RIGHT: London, United Kingdom - 15 March 2019. Thousands of students and young people protest as part of the Youth Strike for Climate march. Ink Drop / Shutterstock.com





The Rockefeller Foundation hosted members of the Berggruen Institute's Renewing Democracy in the Digital Age project for a three-day conference to refine and focus the ideas presented in this report. (Pictured: Project chairs, project team, and working group members).

THE PROJECT

ABOUT THE RENEWING DEMOCRACY IN THE DIGITAL AGE PROJECT

Since September of 2016, the Berggruen Institute has been engaged in a series of high-level, off-the-record symposia on democratic renewal as part of its Future of Democracy Program. Symposia have taken place in the United States, Canada, the United Kingdom, Spain, and Italy, with further consultations taking place in France, Germany, Sweden, Portugal, and elsewhere. Participants have represented nationalities from across Europe, North America, and beyond.

These convenings have involved structured conversations aimed at both surfacing the challenges and opportunities of current democratic systems as well as imagining and defining pathways of reform. Participants have included political leaders, policymakers, technologists, business leaders, journalists, political scientists, sociologists, philosophers, philanthropists, artists, and activists. Furthermore, public polling and research has been conducted through the program in key countries in Europe and North America.

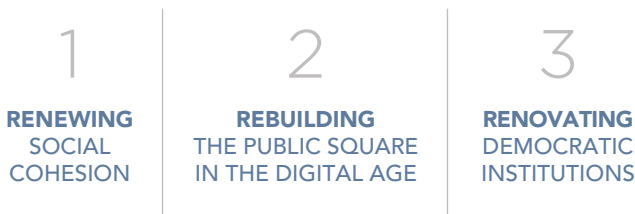
The origin of the project emerged from a simple insight: democratic governments had failed to keep pace with—and effectively manage—the rate and global scale of change in their societies and were in need of a significant overhaul to govern effectively in the 21st century.

As the democratic crisis has intensified, the program has focused its work in three areas: (1) renewing social cohesion, (2) rebuilding the public square in the Digital Age, and (3) renovating democratic institutions.

These areas were chosen because we believe that together they represent among the most important—and the most challenged—systems of democratic society, and those where opportunities for experimentation and new policy are most immediate.

While considering the roots of the crisis of democracy in its broadest context, the program has a limited ambition. Its goal is not to directly address the vast structural drivers of the crisis—like globalization, technological change, the climate crisis, and demographic and social shifts—but to build capacity and design institutions that make society better able to manage these challenges.³⁴ The program thereby acknowledges and embraces the paradox of its work: while major structural changes like globalization themselves pose significant challenges to democratic societies, we will not be able to effectively manage these changes without a more capable, resilient democracy and citizenry. The fundamental goal of the program is to rebuild and renew democratic deliberation and participation and thereby enable effective governance and progress across the range of challenges facing democratic societies in the 21st century.

What follows is an executive brief on the three pillars of the Future of Democracy program:



Each section will begin with a high-level overview of the challenge and the opportunity and will then continue with a short description of illustrative policy proposals. (Full descriptions of each policy proposal are included in the appendix.) These proposals are not meant to be exhaustive, but are rather meant to exemplify the type of policy we believe can make significant contributions to renewing democracy. By design, these policy proposals are not meant to simply tinker around the edges with small reforms but rather to promote significant actions that in and of themselves can help reverse the current trajectory and also be platforms upon which broader reforms may be developed.

³⁴ The Berggruen Institute recognizes the limits of this work and has undertaken projects of similar consequence to address growing wealth inequality, renovate multilateral institutions, and fight climate change. For more information, visit www.berggruen.org.

Karen Kornbluh and Philip Howard at the Social Cohesion and the Public Square working group meeting in London



President of the Rockefeller Foundation, Rajiv Shah, shares his thoughts on rebuilding democratic institutions



The Working Group discusses renewing social cohesion



Second meeting on "Social Cohesion and the Public Square" in Madrid, Spain. The meeting explored the role of media and the responsibility of citizens in renewing social cohesion.



Project Co-chair Nathan Gardels in Bellagio



Project Co-chairs, Helle Thorning-Schmidt and Anthony Giddens, in London



Working Group member Rocío Martínez-Sampere in Madrid



Project contributors and Working Group members Nils Gilman, Mario Monti, and Jamie Susskind in Bellagio



1

SECTION ONE

RENEWING SOCIAL COHESION

Social cohesion /'sō-shə1/ · /'kō-'hē-zhən/

1. The state of being for a body politic where members of a group or society share a fundamental conception of each other as a community of fate that adheres to a set of broad common values and rules.
2. A necessary precondition to political compromise.
3. A new type of social solidarity that embraces our multicultural, pluralistic, and diverse societies.
4. Does not always require agreement or the negation of deeply held identities, philosophies, or beliefs, but rather it enables the ability to sustain constructive and collective dialogue despite differences.

Democracy is a messy, noisy process made more so by the growing diversity of our societies. Upholding values of inclusion and agency has meant fostering ethnic and religious tolerance, welcoming immigrants, and integrating new kinds of identity—all of which brings more voices into the system. While this diversity is a strength and should be embraced and celebrated, it is also a potential Achilles' heel of social cohesion in a time of growing uncertainty.



It is a truth of human nature that fear and apprehension increase during a time of dramatic change. As discussed above, we are living through a period of profound economic, technological, social, and cultural changes which together make an increasing number of citizens vulnerable to manipulation by those who seek to blame the “other” for these misfortunes. Whether it be the elite who rigged globalization in their favor, migrants who pose terrorist threats and have come to steal jobs, or ethnic minorities given special accommodation at another group’s expense, scapegoating and inciting tribalism has become a favored political tactic, particularly among emergent authoritarians. Other nefarious actors, including hostile states, further inflame partisan and social divides, particularly around elections.

Social media has provided powerful tools for these actors to target the vulnerable and deepen divides, exacerbating social fragmentation and contributing to anxiety and depression. A study conducted by the Berggruen Institute and ResponDI U.K. on “Social Media and the Disruption of Democracy” shows a strong correlation between depression, social media use, and political radicalization.³⁵

Building social cohesion today demands a very deliberate effort. This is not the social cohesion of the past, when the few who truly had power and agency shared a sense of belonging and agreed with each other about what needed to be done. The present solidarity is forged of necessity in a time when our societies are more diverse, identity is increasingly defined beyond geography, and we all expect to have a voice in the process. We must forge social cohesion despite differing values and opinions, backgrounds, and world views.

To do this we must instill a sense of duty and obligation in our diverse populations that is built on a strong sense of shared fate. This sense of shared fate is a minimal viable product of the social cohesion required to accomplish political compromise in a pluralistic and rapidly changing society. Individuals must be committed to an obligation born of citizenship in a diverse nation, to understand each other, to engage in constructive dialogue with those who do not share their beliefs or values, and to sustain disagreement while still resolving problems.³⁶ Despite our diversity, fears, values, and resentments, we must recognize and embrace our shared fate to find a new sense of solidarity, one adapted to our times. This new solidarity may be more pragmatic than that which held communities together in the past, but it befits a diverse, pluralistic, and inclusive system that supports enhanced agency.

This new ideal of citizenship and the concomitant skills to disagree well need to be embedded in our education system and supported through new institutions. Creating opportunities

Creating opportunities
for people to come
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to work together across
various kinds of difference
will create more resilient
communities.

for people to come together and learn how to work together across various kinds of difference will create more resilient communities. In building this new civic architecture, there is much to be learned from programs already under

way—new programs designed to foster honest conversation and necessary action across differences, including Better

³⁵ Matthew Browne and Jennifer Robertson, “Social Media and the Disruption of Democracy,” Esomar, September 8, 2019, <https://ana.esomar.org/documents/social-media-and-the-disruption-of-democracy-10732>.

³⁶ Mary Scudder, *Beyond Empathy and Inclusion: The Challenge of Listening in Democratic Deliberation* (Oxford: Oxford University Press, 2020); Mary Scudder, “Beyond Empathy: Strategies and Ideals of Democratic Deliberation,” *Polity* 48, no. 4 (November 2016).

Angels and Patriots & Pragmatists in the United States, and My Country Talks in Germany.³⁷ These programs have demonstrated the hunger for understanding and shared work among our fellow citizens. The challenge now is to create this sort of human contact and connection at scale and to harness it towards action. Of course, such a process should also include continuous renewal: as the experiments at the Hawthorne plant illustrated, changes to routines can bring short term benefits and improvements when people realize they are being observed, but these can be lost once such activities become the norm.³⁸

What follows is a brief description of our two key policy recommendations for building solidarity and renewing social cohesion—the expansion of citizen service and the renewal of civic education and dialogue—both of which are further elaborated in the appendix:

Expansion of Citizen Service—A program to enroll young people in civic service programs after they have completed basic education. These would be opportunities to strengthen their connection to local communities and other young people they would not normally encounter, as well as to acquire skills to help them in their work and adult lives.

While increased citizen service is currently being pushed by a variety of proponents in both Europe and North America, including President Macron, Prime Minister Trudeau, and others, as one solution to some of the challenges of democracy, it has not been fully framed as a response to the lack of social cohesion and economic, political, and social exclusion that define the political landscape in the Digital Era. The response to the Digital Era must include analog efforts at social cohesion. A mandatory citizen service at the national, state, or local level would bring young people (and others) together offline. Not only would such a service provide participants an opportunity to learn about, from, and with each other as they cultivate civic bonds and a broader knowledge of society and their fellow citizens, it would also teach them how to work collaboratively with others toward a shared goal, building skills that are beneficial to society and to their own life, leadership, and career development. Ultimately, it would be an opportunity to break down some of the barriers that currently divide populations and to form cohesive bonds across such divides.

Citizen service offers a cornerstone program that can be adopted by democracies to tackle some of the greatest challenges we face. For maximum effectiveness, citizen service should be (1) mandatory for young people and accessible to all citizens (so that there is no stigma

attached); (2) backed my multiple stakeholders; (3) locally driven and locally controlled; and (4) aimed at integration and advancement, particularly for marginalized communities and those who have felt left behind. As Martin Moore notes in his recommendation, a citizen service can also be adapted to tackle one of today's most pressing challenges—climate change—and thereby help channel the energy of today's youth towards positive action and practical solutions.

Civic Education and Dialogue—New civic education programs would give people the competence to critically judge information in the Digital Age and would instill norms of civic dialogue. These should be matched with moderated platforms so that participants may engage with each other in a positive way based on high-quality information.

There is an obvious need for new avenues of civic education and dialogue that extend beyond traditional classrooms and online platforms, as Mary Scudder notes in her annexed recommendation. Digital media have radically changed the information landscape and created vast new platforms of dialogue and deliberation. We are all still learning how to navigate this new landscape.

Across the West, particularly in the wake of surprising and deeply polarized election outcomes like the 2016 U.S. election and Brexit, there has been an upsurge of initiatives to help citizens discuss difficult topics despite deep disagreement and to provide opportunities for citizens to better understand each other, disagree constructively, and participate fully in democracy. There is a need to create and scale such new initiatives for online and offline discussion, deliberation, and debate in all communities and among all age groups so as to promote understanding of the best traditions and diverse experiences of our democracies.

Digital media have radically changed the information landscape and created vast new platforms of dialogue and deliberation. We are all still learning how to navigate this new landscape.

³⁷ Better Angels: <https://www.better-angels.org/>; Patriots and Pragmatists in America: <https://www.pritzkerinnovationfund.org/>; My Country Talks: <https://www.mycountrytalks.org/>

³⁸ "The Hawthorne Effect," Harvard Business School, Accessed October 5, 2019, <https://www.library.hbs.edu/hc/hawthorne/09.html#nine>.



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2

SECTION TWO

REBUILDING THE PUBLIC SQUARE IN THE DIGITAL AGE

Public Square / 'pə-blik/ · / 'skwɛr/

1. A physical or virtual space where diverse members of a community can gather, exchange and share ideas, and facilitate communal decision-making.
2. The sphere of public opinion shaped by mediating institutions, including journalism, social media, and academic research.
3. A foundational aspect of democracy—without a healthy public square, democratic debate is eroded.

Assessing the impact of the digital revolution upon democracy is a complex task, but it is clear that social media has broadly transformed the old public square of face-to-face interaction and mass media into a networked and fragmented space. The challenge now is to create a common space for deliberation and discourse based on trustworthy information amid this new connectivity.

London, United Kingdom - 11 January 2020. Man taking pictures with his phone at a 'No War with Iran' march on streets of London. Sandor Szmuto / Shutterstock.com



On the one hand, it has democratized the power of communication, unleashing freedom of expression at a scale unimaginable just 15 years ago. Where once media was largely controlled by a small editorial elite that was commonly predominantly white and male, today anyone with access to the Internet can communicate their thoughts and ideas to the world, giving voice to historically marginalized communities. This has led to the empowerment of modern social movements such as Black Lives Matter to #MeToo. Indeed, the emergence of digital technologies has created the opportunity space and driven the demand for greater participation that is at the very heart of this project.

On the other hand, an open information and communication environment also has some costs. The absence of gatekeepers who are accountable for the quality of information has left the system awash with poor or intentionally misleading information and conspiracy theories. Additionally, the powerful algorithms that distribute information do so in a targeted way, effectively producing a different sense of reality among people in the same community. The consequence is social fragmentation. Worse still are the hypertargeting capabilities of these platforms in the wrong hands. Rogue actors with nefarious intent have learned to use the system to manipulate individuals and communities with shared interests to systemic effect. While social media and the broader media environment

in general are not responsible for current divisions in society, they are nevertheless exacerbating these divisions and making them easier to exploit.

Meanwhile, while the quantity of news has increased exponentially, with varying effects on its quality, the speed at which news spreads has likewise rapidly increased and is now truly global in nature: on average every single minute,

We now not only live in the proverbial 24/7 news cycle, we live in a 60/60/24/7 news cycle, which, combined with our shorter attention spans,⁴⁰ has itself contributed to the difficulty in thinking deeply and long-term as a democratic society.

Snapchat users share 527,760 photos; YouTube users watch 4,146,600 videos; Twitter users send 456,000 tweets; and Instagram users post 46,740 photos.³⁹ (In fact, these numbers are growing so

fast that by the time you read this, they are likely to have dramatically increased.) We now not only live in the proverbial 24/7 news cycle, we live in a 60/60/24/7 news cycle, which, combined with our shorter attention spans,⁴⁰ has itself contributed to the difficulty in thinking deeply and long-term as a democratic society.

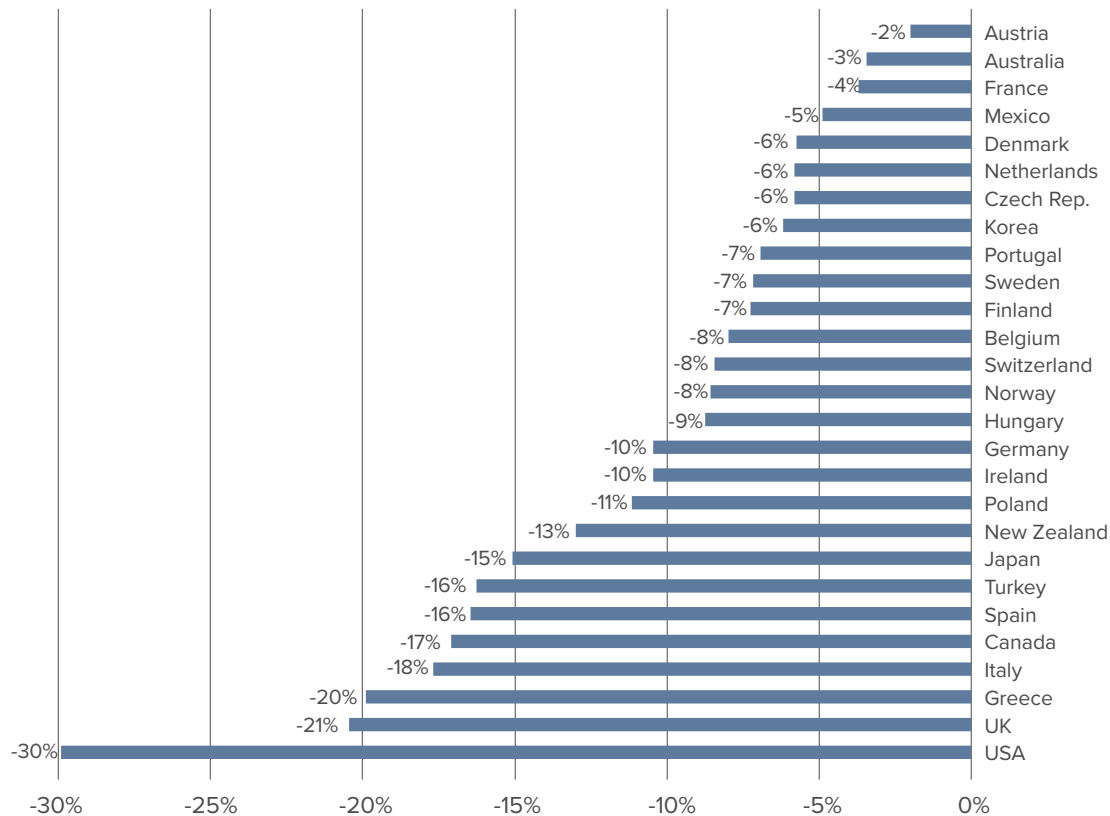
Indeed, the emergence of digital technologies has created the opportunity space and driven the demand for greater participation that is at the very heart of this project.

³⁹ Bernard Marr, "How Much Data Do We Create Every Day? The Mind-Blowing Stats Everyone Should Read," Forbes, May 21, 2018, <https://www.forbes.com/sites/bernardmarr/2018/05/21/how-much-data-do-we-create-every-day-the-mind-blowing-stats-everyone-should-read/#64a5a4cc60ba>.

⁴⁰ Sukhpreet K. Tamana et al., "Screen-time is associated with inattention problems in preschoolers: Results from the CHILD birth cohort study," PLOS One, April 17, 2019, <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0213995>.

ESTIMATED NEWSPAPER PUBLISHING MARKET DECLINE IN OECD COUNTRIES

2007-2009 (in percent) – Figure 2 in study



Source: OECD, Working Party on the Information Economy, "The Evolution of News and the Internet," OECD, (Paris, 2010).

This trend has been further compounded by the decline both of journalistic norms (see the rise of Fox News) and of local journalism. Between 2004 and 2018, 1800 newspapers closed or merged across the United States,⁴¹ and 245 local daily newspapers closed in the same period.⁴² In the United Kingdom, over 300 newspapers have closed since 2015,⁴³ while in Australia, over 3000 journalists have lost their jobs.⁴⁴ Similar declines have been reported across the OECD countries.⁴⁵

This change has been enabled by the rise of digital mega-corporations with massive impact not only on the news environment but on broad aspects of the global economy. These companies are either monopolies or near monopolies and have a scope and intrusiveness with little historical comparison.

Information, in a sense, has gone through the same revolution that nutrition once did. Whereas to the average populace food was once a scarce commodity and the great danger was hunger, now food exists in abundance in most of the West, and the greater danger is obesity. Similarly, information was once a scarce commodity that had to be passed hand-to-hand by pamphlet or, in later forms, via broadcast mechanisms such as the telegraph, newspaper, radio, or television. With the Internet, however, and with the massive amounts of information being produced and distributed on it, the danger has moved from information starvation to information obesity. In this modern digital world, it seems, junk news is as prevalent as junk food.⁴⁶ A majority of citizens now get news from platforms that weren't designed to deliver it, but instead to maximize the attention we give them by appealing to our emotions and too often our sense of outrage.

⁴¹ Penelope Abernathy, "The Expanding News Deserts", University of North Carolina, School of Media and Journalism, <https://www.usnewsdeserts.com/reports/expanding-news-desert/>.

⁴² Freddy Mayhew, "UK Local Newspaper Closures: Net Loss of 245 Titles since 2005, New Press Gazette Research," Press Gazette, February 11, 2019, <https://www.pressgazette.co.uk/more-than-40-local-news-titles-closed-in-2018-with-loss-of-some-editorial-275-jobs-new-figures-show/>.

⁴³ Government of the United Kingdom, Department for Digital, Culture, Media, and Sport, "The Cairncross Review: A Sustainable Future for Journalism," (London: Government of United Kingdom, 2019).

⁴⁴ Common Wealth of Australia, Senate, "Select Committee on Future of Public Interest Journalism," (Sydney: Government of Australia, 2018).

⁴⁵ OECD, Working Party on the Information Economy, "The Evolution of News and the Internet," OECD, (Paris, 2010).

⁴⁶ Martin Moore, *Democracy Hacked: Political Turmoil and Information Warfare in the Digital Age* (London: Oneworld Publications, 2018).



The expansive reach of these platforms was achieved so rapidly in part because they were unfettered by regulation. Similar to the emergence of other industries, such as pharmaceuticals or print media in the 19th century, it was only a matter of time until rogue actors entered the space and found ways to exploit it to prey on the vulnerable. As happened then, it is time for societies, led by governments and platforms working together, to find ways to preserve the benefits and more actively manage the potential harms of this digital networked world. These measures should include the building of public-friendly digital spaces, the re-seeding of high-quality local news as well as finding new frameworks for regulation.

With regards to this final point, it is essential that we remain mindful of the need to protect the freedom of expression that the digital world has so enhanced. We should, therefore, proceed with care and ensure that our actions don't censor speech or put the authority to determine what is acceptable speech in the hands of government.

To advance this agenda, we make three recommendations, presented below and in more detail in the accompanying annexes: the application of a "duty of care" policy to social media platforms, a windfall tax on platforms to fund local journalism, and the establishment of a new set of principles for public interest journalism. In addition, there is a discussion document on the complications of applying U.S. anti-trust legislation to shift the balance of power between governments and platforms.

A Duty of Care for Social Media Platforms—As the Content Policies for most social media platforms show, they have already accepted a certain duty of care for the public spaces they have created. This is shown by the sheer volume of content which is removed on a daily basis.

One platform has taken further steps and has announced the creation of an independent oversight body to handle the most difficult moderation decisions. The global community should welcome these steps, but it is also increasingly apparent that some sort of public regulation has a role in establishing clearer parameters in the public interest. Regulatory regimes that address harms to society caused by companies have existed for hundreds of years, and it is not unreasonable that companies have a legal duty to take reasonably practicable steps to prevent people from coming to foreseeable and preventable harms.

What a person sees when using social media is mostly by their own design, but it is also true that the company that runs the platform influence the exposure and ranking of content, by their terms of service, the software, the algorithm that prioritizes what one sees, and the scale of distribution. For example, an enhanced Duty of Care policy might require greater transparency of how content is ranked and prioritized and what kind of selection the algorithm produces. Another example might be to prevent hyper-targeting of vulnerable groups at a moment of particular weakness, posting triggering or negative content directed at recovering substance abuse addicts or people suffering from depression. Regulators and the platforms must work together to identify foreseeable and preventable harms citizens face online and to determine the resources needed to protect them. This approach is far removed from state censorship, or that seen in broadcast or press regulation. It explicitly excludes content regulation in favor of a focus on systems and capabilities. This approach could be the basis for a transnational regulatory regime backed up by an independent body with the capacity to sanction platforms who fail to apply the Duty of Care policies adequately.



NothingsEverything / Shutterstock.com



BOTTOM LEFT: Paris, France - 19 May 2018. A Guy Fawkes mask, well-known symbol for the online hacktivist group Anonymous. NeydtStock / Shutterstock.com

BOTTOM CENTER: Manchester, New Hampshire, United States - 10 February 2020. Rally goers take cellphone photos at a rally for U.S. President Donald Trump. Arena KelseyJ / Shutterstock.com

BOTTOM RIGHT: Frankfurt, Germany - 29 June 2019. The Frankfurter Allgemeine newspaper. Sergio Delle Vedove / Shutterstock.com

Windfall Tax on Social Media Giants to Fund Local Journalism—thereby rectifying the near total collapse of the public story-telling and accountability mechanisms of whole communities.

In order for local journalism to thrive in this new Digital Age, several changes must be made to both the business models of local newsrooms and the ecosystems in which they operate, as Tom Steinberg notes. There is a need to expand newsroom revenue streams, create network hubs between and among local newsrooms and between local and national newsrooms, incorporate new communications technology into reporting services and products, transform online ecosystems, and strengthen supply and demand for local journalism.

A windfall tax on social media platforms, which have amassed an increasing share of the advertising revenues that once funded more traditional resources could help finance and facilitate this transition. To ensure such funds are used wisely, however, it is also essential to establish the principles for which public interest media projects would receive support.

Establishment of Principles for New Public Interest Media in the Digital Age—to rise to the challenge of communication in the Digital Age and help ensure the central role of the fourth estate in democracy, a series of principles should be defined for new public interest media organizations and new local journalism initiatives.

As Emily Bell and Karen Kornbluh note in their recommendation, this approach would not seek to turn back the clock and fund the institutions that dominated in the pre-social media era, nor would it create a new public news service, like the BBC in the United Kingdom. Instead, it would

focus on creating a fund for public interest media. Outlets that meet standards for independent, local, and trustworthy journalism would be eligible. One set of possible standards is that used by the International Fact-Checking Networks Code of Principles: a commitment to nonpartisanship and fairness, transparency of sources, transparency of funding and organization, transparency of methodology, and open and honest corrections policies.

Increasingly, in Europe and the United States, scholars are analyzing competition policy and antitrust law can be applied to digital platforms, with many asserting that it could become a core tool for tackling threats to democracy from social media platforms. However, while scale presents a clear challenge to the ability of any one government to regulate the platforms, it is not clear how they could be broken up or how doing so might enhance democracy. As Francis Fukuyama notes in his discussion paper, the inherited body of competition and antitrust law as currently applied is inappropriate and – as with many areas of law – must be reconsidered in the face of the changes wrought by technology.

Other ways to limit scale may include limiting the acquisition of startups by large platforms and prohibiting them from moving into parallel markets, or increasing competition, through, for example, data portability. Also, privacy rules might be used to limit the extent to which platforms can monetize the consumer data they hold, or their property rights to that data could be taken from them and returned to the users who initially generated it. However, before we launch measures to address scale, we should deeply consider the costs and benefits of having fewer companies to work with, regulate, and monitor.



3

SECTION THREE

RENOVATING DEMOCRATIC INSTITUTIONS

Institution /ɪnstɪˈtjuːʃ(ə)n/

1. An organization, establishment, foundation, or society that serves as an intermediary amongst citizens and between citizens and powers (governmental or otherwise), thus facilitating the democratic process.
2. A custom, norm, or value that binds citizens together and enables effective collective action while limiting the tyranny of groups, thus protecting the rights of all citizens.
3. An integral component to effectively manage change across diverse constituencies.

A significant effect of rapid, seemingly uncontrolled change and of the stagnating economic circumstances of the middle class is that citizens' trust in government has declined and faith in representative democracy has faltered. At the same time, new digital technologies have changed the landscape of what is possible with platforms that deliver a real-time, customized experience, tailored to the needs of the user. It is possible that digital technology may enable a similar ease of use and customized experience in the civic lives of individuals.

Both the frustration with current governing institutions and the opportunities that technology presents are driving new demand for greater public participation in democratic decision making. In mature democracies in Europe and the United States, referendums have become increasingly common—and disruptive. We have seen their effects in various citizen initiatives in California, other U.S. states, and in the United Kingdom and Italy. In other countries, political parties such as Syriza in Greece and the Pirate Parties across Europe have aspired to overturn established rivals by promising greater citizen involvement—even if their promises often fall far short of the reality.

Good examples of intermediated public participation platforms already exist. For example, although Wikipedia has a large readership, a very small proportion of users actually make the vast majority of edits, these users including a mixture of content experts and users who are experts in Wikipedia's procedures and style guide. In other cases, large numbers of participants are involved in providing input, but decision-making still rests in the hands of a few, either citizens or elected officials. In Taiwan, for example, a citizens' engagement entitled vTaiwan was able to build consensus and compromise on the regulation of Uber by crowdsourcing ideas and using online platforms to identify areas of consensus and potential compromise. Throughout the online and offline discussions, new technology was used to ensure that the deliberations were transparent and open to public scrutiny. Indeed, even the discussions between Uber, taxi drivers, and the government were broadcast live.

The trick, in all these cases, is designing the right type of technology platform for the task and in marrying it to offline



political institutions. Each stage of decision-making, from identifying to evaluating problems, demands distinct forms of information and action. To identify a problem correctly, it is best to ensure large-scale input from a broad and diverse set of members of society. However, when it comes to solving problems, this requires time and expertise. The best crowdlaw projects offer different ways of participating—including consultations, competitions, and participatory budgeting.

PARTICIPATION WITHOUT POPULISM

To mend the breach of distrust between the institutions of self-government and the public, we propose a core innovation—"participation without populism"—that integrates social networks and accommodates the rising penchant for direct democracy into our systems of governance through new mediating institutions that complement representative government.

Since social networks have drawn more players seeking a direct voice into the political fray than ever before, never has the need been greater for the counterbalance of impartial practices and institutions that can sort out the cacophony of voices, the welter of conflicting interests, and the deluge of contested information.

The great promise of robust citizen participation is that it can generate innovative solutions to pressing public concerns and break through the insider establishment of organized special interests that tends to dominate representative democracy. But such enhanced engagement can only be effective if equipped with the capacity to bring knowledge and expertise to bear on the issues at hand while being embedded in institutional arrangements that enable and encourage reasoned processes of negotiation and compromise. In short, effective citizen

participation relies on the interposition of a deliberative check against the false claims, misinformation, intolerance, and magical thinking that often comes along with the immediate wash of networked popular sentiment.

As explained in the detailed paper by Nathan Gardels, the challenge ahead for liberal democracies is incorporating the new tools of technology and innovative platforms for deliberation into a new hybrid political system that features both direct democracy and greater engagement by citizens with their representatives in government. This includes:

- Innovative practices such as “crowdlaw” that mobilize “collective intelligence” through networked deliberation—such as the annual “Presidential Hackathon” that takes place in Taiwan under the auspices of Digital Minister Audrey Tang—as a way to register public priorities and set the agenda for both legislators and sponsors of citizens’ initiatives and referendums;
- Interactive civic software, such as Lex Iscritti employed by the Five Star Movement in Italy, that enables constituencies to propose, deliberate, and iterate legislative measures directly with their elected representatives;
- Citizens’ assemblies, policy juries, and deliberative polling, which bring together randomly selected groups of citizens indicative of the population as a whole, including through lottery, who hear pro and con arguments and are presented with verified facts in order to reach consensus on a given issue. The results of these deliberations may serve as recommendations to legislatures or to voters in a referendum, or may be binding through an up or down vote;
- Requiring “second reading” of citizen-initiated measures as well as government-sponsored referenda before they go to the ballot box for a vote.
- Creation of a European Citizens’ Assembly as a second house of the European Parliament. [Intermediate steps to this goal would include a “Citizens’ Bill” under the current European Citizens Initiative (ECI) process that mandates debate and an “indicative vote” on the proposed issue in the EU Parliament (since the Parliament cannot initiate legislation, only the EU Commission). Further, the Commission should clearly define the areas of its competence to propose laws, and if ECI qualifying signatures for a measure within those parameters reaches a certain threshold, formulate legislation in response to the proposition or put it to a European-wide referendum.]
- Digital Technology and Government: Integrating the learning algorithms of Artificial Intelligence into the practices of deliberation and decision-making as well as public administration and law enforcement.

Some form or another of these proposals is already being implemented across the Western democracies, from Taiwan to California, from Ireland to Switzerland, from Iceland to Chile. As they are scaled up in the coming years in response to demands for a more inclusive politics, they will become as integral to the practice of liberal democracy as elections long have been.

POSSIBLE “SECOND-READING” PROCESSES

Citizens’ assemblies and review panels of the kind noted above to deliberate both government-sponsored referendums as well as citizens’ initiatives;

Authorization of legislatures to negotiate with citizen sponsors to vet the constitutionality of their proposed measures, fix problems, discover unintended consequences, and make amendments consistent with the sponsor’s intention. If agreement is reached on addressing the issue through legislation, the citizen’s measure can be withdrawn. If no agreement can be reached, the legislature can place an alternative, competing measure on the public ballot without going through the step of gathering the requisite signatures to qualify;

Re-configuring the upper house, or senate, of legislatures as a non-partisan body that is selected in part by sortition and in part through indirectly elected or appointed members on the basis of experience and expertise (so as to insulate it from the pressures of special interests in electoral contests) to function as the primary institution for a “sober second reading” of citizen-initiated measures as well as legislative proposals from the lower house. It would be empowered, per above, to negotiate with citizen sponsors to reach common agreement or place a competing measure on the ballot.



TOP CENTER: Madrid, Spain - 1 December 2016. Taiwanese Digital Minister Audrey Tang. MediaLab Prado / David Fernández / LM TOP RIGHT: London, United Kingdom - 19 April 2019. Sign used by Extinction Rebellion supporters in protest of environmental climate breakdown. John Gomez / Shutterstock.com BOTTOM LEFT: The Renewing Democracy for the Digital Age working group participates in a Civic Imagination Project workshop led by Henry Jenkins, the project's principal investigator. BOTTOM CENTER: Henry Jenkins of the Civic Imagination invites Francis Fukuyama and the rest of the Renewing Democracy in the Digital Age working group to imagine alternatives to current cultural, social, political, or economic conditions as a starting point to creating a better world. As his research shows, one cannot change the world unless one can imagine what a better world might look like. Eli Zaturanski / Eli Zaturanski Photography BOTTOM RIGHT: London, United Kingdom - 19 October 2019. Woman protesting against Brexit at the People's Vote march. Sandor Szmuto / Shutterstock.com

CONCLUSION

The crisis that liberal democracy is currently experiencing is not a rejection of the principles of liberal democracy, but rather frustration with the failure of the current incarnation of this model of governance to meet new challenges and to adapt to new demands of the citizens for greater agency.

Building a new form of citizen-engaged democracy will require a series of adaptations to the current order to create new opportunities for participation and deliberation, to upskill citizens, to restore social cohesion, and to renovate the public square for the Digital Age. The recommendations outlined above are illustrative initiatives, highlighting how those who wish to see liberal democratic values prevail and democratic institutions adapt might advocate for reform.

In the months ahead, we hope that these proposals will contribute to a broader debate on the future of democracy, one that we intend to engage in and lead.

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APPENDIX A:
RENEWING SOCIAL COHESION

YOUTH ENVIRONMENT SERVICE (YES)

Martin Moore



Young people today seem ever more disillusioned with democracy, and alienated from mainstream politics. At the same time, youth in every part of the globe are deeply concerned about the climate and ecological crisis currently confronting the planet and all its peoples. In the last two years, they have demonstrated generational leadership in elevating calls for action to contain the crisis in the streets, in boardrooms, and in the halls of power. They are also rightly condemning older generations for “failing” them in developing urgent solutions appropriate to this growing planetary emergency. That failure extends beyond the necessary policy, economic, technological, and social changes necessary.

The governing generations have also failed to provide viable pathways of action for youth that can harness and develop their energy, passion, and skills in pioneering and scaling solutions now. In short, we have an input and an output challenge when it comes to young people, democracy, and the environment.

To meet this challenge, I am proposing to the Berggruen Institute the creation of a Youth Environment Service (YES) programme. This programme is a response to both the climate emergency and the growing fragmentation and alienation of diverse parts of democratic societies from one another. By providing opportunities for young people to work on the most critical crises that confront their generation, they can both transform the environmental landscape and help reforge more cohesive, purpose-driven democratic societies, and thus help restore their own faith in democracy. The program is modeled on national conscription services—which more than 20 democracies currently have—but can be adopted on either an obligatory or voluntary basis. Programmes similarly can be run by governments at the national, international, and local levels in concert with civil society, international organizations, and other key stakeholders. A brief outline of the program and its rationale follows below.

SUMMARY: A YOUTH ENVIRONMENT SERVICE

(YES) to provide opportunities for young people to work together across differences to protect the planet from climate catastrophe while furthering their democratic leadership, job skills, and capacity for common purpose.

SCIENCE DEMANDS ACTION

- There is a global climate emergency. The Intergovernmental Panel on Climate Change (IPCC) has advised that unless we take radical action before 2030, temperature change cannot be kept below 1.5C.
- Failure to act decisively will lead to severe disruptions to human society, including region-wide famine and water shortages, dramatic declines in health and wellbeing, economic and social breakdowns, mass climate migrations, and rising threats to international and human security. The predicted loss of life will be greater than in any previous international conflict and will likely accelerate over time.
- The climate crisis is also accelerating a Sixth Global Mass Extinction. The Intergovernmental Panel on Biological and Ecosystems Services (IPBES) advises that more than one million species are on the brink of extinction. We are on the edge of natural tipping points from which we may not soon or easily recover.

YOUTH DEMAND RADICAL ACTION

- Youth understand the crisis and its profound implications for their future. The School Strike for Climate movement has sustained the largest global protest in human history over the past year. Numerous other protests and calls for action increasingly define the younger generation's agenda.
- Gradual political change, encouraged by the Paris 2015 Climate Accord, is not slowing the rate of climate change or ecological decline. Technological and scientific solutions are emerging, but currently with limited effect, and are not being developed fast enough.
- There is rising frustration and anger about the failure of governments to deal decisively with climate change and ecological breakdown, compounding already high distrust of democratic institutions and governance.

YES CAN ADDRESS MULTIPLE OBJECTIVES

- **Environmental goals:** to slow climate change and reverse mass extinctions.
- **Economic goals:** to develop job skills, particularly among disadvantaged youth, and to advance sustainable development, particularly in areas that were left behind in the last era of globalization. Service programs have been shown to have significant long-term positive economic effects.⁴⁷
- **Social goals:** to promote the democratic integration of youth from diverse communities to achieve a common cause.

- **Political goals:** to channel protest, frustration, and anger towards positive and constructive ends and to show that democratic communities are capable of addressing the biggest challenges together.

WHAT IS YES?

- YES is modelled on national conscription programs, re-purposed to protect humans and the natural world from climate and ecological catastrophe.
- YES would offer opportunities for every young person aged between 18-25 years old to complete one year of environmental service; different jurisdictions could choose to make service obligatory or voluntary. Citizens over the age of 25 could also volunteer.
- Each service would be developed nationally but could seek to address national or international environmental problems.
- National governments could manage programs directly or in conjunction with international institutions and civil society.
- Programs would be locally-driven to respond to the needs, decisions, and processes of local communities.

WHAT WOULD PARTICIPANTS IN YES DO?

Participants in the Youth Environment Service would choose to spend their year doing one of five options: protect, restore, explore, sustain, or support (PRESS):

- **Protect:** protecting against environmental damage and danger, including protection from flooding, fires, tornadoes, and tsunamis. This could include building defenses against flood damage, forestry work to protect against fires, insulating homes to protect against energy loss, and working on disaster preparedness.
- **Restore:** restoring land, waterways, and seas, including cleaning of waterways, removing plastic from the seas, and land recovery.
- **Explore:** technological and scientific research and experimentation to develop ways to trap carbon, reduce emissions, and enhance environmental sustainability. This could also include storytelling and journalistic activities to explore and explain the ramifications of the program.
- **Sustain:** planting trees, growing food, regenerative agriculture, recycling waste, and other sustainable activities.
- **Support:** supporting people who are already suffering the effects of climate change and ecological disaster.

⁴⁷ Salamon, Lester M., "Measuring the Economic Value of Volunteer Work Globally: Concepts, Estimates, and a Roadmap to the Future," *The Authors Annals of Public and Cooperative Economics* 82, no. 3 (2011) pp. 217-252.

APPENDIX A:
RENEWING SOCIAL COHESION

RENOVATING DEMOCRACY THROUGH AN ETHIC OF CITIZENSHIP

Mary Scudder

Democracy appears to be in crisis. Increased polarization, declining rates of participation, and the rise of authoritarian populism have put our democratic institutions in jeopardy. Are citizens up to the task of meeting these threats?⁴⁸ Moreover, what efforts can we, as a society, take to ensure that citizens can effectively overcome the challenges facing democracy today?

Here, I outline steps we can take to cultivate the ethic of citizenship required to combat these issues and reverse the growing dissatisfaction with democratic governments. These strategies are not exhaustive, but rather are intended to provide initial answers to the question of how citizens might better participate in the revitalization of democracy.⁴⁹ First, civic education programs should be focused as much on the nature and value of democracy as they are on the nuts and bolts of how government works. Second, we should aim to cultivate a greater acceptance of disagreement and conflict in politics. This would mean civically educating people as to the legitimacy of disagreement and difference. Third, we ought to institutionalize expectations of listening between co-citizens, as well as between citizens and their representatives.

First, civic education programs should be aimed at fostering a cultural commitment to democracy. To this end, citizens must be encouraged to take a step back and consider the nature and value of democratic self-rule in the first place. The aim here is to cultivate an understanding among citizens that their own autonomy or freedom depends upon maintaining democratic

practices of deliberation and decision-making. Autonomy, or self-rule, is a fundamental ideal of western democracy. But citizens in western democracies, and in the United States in particular, often see autonomy as a private, not a public issue. Without an understanding of the nature of *public* autonomy, or collective self-rule, citizens struggle to see that democracy is essential to their leading free, self-directed lives. Having a say in the collective decisions we make is as essential to their liberty as having a say in their own private lives.

Importantly, however, the political forum is not the same as the marketplace, and citizens should behave differently in these arenas. Politics involves the exercise of power. Citizens make decisions collectively. And the people living within a given jurisdiction will be confronted with these decisions in the form of law, backed up by coercive force. As such, when forming their opinions on policy issues and deciding how to vote, citizens have an obligation to take others' perspectives into consideration. The legitimacy of collective decisions depends on all perspectives being included and fairly considered in the decision-making process.

All this is to say that we need to do a better job of civically educating citizens that democratic self-rule is about much more than campaigns and elections, or even majority rule.⁵⁰ It's crucial that our civic education programs reflect this more nuanced and substantive take on democratic life. For example, we could reform our student government associations which, in their current form, tend to place undue emphasis on campaigns, elections, and representatives with little attention paid to deliberative processes that include the larger student body. When making decisions that affect an entire school or classroom, even for something as simple as where to go for a field trip, teachers should moderate inclusive discussions, ensuring that all proposals are given a fair hearing. Only then should they hold a vote on the issue. Teachers should help students distinguish between decisions that bear on public

⁴⁸ John S. Dryzek et al. "The Crisis of Democracy and the Science of Deliberation." *Science* 363, no. 6432 (2019).

⁴⁹ Mary Scudder. *Beyond Empathy and Inclusion: The Challenge of Listening in Democratic Deliberation*. Oxford University Press (forthcoming 2020).

⁵⁰ John Dewey, *The Public and its Problems* (Swallow Press, 1954).

autonomy (e.g. where to go on a field trip) and decisions that have implications only for private autonomy (e.g. what book a particular student wants to read for a report). They should also emphasize the possibility of issues carrying significance for both, for example, the decision of which holidays the students will celebrate as a class.

Importantly, democratic self-rule does not require that all citizens get their way, nor does it demand that public deliberation reveal an underlying consensus or general will. Instead, it requires that all citizens be meaningfully included and given equal voice in processes of decision making. This implies that listening to what others have to say is an important responsibility of democratic citizenship. Citizens need to be willing to speak up, listen to each other, and ultimately to form their opinions by taking others' perspectives and preferences into account.

The second strategy for cultivating the ethic of citizenship needed today involves educating citizens about the legitimacy of political conflict and disagreement.⁵¹ Specifically, we ought to educate people in the ethos of an active citizen, helping them recognize that a good democratic life must admit of some controversy and contestation. Civic education initiatives focused on teaching the acceptability of deep disagreement would be in stark contrast to what is typically promoted today. Efforts to prepare citizens for the challenges of democracy amid dissensus are often aimed at promoting civic friendship and greater empathy.

The problem with these empathy-based approaches to democracy is that democratic engagement amid deep disagreement becomes a nearly impossible task. Not only do I have to hear my opponents out and try to understand their perspective, but now I must empathize with them and even come to see them as friends, no matter how offensive or hurtful their arguments. These high (and democratically unnecessary) expectations can deter citizens from listening to those with whom they disagree. Citizens may even be less likely to join in political conversations regarding contested political issues if they believe that these conversations are supposed to produce some resolution or compromise, or empathy for those with whom they deeply disagree.

To be sure, expecting citizens to engage and listen across difference and disagreement is more burdensome than citizenship models that expect citizens to simply express their individual preferences through voting. But it is also arguably more meaningful and even more attractive to citizens. Indeed, research in deliberative democracy shows that citizens' willingness to deliberate is wider than often assumed.⁵²

Moreover, it is precisely those people less likely to participate in traditional partisan politics who are most interested in participating in other ways, including deliberative town hall forums. In other words, current patterns of citizen engagement do not reflect the variety of ways in which citizens would engage if given more attractive opportunities.

But even if citizens are willing to participate in deliberative encounters with their fellow citizens or representatives, they will not always listen attentively and critically. This highlights the importance of my third strategy for democratic revitalization through an ethic of citizenship, which involves institutionalizing expectations to listen. While we cannot institutionalize listening itself, we can institutionalize the expectation to listen. For this too, we can begin by making changes in the classroom. Whenever student "participation" is evaluated, teachers ought to clearly include listening to one's fellow students in that assessment. Formalizing the expectation to listen to others is essential to helping students recognize its importance. Of course, clearly stating expectations does not ensure others will necessarily meet them. Still, communicating the expectation of listening, specifically when and to whom someone should listen, is not trivial. We could also communicate these expectations to elected officials, helping them recognize that listening to their constituents and carefully considering their viewpoints and arguments are essential to their role as elected representatives.

These kinds of institutional innovations aimed at bringing citizens together with their fellow citizens and with elected representatives can help create a virtuous cycle of democratic engagement. Citizens are motivated to do the hard work of democracy precisely because they expect their representatives will listen, and their representatives listen because these constituents have taken the time to inform themselves.⁵³

Deliberative democracy research shows that, when given the opportunity to meaningfully participate in politics, citizens rise to the occasion.⁵⁴ They are able to resist elite manipulation and framing and even overcome polarization to reason effectively. It makes sense, therefore, to begin the process of democratic renewal by improving the conditions and practices of citizenship.

⁵¹ Teresa Bejan, *Mere Civility: Disagreement and the Limits of Toleration* (Cambridge: Harvard University Press, 2017).

⁵² Michael Neblo et al., "Who Wants to Deliberate—And Why?," *American Political Science Review* 104, no. 3 (2010): 566-583.

⁵³ Kevin M. Esterling, David Lazer, and Michael Neblo, *Politics with the People: Building a Directly Representative Democracy* (Cambridge: Cambridge University Press, 2018).

⁵⁴ Simone Chambers, "Human Life Is Group Life: Deliberative Democracy for Realists," *Critical Review* 30, no. 1-2 (2018).

APPENDIX B:
REBUILDING THE PUBLIC SQUARE IN THE DIGITAL AGE

IMPLEMENTING A DUTY OF CARE FOR SOCIAL MEDIA PLATFORMS

William Perrin

There is indicative evidence that social media is causing a broad spectrum of harms in many countries. These range from deterring women from public life, racial, religious, sex-based abuse often illegal, child sexual exploitation and abuse, profound disruption to political processes, to threats to national security, to economic fraud, and wider harms to consumers. The issues caused by online media are so profound that only a systemic policy solution will succeed, based on robust micro economics and balancing the rights of people who are harmed with those who have a right to speak.

From an economist's perspective, the operation of social media companies, themselves essentially data and advertising businesses, causes costs to society that are not born by the companies' shareholders. Because costs fall outside the company to society, the company has no economic incentive to fix the problem. They just go on producing a harmful product. For 40 years the OECD has supported the 'polluter pays' approach as the most micro-economically efficient approach to solving such problems—governments returning societal costs through tax or regulation to those that create the costs. What system then will make the social media companies invest in preventing or cleaning up the harm they cause, while still respecting people's rights?

A starting point is that everything a person sees or experiences when using social media is a result of a decision made by the

company that runs that platform: service design decisions about the terms of service, the software, and decisions about the resources put into enforcing the terms of service and keeping the software up to date. Services are differentiated by these decisions, which also have an effect on the nature of harms that arise.

Regulatory regimes that address harms to society caused by companies have existed for hundreds of years. At first these were detailed, prescriptive laws, but such laws tended to be evaded in time. More recently, governments have brought in high level regimes focused on outcomes that companies must achieve that are harder to evade and allow the companies concerned to make their own decisions about how to comply. Often a regulator will guide companies' attempts to achieve outcomes, with powers to sanction if the company fails. Risk assessment and management is central in these regimes.

In the United Kingdom, the government proposed such an approach for reducing online harms, based upon work by Carnegie U.K. Trust. The Carnegie approach has been endorsed by many U.K. parliamentary committees and groups.

The U.K. approach requires parliament to legislate that social media service providers have a duty in law to take reasonably practicable steps to prevent people from coming to reasonably foreseeable harm due to the operation of the company services. Also required is the creation of a regulator to oversee this process at one remove from government. Whether this duty is met or not is assessed by outcomes, and the focus on harm is both durable and systemic. This 'statutory duty of care' is a distant relation of the duty of care that arises in tort, familiar across the common law domain. But rather than the courts, parliament set out in statute that there exists a duty of care from one class of people to another and that a regulator supports and enforces it.

This systems-based approach side-steps issues of content liability and asks if the systems the content passes through are risk assessed, managed and fit for purpose based on the

outcomes. This is far removed from a state censorship based approach or that seen in broadcasting or press regulation. In the U.K. proposals the regulator would be bound by the European Convention on Human Rights and required to balance people's rights in its work. The regulator would be funded, as is normal in Europe, by a mixture of government money and levy on the companies regulated.

The challenges addressed by a statutory duty of care arise from the immense commercial success of American companies exporting the U.S. regulatory approach to platform liability and regulation. But it is possible to sign up hundreds of millions of subscribers while coming from a different regulatory system where there is extreme liability, as China's TikTok demonstrates. Until the United States changes its law, which seems unlikely, other nations and trade blocs will pose diverse regulatory responses. Social media companies should address the external costs of their actions, but the benefits from such services would be hampered by an uncoordinated set of burdens that might themselves be ineffective.

The European Commission is reportedly looking to take up a statutory duty of care in its work on reforming intermediary liability in a new Digital Services Act. And a French government expert group recommended a similar approach to their government. This would point to four members of the G7 coming under a similar regime. Around the world, nations and trade blocs are examining how to deal with the issues arising from social media. India has in draft new laws on platform liability. Ireland, the default taxation-friendly home for tech companies in Europe, is about to publish their own proposals on online content. Australia is constantly examining how to protect children from harm, and New Zealand is considering new laws following the Christchurch massacre. Canada is also looking at its regulatory system. India has new laws on intermediary liability in draft. And China of course has its own, distinctive regime for social media regulation. The United States, in part instinctively, in part due to the above, is trying to bake its own low liability regime into trade deals.

Nation states recognise that there is a problem, but there isn't universal agreement on the solution. Nor are there mechanisms for global harmonisation. Unlike say a trade round where there is give and take, even in asymmetric rounds, the negative externalities generated by technology companies located in the United States and increasingly in China are felt in other nations who receive little benefit, not even significant tax revenues.

States where the externalities fall are still developing policies, and the states where the externalities are created are attached to their own domestic regimes. There is little mutual multi-lateral understanding of positions. Taking forward a duty

of care approach at a multinational level requires a forum that reflects these conditions. Supra national attempts to address issues by consensus in particular through the United Nations are weak. Internet governance forums that involve governments have proven only to be weak talking shops, at their best only on narrow technical issues. A trade-round-style approach may be premature as participants don't yet have formed positions from which to negotiate. A more multi-lateral, information-sharing approach is more appropriate but in a formalised, established setting supported by a strong secretariat. There are analogies with recent work on tax and the digital economy—multilateral forums and Sherpa work moving forward understanding of technical issues, even if not finally attaining agreement which might need to come later through a harder edged mechanism.

At present there is little or no mutual understanding of regulatory positions at a multi-national level, not least because these are not fully formed. And this needs to be addressed before moving to hard edged discussion of an actual multi-national regime. A statutory duty of care, enforced by a regulator approach, is an ideal reference position against which to assess emerging national approaches.

The OECD has a long history of cooperation with the countries considering proposals to regulate and has studied digital issues for decades. The OECD secretariat has a strong track record in writing comparative, yet neutral papers analysing and comparing national policy positions on a range of issues. OECD has hosted digital ministerials, most recently in 2016. OECD is also well used to engaging non-members such as China and India. OECD would be well placed to convene talks on regulation and to use a statutory duty of care approach as a central comparator.

We call for a 2020 OECD meeting of Ministers responsible for regulation of social media to discuss managing the external costs of internet platforms, focused on economically rational regulation. Non-OECD members China and India have a working relationship with OECD and should be explicitly included in the process. The OECD should put forward the statutory duty of care enforced by a regulator approach as a reference point to focus discussion and begin a process of discussion and negotiation between countries and trading blocs as they move towards regulation. The outcome of an OECD process would be vastly improved understanding of the models employed and available to governments and, most likely, increased uptake of a duty of care approach. Such understanding in itself could improve the regulatory outcomes in a range of nations and would then underpin discussions on trade matters that seem bound to flow in the future.

APPENDIX B:
REBUILDING THE PUBLIC SQUARE IN THE DIGITAL AGE

FUNDING ACCOUNTABLE MEDIA THROUGH REFORMED TAXATION OF INTERNET GIANTS

Tom Steinberg



Slowly but surely the world's tax authorities are coming for the internet giants. These companies' Teflon anti-tax coating (made up of a potent combination of multinational structures mixed with innovation pixie dust) is starting to wear thin, and the tax collectors are starting to stick.

Most recently the OECD has endorsed proposals to collect taxes in the countries where internet giants actually make money, rather than the countries where they technically book that money. Such reforms, even if only half-heartedly implemented, would mean a big increase in tax revenues for countries that have big, rich populations of internet users. The companies—household names like Amazon, Apple, and Google—are ultimately trapped. A company like Amazon cannot leave a country in protest at 'unacceptable taxation' without losing substantial revenues. Even worse, packing up and leaving a country behind creates a possible vacuum in which powerful rivals can be incubated—you only have to look at China's coddled internet giants to see how this has worked out badly for Google and Facebook.

The internet companies' previous shield against the imposition of higher taxes—political goodwill—is shot. Reviled by even the political organisations that benefit most from their conduct, these digital giants are businesses that nobody in politics wants to be seen to be friends with. Moreover, there's plenty of political capital to be made by queuing up to sock them in the kisser.

This recommendation, however, is not an argument for increasing taxation upon these multinational technology businesses. Instead, we take it as read that tax reforms are coming, slowly and unevenly—but inevitably. We don't know exactly when they will hit first, or how successful they will be. We also can't tell which governments will crumble under the weight of powerful lobbying and back away from taxation entirely, tails between their legs. But in a number of rich countries the sails are set towards greater local taxation, and the ship is only going one way.

So this recommendation is not about increasing taxes on multinational technology companies. Instead it is focused on the use that will be made of the revenues that will result from these reforms. In an era of large national debts and insatiable citizens, there is no doubt that politicians' first instinct will be to bank the new money for traditional goals: schools, hospitals, teachers, soldiers, etc. Despite the attractive nature of these policy priorities, we want to put forth an argument that some of the new money raised by taxing large digital companies deserves to be ring-fenced and set aside specifically to address some of the social harms that are exacerbated by these businesses. Thus, in the same way that pollution taxes help both to deter pollution and generate funds for cleaning up the mess created, it is time to see taxation on internet companies as a way of mitigating some of the harms these companies create.

There are several problem areas, worthy of investment, which could be plausibly attributed to the rise of large digital multinationals. But the problem that deserves the most acute and urgent attention is the problem of the collapse

in journalism, especially the kind of journalism that holds local and regional power to account.

Traditionally propped up by advertising, local news media has collapsed as these revenues transfer to internet companies headquartered in California and tax resident in the Republic of Ireland. The social cost of this collapse is enormous—large swathes of countries that previously had meaningful forms of investigative local news media now have essentially none. This lack of scrutiny allows misconduct and maladministration at the local and regional level to go ahead without being spotted, and without repercussions.

Local advertising money used to go from local businesses to local newspapers. These newspapers then used a proportion of that money to pay for investigations and other forms of ‘hard news’. This money now flows instead to multinationals who do not generate local knowledge and accountability of the same kind. We argue that it is time to take some of this money back from the companies that undermined the local journalism industry, in order to fund investigations and hard news that will otherwise never take place.

Delivering this kind of mitigation will require focused, sustained lobbying to take place alongside the long-term tax reforms which will be taking place anyway. There is a strictly one-off chance approaching to make the case that large internet companies should help to pay for local news media, because their rise has been predicated on the destruction of something that was extremely socially important and valuable. We should be lobbying, right now, for governments to set aside and ring fence part of this new tax money. And we should be realistic about how long we will have to lobby—it is entirely likely we might have to push a political process that might take a decade or more to shake out.

But this is a very difficult journey. Once the enormous task of legislating to collect new tax revenues is out of the way, we have only solved the ‘easy’ part of the problem. The public is hugely suspicious about governments setting news agendas, and anything that smacks of ‘government propaganda’ will be dead, in credibility terms, before it ever gets started.

Legislators therefore need to take seriously the challenge of setting up a taxation-based local media funding system that is not widely seen to be positively biased towards the interests of their tax-collecting paymasters.

Achieving this kind of public trust in a new institution will be very tough in the era of fake news, but is not impossible. The way that the BBC has independence from the government in the United Kingdom whilst still being a public body is an ancient model, but does hold some lessons. There are also more modern lessons to be taken from institutions that behave with radical transparency. A new funding distribution

organisation that works in this arena should be uniquely transparent in its decisions and operations, and it should be challengeable by the public. It should be designed around the Internet, and responsive to the way people on the Internet acquire and lose trust in institutions.

For a long period it was not obvious whether the Internet would destroy local accountability journalism or simply transmute it. Twenty years after the creation of the web, it is increasingly clear that the final result was widespread destruction in many locales. A deliberate project must begin, therefore, to rebuild what has been lost, whilst remaining crystal clear that what comes next cannot possibly be a simple re-creation of what came before.

A deliberate project must begin, therefore, to rebuild what has been lost, whilst remaining crystal clear that what comes next cannot possibly be a simple re-creation of what came before.

APPENDIX B:
REBUILDING THE PUBLIC SQUARE IN THE DIGITAL AGE

A PUBLIC OPTION TO FUND PUBLIC INTEREST JOURNALISM

Emily Bell and Karen Kornbluh

Today, democracy is challenged by the structures of the digital media landscape, as public interest media, especially local journalism, has shrunk dramatically, replaced by “online content mills.” Nevertheless, a comprehensive framework that systematically addresses funding, transparency, and distribution can restore journalism to its rightful place as a fourth estate that guards truth, holds power to account, and enables effective democratic deliberation and decision-making.

There are several emerging models for revitalizing public interest journalism. With the decline of the traditional advertising revenue model, independent news sites are increasingly turning to subscriptions and philanthropy. We argue, however, that there is a precedent, need, and ability to build a robust public funding model to support public interest journalism in the Digital Age.

At the dawn of broadcasting, Western democracies created public broadcasting services, including the BBC in the United Kingdom and NPR in the United States, to provide news and scientific information in addition to other cultural programming. These services were publicly-funded and provided with a means of distribution. This type of model can be adapted to ensure that news and information needed for democracy are available in the new media environment. This approach would not simply seek to turn back the clock or fund the incumbent institutions that dominated in the pre-social-media era, nor would it create

a new public news service, like the BBC. Instead, we propose creating a fund for public interest media. Funding could come from a fee levied on the significant advertising revenue that digital platforms earn.⁵⁵ In this way, digital platforms would be sharing revenue earned on near monopolies that undermine journalism’s previous business model. This proposal, in essence, would be a “sin tax” on engagement-derived revenue that poses harm to the information ecosystem, with the revenue repurposed towards public interest journalism.

Outlets that meet standards for independent, local, trustworthy journalism would be eligible for funding. One set of possible standards is that used by the International Fact-Checking Networks Code of Principles, a commitment to:

- Nonpartisanship and Fairness
- Transparency of Sources
- Transparency of Funding & Organization
- Transparency of Methodology
- Open & Honest Corrections Policies

It is not enough to merely fund outlets. Like the broadcast context, it is necessary to provide a means for distribution online (public broadcasting was provided spectrum). In the United States, the digital platforms cannot be compelled to add these new public interest outlets to their “white lists”, but may be persuaded or incentivized to do so.

THE MARKET FAILURE BEHIND THE DECLINE OF PUBLIC INTEREST MEDIA

The threat to public interest media, especially to local journalism, is evident in industry market trends. Between 2004 and 2018, 1,800 newspapers closed or merged across the United States,⁵⁶ with 245 local papers closing entirely. Employment in U.S. newsrooms fell by 45%.⁵⁷ In the United Kingdom, meanwhile, over 300 newspapers have closed since 2015,⁵⁸ while in Australia, over 3,000 journalists have lost their jobs.⁵⁹ Similar declines have been reported across the OECD countries.⁶⁰

⁵⁵ As proposed by Rutgers University Law School professor Ellen P. Goodman at the German Marshall Fund’s Digital Democracy 2020 in February 2020, taken from her monograph “Public Media Policy Reform and Digital Age” in *Communications Law and Policy in the Digital Age: The Next Five Years* (ed. Randolph May, Durham: Carolina Academic Press, 2012).

⁵⁶ Penelope Abernathy, “The Expanding News Deserts”, University of North Carolina, School of Media and Journalism, <https://www.usnewsdeserts.com/reports/expanding-news-desert/>.

⁵⁷ Freddy Mayhew, “UK Local Newspaper Closures: Net Loss of 245 Titles since 2005, New Press Gazette Research,” Press Gazette, February 11, 2019, <https://www.pressgazette.co.uk/more-than-40-local-news-titles-closed-in-2018-with-loss-of-some-editorial-275-jobs-new-figures-show/>.

⁵⁸ Government of the United Kingdom, Department for Digital, Culture, Media, and Sport, “The Cairncross Review: A Sustainable Future for Journalism,” (London: Government of United Kingdom, 2019).

⁵⁹ Commonwealth of Australia, Senate, “Select Committee on Future of Public Interest Journalism,” (Sydney: Government of Australia, 2018).

⁶⁰ OECD, Working Party on the Information Economy, “The Evolution of News and the Internet,” OECD, (Paris, 2010).

The cause of the decline is clear. The advertising revenue that once supported local media has shifted to larger digital platforms such as Google and Facebook. Google and Facebook combined now capture 58% of the U.S. market, followed by Amazon, Microsoft, and Verizon. The Cairncross Review, commissioned by the British government, acknowledged that Facebook, Google, and the shift of distribution and advertising revenues to large technology platforms have damaged some parts of journalism to a point where the market cannot repair them.⁶¹ The new gatekeepers have rendered a market solution structurally impossible. One recent symptom of the new structural reality: the major American newspaper chain, McClatchy Company, which started in 1857 and runs 30 dailies across the country, declared bankruptcy at the same time that Facebook was rolling out its NewsTab and Google was offering to pay outlets. Absent a structural solution, public interest journalism will continue to decline or rely merely on philanthropy and good will. Attention should thus be focused on finding a holistic solution to mitigating the worst of our local news failures, and indeed to recreating a healthy information ecosystem.

Quality journalism is expensive to produce (due to the cost of talent and production, including investigation, editing, and fact-checking). Yet, with social media, publishing and distributing unverified content online is easier and cheaper than ever before. In some markets, particularly the United States, it may seem radical in today's age to argue for public subsidy of journalism. Yet a subsidy if provided at an arms' length is far more protective of the independence of the press than the idea that Google and Facebook take over the role of supporting journalism by directly picking and funding specific outlets.

THE CONTENT MILL NEWS INDUSTRY — AND THE FAILING RESPONSES TO IT

The market failure for the decline of public interest journalism has been further compounded by the rise of cheap-to-produce and easy-to-spread content mill news. News stories that were once driven by societal needs are now driven by audience development teams, partisan interest, and publisher revenue goals, which do not effectively favor high-quality journalism over content mill news. Outrage and conspiracy theories are effective mechanisms for hooking readers. To take just one example, in an analysis ahead of the 2017 German parliamentary elections, BuzzFeed found that seven out of the ten most shared articles about German Chancellor Angela Merkel on Facebook were false.

Moreover, low quality information is increasingly hard for readers to detect. Digital platforms often deliver partisan news and conspiracy sites alongside articles from independent media

with no user interface clues to distinguish what is accurate. The articles are delivered decontextualized — without information about whether the article is news or opinion, or whether the outlet has a masthead, codes, and standards.

Dark money is also beginning to infiltrate local news with false and misleading content. An investigation by the Tow Center for Digital Journalism at Columbia Journalism School discovered at least 450 websites in a network of local and business news organizations, each distributing thousands of algorithmically generated articles and a smaller number of reported stories.⁶² Networks of local websites in U.S. states Michigan, Illinois, Maryland, and other jurisdictions, which together lack mastheads, local addresses, and disclosure of their ownership or revenue sources. A similar group has launched sites in Tennessee, Minnesota, and Ohio, drawing on syndicated content from conservative sources. The sites distribute their content by being linked to on public pages. U.S. President Trump's official Facebook page linked three times to the fake *Minnesota Sun*.⁶³

Platforms have made efforts since the 2016 election to reduce the spread of disinformation and reduce the most egregious clickbait and misinformation. Google and Facebook have separately pledged \$300 million to various initiatives aimed at reviving local news across the United States. Several studies have found declining engagement of content from the sites on lists of egregious disinformation sites. However, politically-motivated disinformation continues to be a significant challenge. Facebook, for instance, has billed its NewsTab as a partnership that highlights “trusted” sources. Nevertheless, it has included Breitbart — the outlet formerly run by Stephen Bannon which repeatedly runs inaccurate and incendiary content, including about immigrants, African-Americans (it had a “Black Crime” section), and Democrats.⁶⁴

THE WAY FORWARD

Yet the information ecosystem need not continue to deteriorate with disastrous effects for democracy. As much as transformed revenue models have posed an existential threat to public interest journalism, so has the emerging threat to democracy revitalized not only the necessity but the demand for high-quality information, even as it has increased the desire among talented young people to go into journalism for themselves. If a long-term, sustainable solution can be implemented, as it was to adapt to previous technological disruption, we believe that a new golden age of journalism and of democracy can dawn.

⁶¹ Emily Bell, “The Cairncross Review admits what America won’t about journalism,” *Columbia Journalism Review*, February 15, 2019, https://www.cjr.org/tow_center/the-cairncross-review.php.

⁶² Priyanjana Bengani, “Hundreds of ‘pink slime’ local news outlets are distributing algorithmic stories and conservative talking points,” *Columbia Journalism Review*, December 18, 2019, https://www.cjr.org/tow_center/reports/hundreds-of-pink-slime-local-news-outlets-are-distributing-algorithmic-stories-conservative-talking-points.php.

⁶³ Sam Levin, “Facebook promised to tackle fake news. But the evidence shows it’s not working,” *The Guardian*, May 16, 2017, <https://www.theguardian.com/technology/2017/may/16/facebook-fake-news-tools-not-working>.

⁶⁴ Casey Newton, “Facebook’s Breitbart Problem,” *The Interface*, October 28, 2019, <https://www.getrevue.co/profile/casynewton/issues/facebook-s-breitbart-problem-206787>.

APPENDIX B:
REBUILDING THE PUBLIC SQUARE IN THE DIGITAL AGE

THE FUTURE OF ANTITRUST

Francis Fukuyama

As any casual reader of business news can attest, antitrust law applied to digital platforms has become a major policy issue in the United States, following a prolonged period in which there was little in the way of antitrust actions on the part of the U.S. government.

In October 2019, a group of some 40 U.S. state attorney generals announced they were following the lead of New York state in looking into platform antitrust issues, and the Justice Department and Federal Trade Commission said that they were taking new looks at Google and Facebook for potential antitrust violations. A number of Democratic presidential candidates, led by Massachusetts Senator Elizabeth Warren, have included antitrust planks in their campaign platforms. There are good reasons for the U.S. legal community to take a new look at this issue, which will have profound implications both for the economy, and for the future of American democracy.

The framework under which regulators and judges today look at antitrust was established during the 1970s and 1980s as a byproduct of the rise of the Chicago School of free-market economics. As chronicled in Binyamin Appelbaum's recent book *The Economists' Hour*,⁶⁵ figures like George Stigler, Aaron Director, and Robert Bork launched a sustained critique of overzealous antitrust enforcement. The major part of their case was economic: antitrust law was being used against companies that had grown large because they were innovative and efficient. They argued that the only legitimate measure of economic harm caused by large corporations was lower consumer welfare, as measured by prices or quality. And they believed that competition would ultimately discipline even the largest companies. For example, IBM's fortunes faded not because of government antitrust action, but because of the rise of the personal computer. With consumer welfare the only

standard for bringing a government action, it was hard to make a case against companies like Google and Facebook that gave away their main products for free.

The Chicago School critique made a further argument, however: the original framers of the 1890 Sherman Antitrust Act were interested only in the economic impact of large scale, and not in the political effects of monopoly. They argued that many of the antitrust actions undertaken in the period after World War II were based on shifting and arbitrary standards, in which the harms either to the economy or to American democracy were not clearly defined.

We are in the midst of a major rethinking of that inherited body of law in light of the changes wrought by digital technology.⁶⁶ Economists and legal scholars are beginning to challenge the consumer welfare standard as the sole harm caused by corporate scale. "Zero price" platforms like Google and Facebook have built enormous businesses around the exploitation of user data, which in Facebook's case in particular have been sold despite repeated promises that it would respect its users' privacy.⁶⁷ Consumers who are harmed by that loss of privacy in return for the free services they receive may not understand the bargain they have made. In other instances, the harm of large scale lies in foregone innovation, as Google and Facebook buy up startups (like DoubleClick or YouTube by Google or Instagram and WhatsApp by Facebook) that might challenge them. Platform size gives them access to consumer data that makes it very hard to compete against them; Amazon, for example, is both a platform hosting other sellers, as well as a seller itself that can compete against its own clients.

But the political harms caused by large scale are critical issues as well, and ought to be considered in antitrust enforcement. Social media have been weaponized to undermine democracy by deliberately accelerating the flow of bad information, conspiracy theories, and slander. Many political figures have called for stricter government regulation of speech as a result. The U.S. Constitution's First Amendment contains very strong free-speech protections. But while many conservatives have accused Google and Facebook of "censoring" voices on

⁶⁵ Binyamin Appelbaum, *The Economists' Hour: False Prophets, Free Markets, and the Fracture of Society* (Boston: Little, Brown, 2019).

⁶⁶ See Lina M. Khan, "The Ideological Roots Of America's Market Power Problem," *Yale Law Journal Forum* 127 (2017); Tim Wu, *The Curse of Bigness: Antitrust in the New Gilded Age* (New York: Columbia Global Reports, 2018); Jonathan B. Baker, *The Antitrust Paradigm: Restoring a Competitive Economy* (Cambridge, MA: Harvard University Press, 2019).

⁶⁷ Roger McNamee, *Zucked: Waking up to the Facebook Catastrophe* (New York: Penguin Press, 2019).

the right, the First Amendment applies only to government restrictions on speech; law and precedent protect the ability of private parties like the internet platforms to moderate their own content. In addition, Section 230 of the 1996 Communications Decency Act exempts them from private liability that would otherwise deter them from curating content.

The U.S. government's ability to regulate political speech exists, as evidenced by the Federal Communications Commission's (FCC) "Fairness Doctrine" which, in the 1970s, was used to mandate "balanced" coverage of political speech. But this doctrine came under sustained attack by conservatives and was eventually rescinded in 1987 through an administrative decision. It is impossible to imagine today's FCC articulating a modern equivalent of the Fairness Doctrine applied to digital platforms. Our politics are far more polarized; reaching agreement on what constitutes unacceptable speech would be, if not legally, politically impossible.

Europeans have been much more forthright in pursuing both regulatory and antitrust approaches. The German NetzDG, for example, criminalizes fake news with stiff penalties, though its very severity may have chilling consequences for legitimate political speech. European law regards privacy as a fundamental right, and has used the General Data Protection Regulations (GDPR) to limit platform ability to make use of user data. While European competition law accepts many of the same premises as U.S. law, it is more flexible in allowing remedies for alleged violations, and has imposed substantial fines on both Google and Facebook.

A regulatory approach to content moderation is much more problematic in the United States. The problem with platform self-regulation is not that private companies are incapable of moderating content: we don't complain that the *New York Times* refuses to publish a conspiracy theorist like Alex Jones, because the newspaper market is decentralized and competitive. The issue is rather one of scale: a decision by Facebook or YouTube not to carry Jones is much more consequential because of their monopolistic control over internet discourse. The government cannot legitimately delegate to a single private company (largely controlled by a single individual) the task of deciding what is acceptable political speech. We would worry much less about this problem if Facebook was part of a more decentralized, competitive platform ecosystem. Antitrust therefore becomes a serious alternative to state regulation if one worries about the impact of fake news and conspiracy theories on democracy.

Remedies will be very difficult to implement: it is the nature of networks to reward scale. As a recent European Commission

study notes, digital platforms do not compete for market share, but for the market itself.⁶⁸ It is not clear how a company like Facebook could be broken up horizontally as AT&T was in the 1970s, since a baby Facebook would likely end up occupying the same position as its parent over time. Other ideas to increase competition among platforms have been suggested. One is to facilitate data portability between platforms by mandating a common API, a proposition that immediately runs into privacy concerns since a platform user's friends are an integral part of the user's profile. Another idea is to prohibit or more strictly limit acquisition of startups by large platforms, or to prohibit them from moving into parallel markets where their access to large amounts of consumer data gives them an enormous advantage. Internet companies could be prohibited from being both platforms and sellers on platforms. The United States could adopt privacy rules comparable to GDPR that could be used to limit the extent to which platforms can monetize the consumer data they hold. Finally, U.S. antitrust law could treat media companies differently from large companies in other sectors, given the political externalities generated by political media content. It is less clear in the media space that efficiency and consumer welfare are overriding goals, given these externalities. If the large platforms were held to be media companies, they could be subject to a different interpretation of existing U.S. antitrust law.

The increasing concentration of power in a handful of extremely large corporations that exert oligopolistic or monopolistic control over markets is an issue for many sectors beyond the digital platforms: pharmaceuticals, hospitals, internet providers and telcos, airlines, and countless other sectors have seen mergers and acquisitions in recent decades that have left them far less competitive than they were a generation ago. Economist Thomas Philippon has argued that the U.S. economy is now more concentrated than that of the European Union, and that this has been holding back both innovation and growth.⁶⁹ The European Union, for its part, has been much more forthright in pushing competition policy against Google, Facebook, and other large internet companies. The current situation in the United States is the byproduct of an intellectual revolution that took place in the 1980s, which has left a legacy of judges and legal scholars who believe that antitrust law is largely an uninteresting issue because it long ago became settled law. Changing this perspective in light of the new challenges posed by digital technology will therefore require a similar intellectual and legal revolution.

⁶⁸ Jacques Cremer et al., *Competition Policy for the Digital Era* (Brussels: European Commission Directorate General for Competition, 2019).

⁶⁹ Thomas Philippon, *The Great Reversal: How America Gave up on Free Markets* (Cambridge, MA: Belknap/Harvard University Press, 2019).

APPENDIX C:
RENOVATING DEMOCRATIC INSTITUTIONS

MENDING THE RUPTURE BETWEEN INSTITUTIONS OF SELF-GOVERNMENT AND THE PUBLIC

Nathan Gardels

In his book, *Rupture*, the Spanish sociologist Manuel Castells argues that what we are witnessing today is not some normal turn of political cycles, but an historic rupture of the institutional relationship between the governing and the governed in liberal democracies.

Yet he sees no new relationship on the horizon that might supplant the old ways of representation, only fragments of the former mainstream parties and upstart populists vying to put their team in power through the exercise of electoral contests in which ever fewer believe. The resulting polarization and paralysis has divided nearly all societies in half or splintered them even further into a multitude of tribes, unable to reach a governing consensus.

This disaffection with and distrust in governing institutions has gained more traction than ever before because of the participatory power of peer-driven social media. It levels the playing field of information among amateurs, professionals, and meritocratic experts. As a platform open to all, social networks challenge the custodianship of elites and, not least, the legitimacy of representative democracy.

This rise of social networks heralds a new distribution of power that is a gamechanger for governance. The political corollary of this powershift is a disposition by disaffected constituencies to make the big decisions themselves through participatory platforms or through the direct democracy of referendums and citizen's initiatives at the ballot box. Increasingly, the connected citizenry is inclined to dispense altogether with governing intermediaries. According to a global Pew Poll conducted in 2017, 66 percent of respondents preferred a system in which "citizens, not elected officials, vote directly on major issues to decide what becomes law."⁷⁰

We've seen this sentiment in action not only with the Brexit referendum and the Catalan independence vote but also with innovations like Decidim, the on-line platform in Barcelona conceived as a "civic alternative to Facebook," that enables citizens to participate in decision-making in areas from housing to transport and pollution. We've seen it as well in the advance to power in 2018 of the internet-based Five Star Movement (FSM) in Italy under the slogan "participate, don't delegate." After a fraught coalition with the anti-immigrant League Party headed by Matteo Salvini before that government fell, the FSM forged a coalition in 2019 with the mainstream Democratic Party (PD)—even though the FSM (with some justification) regards the PD as the old politics of an insider establishment and the PD regards the FSM (with some justification) as incompetent and demagogic. In a never before seen political coalition, the defenders of representative democracy and the proponents of direct citizen participation are trying to govern together.

"Our experience is proof of how the Internet has made the established parties, and the previous organizational model of democratic politics more generally, obsolete," says Davide Casaleggio, who runs the movement's on-line platform and is considered the power behind the network. "The platform that enabled the success of the Five Star Movement is called Rousseau," he explains, "named after the 18th century philosopher who argued politics should reflect the general will of the people. And that is exactly what our platform does: it allows citizens to be part of politics. Direct democracy, made possible by the Internet, has given a new centrality to citizens and will ultimately lead to the deconstruction of the current political and social organizations. Representative democracy—politics by proxy—is gradually losing meaning."

In 2018, the governing coalition in Italy created the first ever Ministry for Direct Democracy in a national government that will administer the newly established right of citizens to initiate measures that make law directly at the ballot box without going through Parliament.

Following the FSM's lead, a key demand of the *gilets jaunes* in France has been for a similar process of citizen-initiated referendums, a demand to which President Emmanuel

⁷⁰ Richard Wike et al., "Globally, Broad Support for Representative and Direct Democracy," Pew Research Center, October 16, 2017, <https://www.pewresearch.org/global/2017/10/16/globally-broad-support-for-representative-and-direct-democracy/>.

Macron has at least partially acceded at the local level and in a highly constricted way at the national level that requires joint qualification by citizens through signature gathering as well as by a certain percentage of votes in the Parliament. Macron has also announced he will submit the recommendations of the Citizen's Climate Convention to a referendum vote so that the entire public has a voice in setting future climate policies. Over several months, across seven weekends, the citizen assembly members—150 people chosen by random sampling from a pool of 250,000—have been briefed by experts and deliberated on issues including fast fashion, plastics, transport and housing. “This is not a consultation asking for people’s views; we’re asking them to produce concrete, structural measures; that’s what’s original,” said Julien Blanchet, who is overseeing the process.⁷¹

“People want more democracy. They don’t just want to follow the laws, but to participate,” Macron said in January 2020. That statist, centralized France would move at all in this direction is indicative of the gathering momentum behind the idea that citizens can “take back control” through direct democracy.⁷²

In 2020, New Zealand will hold a series of referendums on euthanasia, legalization of cannabis and abortion, which they call “conscience votes,” to guide the parliamentary agenda on these issues.⁷³

Also in 2020, James Fishkin, the deliberative polling guru from Stanford University, has been invited to Iceland to mediate the drafting of a new constitution between a crowd-sourced document and the extant constitution.

The whole Brexit episode has converted some longtime traditional politicians to the cause of deliberative gatherings.

“Trust has broken down in our representative democracies because political parties are no longer performing their traditional role of assembling and then aggregating public opinion to build an informed consensus,” says former U.K. Prime Minister Gordon Brown. “In their place, Facebook, Twitter and our social media give the impression that we have a direct democracy where, through by-passing representative institutions, leaders and led can communicate with each other on equal terms.”

He continues, “At its best, however, our social media is a shouting match without an umpire and at worst an echo chamber isolating and reverberating the most extremist of views. It may take years to rebuild the party system. In the meantime we can attempt to build an informed direct democracy through Citizens’ Assemblies. They would bring

together, in microcosm, citizens who would spend time hearing the facts, interrogating the experts, and challenging factional views . . . I am certain we will find [through such citizen platforms] that we are far more tolerant, more fair-minded, and more outward-looking than the extremists who today claim to speak in our name.”⁷⁴

The Scottish parliament has commissioned a citizens’ assembly that will discuss options and pathways for Scottish independence from the United Kingdom in the wake of Brexit.

In an editorial on August 11, 2019, the *Financial Times* endorsed the growing attraction of deliberative democracy:

“When polarized opinion turns democratic norms into a source of paralysis, too many voters are driven to strongmen who have no use for such principles other than as a veneer to decorate their grab for power. But democracy is not helpless. Institutions struggling with polarization must innovate. To stay true to their democratic justification, they should adapt in the direction of a better exercise of reasoned disagreement—never a silencing of it. There is a case for making democracy more deliberative, not just within the political class but among citizens at large through citizens’ assemblies—deliberative groups made up to be representative of the electorate at large . . . ”⁷⁵

This trend is also taking hold outside the long-standing democracies of Europe or some American states. In August 2019, activists from six continents met in Taichung, Taiwan and declared “a strong shared sense that modern direct democracy—and tools like the initiative and referendum—should have a greater role in the world. Direct democracy systems must not exist by themselves, like a lone tree in a desert. They must be surrounded by participatory and democratic infrastructure—such as citizens’ assemblies—that make clear the rules of the process and guarantee that all people can use direct democratic tools and exercise their democratic rights . . . the Internet and digital tools can make direct democracy more robust, accessible, and transparent, as we have seen here in Taichung, with the city’s mobile platform for government transparency and citizen ideas.”⁷⁶

Audrey Tang, the Digital Minister of Taiwan, is leading the way. The transgender minister administers the annual “presidential hackathon,” born out of the Sunflower protest movement of 2014, which engages nearly 10 million citizens each year through a digital deliberation platform to reach consensus on key issues that then guide parliament and government policy. “Data collaboration” through “radical transparency,” instead of centralized data control, is the motto of her office.

⁷¹ Angelique Chrisafis, “Citizens’ assembly ready to help Macron set French climate policies,” *The Guardian*, January 20, 2020, <https://www.theguardian.com/world/2020/jan/10/citizens-panels-ready-help-macron-french-climate-policies>.

⁷² Robert Williams, “France’s President Calls For a Referendum on Climate Change,” *Bloomberg*, January 10, 2020, <https://www.bloomberg.com/news/articles/2020-01-10/france-s-president-calls-for-a-referendum-on-climate-change>.

⁷³ Charlotte Graham-McLay, “New Zealand is Tackling Hot-Button Liberal Issues in One Scoop,” *New York Times*, November 16, 2019, <https://www.nytimes.com/2019/11/26/world/asia/new-zealand-euthanasia-cannabis-abortion.html>.

⁷⁴ Gordon Brown, “Divisive Us v Them nationalism is biggest threat to Union in 300 years,” Gordon and Sarah Brown, June 25, 2019, <https://gordonandsarahbrown.com/2019/06/gordon-brown-divisive-us-v-them-nationalism-is-biggest-threat-to-union-in-300-years/>.

⁷⁵ Editorial Board, “Deliberative Democracy is just what Politics needs,” *Financial Times*, August 11, 2019, <https://www.ft.com/content/6bc199c8-b836-11e9-96bd-8e884d3ea203>.

⁷⁶ *ibid.*

Minister Tang offers this coda for tech-assisted citizen participation as the alternative to Silicon Valley's app-down template:

When we see “Internet of Things,” let’s make it an Internet of beings.

When we see “virtual reality,” let’s make it a shared reality.

When we see “machine learning,” let’s make it collaborative learning.

When we see “user experience,” let’s make it about human experience.

When we hear “the singularity is near,” let us remember: the plurality is here.

In Chile, after months of demonstrations that led the government to call for a new constitution, citizens are demanding a say in its makeup through local citizen assemblies in advance of the measure going to a referendum vote. Both the government and citizens’ groups have invited Fishkin to Santiago to mediate the constitutional discussions.

In Mexico, the left-populist president, Andres Manuel Lopez Obrador, has also called for “participatory democracy,” initiating a series of “consultations,” though these are widely criticized as manipulated efforts to affirm the president’s agenda. The new president of Tunisia, constitutional lawyer Kais Saied, has proposed non-partisan local councils for deliberation that elect regional counselors who, in turn, elect members of parliament, a sort of combination of direct democracy and indirect elections that aims to return government to the citizens and avoid a system locked up by political parties.

Former Greek Prime Minister George Papandreou has gone the whole distance, calling for a citizen-dominated “fourth branch of government.” “This new deliberative branch in which all citizens—the ‘demos’—could participate, would sit alongside the executive, legislative and judicial branches,” he has written.⁷⁷

THE MEANING OF PARTICIPATION

Before going further, it is important at this juncture to define clearly what is meant here by the demand for participation. This does not imply that publics will somehow be perpetually mobilized into activists, spend all their free time studying the issues, and turning out in droves for every referendum vote. The average citizen is by and large way too busy with work and family to engage actively on an ongoing basis in politics, and there is no indication that is what they want.

The demand for “participation” as a way to “take back control” means the *reliable expectation* of a process in which all voices

are heard and weighed among others in decisions which affect each of our lives. If the operational practices and institutions of self-government are considered impartial and inclusive, citizens will accept the outcome of the competition over ideas and interests as fair—even if they end up on the losing side of a dispute or get only half a loaf through trade-offs that enable a consensus. It would be going too far to say that a system works best if there are “happy losers.” But it would be appropriate to say that when citizens are satisfied that the process is legitimate because it has not excluded their express concerns, they will not become disaffected with the system.

The growing appeal of direct democracy is precisely this: Citizens know there is a ready venue for their immediate “agency” when elected representatives captured by an insider establishment of organized special interests neglect, or are unwilling to address, issues of primary concern to the average person.

As Bruno Kaufmann reports, “113 of the world’s 117 democratic countries offer their citizens legally or constitutionally established rights to bring forward a citizens’ initiative, referendum or both. And since 1980, roughly 80 percent of countries worldwide have had at least one nationwide referendum or popular vote on a legislative or constitutional issue. Of all the nationwide popular votes in history, more than half have taken place in the past 30 years. As of May 2019, almost 2,000 such votes have taken place: 1,075 in Europe, 193 in Africa, 192 in Asia, 187 in the Americas, 117 in Oceania.”⁷⁸

The explosion of direct and participatory democratic practices at the local and provincial level, argues Kaufmann, is related to the rise of populist authoritarianism. “Frustration is growing with democratic systems at national levels,” he reports, “and yes, some people become more attracted to populism. But some of that frustration is channeled into positive energy—into making local democracy more democratic and direct.” Some call it “leading from below.”⁷⁹

WHERE DELIBERATION COMES IN

Switzerland, many American states such as California, and cities around the world have long employed the direct democracy mechanism of citizen’s ballot initiatives—with highly mixed and often deleterious results. What makes this new surge qualitatively different is the scope and scale of social connectivity that fortifies it. Indeed, if unmediated, direct democracy in the Digital Age will look a lot like social media itself. It will encompass the good, the bad and the ugly, a platform not only for the spread of innovative ideas that respond to citizen concerns, but for ill-tempered blogmobs, hateful sentiments, alternative facts, outright lies, utopian delusions, and worse.

⁷⁷ George Papandreou, “We Need a Fourth Branch of Government,” *New York Times*, October 8, 2019, <https://www.nytimes.com/2019/10/08/opinion/fourth-branch-of-government.html>.

⁷⁸ Bruno Kaufmann and Joe Matthews, “Democracy doomsday prophets are missing this critical shift,” *Washington Post*, May 8, 2018, <https://www.washingtonpost.com/news/theworldpost/wp/2018/05/08/direct-democracy-is-thriving/>.

⁷⁹ *ibid.*

But the genie is now out of the bottle and won't be squeezed back into the forms and concepts of democratic governance that have prevailed since the 18th century.

All this presents a paradox for governance in the Digital Age: The more participation there is, the greater the need for the counterbalance of impartial practices and institutions that can process the cacophony of voices, sort out the deluge of contested information, negotiate fair trade-offs among the welter of conflicting interests and dispense with the magical thinking or xenophobia that comes along with networked popular sentiment. In this new era of distributed power, such a deliberative ballast is as essential to the survival of republics as the direct engagement of citizens in governance.

The exercise of collective intelligence requires “cool and sober deliberation” that “enlarges the public view” even more in the Digital Age than in the era of the American Founding Fathers and others who designed the constitutional frame that has enabled the liberal democracy we have so far known. If the ethos of the digital disruptors has been to “move fast and break things,” the counterpoint of 21st century democracy must be to “move deliberately and fix things.”

WHEN AI ARRIVES IN POLITICS

Jamie Susskind, the author of *Future Politics: Living Together in a World Transformed by Tech*, takes an even longer view of the effect of digital technology in self-government, situating today's revolution in its historical context. He contemplates how the advent of artificial intelligence (AI) has the potential both to diminish the quality of democratic governance but also to enhance it—with respect to deliberation, decision-making, public administration, and the enforcement of laws and rules.

“*Deliberation*,” he writes, “is the process by which members of a community discuss political issues in order to find solutions that can be accepted by all (or most) reasonable people. The Internet has already changed the nature of the forums we use for deliberation. For ordinary citizens, a growing amount of political speech takes place on digital platforms owned and controlled by private entities. The early consequences of this development are becoming clearer, with recent concerns centering on polarization and fragmentation between rival factions, and the proliferation of ‘fake news’. Another source of growing unease is about the privately-made determinations about who may participate in the deliberative process (and who is blocked or banned), what may be said (and what is prohibited), and how it may be said (no more than 280 characters, etc.)”

He considers the prospect of a “more radical—but by no means fanciful—prospect for the long term” with “humans [ceasing] to be the only participants in the deliberative process. It is important to recognize that bots in the future will be able

to deliberate in ways that rival—and even exceed—human levels of sophistication.” To the extent that AI can aggregate collective preferences and discern patterns better than humans, he argues, it will augment deliberation. More and better data can only improve decision-making.

He then turns to the notion of *direct democracy*—“disregarded for centuries because of the size and complexity of modern polities.” It is possible, he writes, “if not necessarily desirable, that citizens in the future might be able to vote on several policies a day, using smartphones or whatever replaces them. It will also be possible for people to delegate their vote on certain issues to others whom they trust—for instance, allowing a consortium of doctors, nurses, and patient groups to cast their vote on matters of health policy. This is so-called ‘liquid democracy.’”

For Susskind, the big question for democracy going forward is how increasingly capable systems, which can quantify and process the massive data gleaned from the “Internet of Things” that integrates billions of connected devices, will impact how we govern ourselves.

Participation without populism

The most urgent task today, therefore, is to figure out how to exploit the new tools of the Digital Age and apply innovative practices of deliberation to help mend the breach of distrust between the institutions of self-government and the public. That will entail integrating social networks, AI, and direct democracy into the political system through the establishment of new mediating practices and institutions that both complement, and compensate for, the waning legitimacy of representative democracy. This evolved form of democracy for the 21st century can be called “participation without populism.”

FOUNDATIONAL FRAME: BEYOND THE BALLOT BOX

In conceiving a new institutional design for governance going forward, we must return to first principles. Philosopher and political theorist Philip Pettit has set the foundational frame. The aim of popular sovereignty is “control of government by its citizens” through mechanisms that assure consent of the governed. What happens outside the ballot box, he argues, is as essential to control of government by all its citizens as elections. It is the operational constraints on power and the impartial rules and practices of “competitive collaboration” and deliberation that guarantee an “inclusive” democracy in which the values and interests of all citizens, and not just the electoral majority or organized special interests, are weighed in any decision-making process. This is the essential distinction between a mixed constitutional republic and the pure democracy many are promoting today, which was so loathed by the American Founding Fathers that Thomas Jefferson described it as “elective despotism.”

In an inclusive governing system, design must strive to reach a “detached judgment” that respects all citizens as carrying the same weight even in a majoritarian regime in which “affective interests and investments” can lead to “stable divides, with some being cast as more or less fixed minorities.”

To navigate these shoals of self-government where the aim is *inclusion and consensus* requires more than everyone seeking to maximize their own interests through bargaining power. That alone will lead to might making right, or gridlock among factions. Only governing through a deliberative process “constrained by common reasons” can transcend divisions to reach a governing consensus.

As Pettit puts it: “The need for participants in public discussion to accept the constraint of invoking only reasons accepted as relevant on all sides (that is, not your self-interest alone) is a special case of the general need for people in a democracy to abide by the rules that allow them to compete with one another for victory. Indeed, this constraint may be the rule that is most fundamental to the possibility of democracy. If and only if it is accepted can there be a hope of people finding a common framework under which to pursue their competitive, political ends in a peaceful way.”

In our populist age of polarization and paralysis tempted by, and indeed embracing, rule by plebiscite, nothing is more important than fostering practices and building new institutions that establish trusted frameworks for exercising the constraint of common reasons. In diverse societies, the possibility of reaching consensus and compromise requires impartial platforms – islands of good faith and will – that are beyond the sway of organized special interests and insulated from the immediate electoral fray of partisans seeking advantage as they vie for power. In short, decision-making, especially where direct democracy is involved, requires *depoliticization* of the institutions where deliberation takes place and where verified facts and expertise are brought to bear. As the American Progressive Era journalist Walter Lippmann once wrote: “The value of expert mediation is not that it sets up opinion to coerce partisans, but that it disintegrates partisanship.”

To be abundantly clear, this is not to wishfully imagine that partisan perspectives and real conflicts can somehow be purged from politics. It is to say that the fair competition among disparate interests and values that makes decisions legitimate can only be assured through deliberative platforms that are themselves impartial and non-partisan. And it is to say that the more likely path to achieving compromise solutions and consensus is when partisan passions are constrained.

As Pettit suggests, such a process of deliberation that feeds into either legislative or referendum decision-making can involve referral of contested issues to expert committees,

referral to an individual or group that is taken to be impartial or even resort to a lottery mechanism, among other similar arrangements.

(Footnote: *With respect to expert committees, it is worth noting the practice of Base Closing Commissions in the United States. Since closing a military base in any constituency, with all its economic consequences, was deemed too politically costly for sitting politicians, those decisions in the 1980s-1990s were delegated to an independent commission appointed by the Congressional leadership that comprised former generals, former local elected officials, and former Congressmen or women. The recommendations of the commission could only be voted up or down as a whole—no amendments—by the Congress. This insulated politicians from any local political cost while making decisions in the interest of the entire nation.

To go a bit further, the value of a non-elected technocratic government, such as the one that Mario Monti presided over as prime minister of Italy from 2011-2013, is that it can make the tough decisions and formulate policies that take into account the long-term interests of all citizens instead of the immediate priorities that prevail in a government formed by elected parties representing organized special interests. It is doubtful that the fiscal measures implemented by the Monti government, including the trimming of new pension benefits and advancing the retirement age, could have been achieved through a partisan election. That the coalition in power today in Italy aims to rescind the pension measures exposes the chief flaw of technocratic government: it was perceived as lacking popular legitimacy—despite the fact that Monti was appointed by the non-partisan President of Italy to run a government in which a parliamentary majority was already in place and approved his appointment and the reforms he proposed.

Democratic governance could be improved by combining the impartial and knowledgeable character of technocracy with mechanisms beyond representative government to establish legitimacy, balancing administration by the best and brightest with alternative means of registering consent of the governed. One way to do this would be to put the proposed policies, developed after broad consultation, to a public vote in a “confirmation referendum” preceded by the convening of a series of Citizens’ Assemblies in advance of the poll, a process that could include possible amendments if consistent with the purpose. The experience of Citizens’ Assemblies in Ireland shows how a group of citizens gathered in a way indicative of the whole can come to a consensus even on a highly emotional issue if issues are deliberated outside the electoral arena. In the Irish case, this process entrusted to citizens “like ourselves” persuaded voters at large to remove an anti-abortion clause from the constitution by a large margin in a referendum.)

Following this foundational frame, any new design of governance that empowers participation without populism entails establishing (a) open platforms for public discourse where the trustworthiness and integrity of information is assured; (b) robust venues for citizens to voice their concerns and set the political agenda; and (c) disinterested, impartial, and “depoliticized” spaces for the deliberation and processing of popular concerns through negotiation and compromise into responsive and sound policy for a public vote at the ballot box or in legislatures.

ELEMENTS OF A HYBRID SYSTEM: PARTICIPATORY AND DIRECT DEMOCRACY + REPRESENTATIVE GOVERNMENT

The challenge ahead for liberal democracies is incorporating the new tools of technology and present methods of deliberation and administration into a new hybrid political system that features both direct democracy and greater citizen engagement with their representatives in government. This includes:

- Innovative practices such as “crowdlaw” that mobilize “collective intelligence” through networked deliberation as a way to register public priorities and set the agenda for both legislators and sponsors of citizens’ initiatives and referendums;
- Interactive civic software, such as Lex Iscritti employed by the FSM in Italy, that enables constituencies to propose, deliberate, and iterate legislative measures directly with their elected representatives;
- Citizens’ Assemblies, policy juries, and deliberative polling which bring together randomly selected groups of citizens indicative of the population as a whole, including through lottery, who hear pro and con arguments and are presented with verified facts in order to reach consensus on a given issue. The results of these deliberations may serve as recommendations to legislatures or voters in a referendum, or may be binding through an up or down vote;
- Requiring the deliberative process of a “second reading” of citizen-initiated measures as well as government sponsored referendums before they go to the ballot box for a vote. This can be done through:
 - Citizens’ Assemblies and review panels of the kind noted above to deliberate both government sponsored referendums as well as citizens’ initiatives;
 - Authorization of legislatures to negotiate with citizen sponsors to vet the constitutionality of their proposed measures, fix problems, discover unintended consequences, and make amendments consistent with the sponsor’s intention. If agreement is reached on addressing the issue through legislation, the citizen’s measure can be withdrawn. If no agreement can be

reached, the legislature can place an alternative, competing measure on the public ballot without going through the step of gathering the requisite signatures to qualify;

- Re-configuring the upper house, or senate, of legislatures as a non-partisan body that is selected in part by sortition and in part through indirectly elected or appointed members on the basis of experience and expertise (to insulate it from the pressures of special interests in electoral contests) as the primary institution for a “sober second reading” of citizen-initiated measures as well as legislative proposals from the lower house. It would be empowered, per above, to negotiate with citizen sponsors to reach common agreement or place a competing measure on the ballot.
- Creation of a European Citizens’ Assembly as a second house of the European Parliament. [Intermediate steps to this goal would include a “Citizens’ Bill” under the current European Citizens Initiative (ECI) process that mandates debate and an “indicative vote” on the proposed issue in the EU Parliament (since the Parliament cannot initiate legislation, only the EU Commission). Further, the Commission should clearly define the areas of its competence to propose laws, and if ECI qualifying signatures for a measure within those parameters reaches a certain threshold, formulate legislation in response to the proposition or put it to a European-wide referendum.]
- Integrate the learning algorithms of AI in all of the above practices to the extent they enhance citizen consultation, deliberation and decision-making.

CONCLUSION

Though not systematized as a template for the governance of liberal democracies in the Digital Age, many of these embryonic elements and practices of deliberation already exist across the West.

Since the practices and institutions of democratic deliberation are the central platform through which open societies make their most consequential choices, rebuilding trust in the inclusivity and impartiality of institutions of self-government is the core imperative if citizens are to “take back control” of their destiny. Neither a turn toward autocracy nor lame attachment to forms of government that have become dysfunctional offers an answer to the question of how to govern open societies in the 21st century.

A mixed constitutional system for the Digital Age that accommodates the participatory power of social media by expanding the zone of direct citizen engagement, replete with its own set of deliberative checks and balances, would both complement, and compensate for, the waning trust in mass political parties and representative government.

CROWDLAW: CITIZENS SETTING THE AGENDA

More than a hundred local city councils and parliaments at both the regional and national level, from Iceland to Ireland to India, are turning to “crowdlaw,” a form of crowdsourcing that uses novel collective intelligence platforms and processes to help governments engage with citizens. Crowdlaw is based on the simple but powerful idea that parliaments, governments, and public institutions work better when they leverage new technologies to tap into diverse sources of information, judgments, and expertise at each stage of the law and policymaking cycle. This helps improve the quality as well as the legitimacy of the resulting laws and policies.

Because collective intelligence helps to aggregate collective wisdom, it is useful for identifying problems. For example, the crowdlaw project vTaiwan, championed by Taiwanese Digital Minister Audrey Tang, enables the public to define public problems. It then utilizes machine learning software to form working groups to create policy recommendations. In more than 80 percent of cases, publicly-defined issues have led to government action, in large part because the process tightly integrates collective intelligence into public decision-making. So far, 26 national issues, including the regulation of Uber, telemedicine, and online education, have been discussed with over 200,000 participants.

Collective intelligence is also good at helping groups of people deliberate and discuss. In Iceland, the capital of Reykjavik has its own crowdlaw project called Better Reykjavik, created by the Active Citizens Foundation, where users identify and then devise ways to improve city services through forum discussions. A reported 20 percent of Iceland’s population has used the site, and more than half of those registered use it regularly. More important, the site is having an impact. When the economic crisis in Iceland left people homeless and literally freezing to death, the platform helped the public devise a new homelessness policy.

Another way that collective intelligence platforms can be used is to help citizens evaluate laws and policies after the fact. In Ghana, tech entrepreneur Prince Anim launched TransGov, a social auditing platform, in 2014. This site is used by about 600,000 Ghanaian citizens who monitor the progress of local development projects and hold their government accountable. In Brazil, the government launched a platform in 2016 that enabled students across 10 Brasília

public schools to share information about their learning environments. The platform helped identify the major issues students faced and then helped pinpoint root causes and generate ideas on how to fix them.

Despite these proliferating examples, however, the success of collective intelligence platforms has been mixed. Many projects remain in the pilot phase, failing to expand. When Spain’s Podemos was still an upstart political party, for example, it successfully engaged its supporters in drafting an online party platform but saw less success embracing these crowdsourcing practices once in government. And the Decide Madrid platform, to which 400,000 people have signed up to propose policy to the city council, has resulted in only two new policies but not a single new law. This is because bureaucracies are very resistant to change. Furthermore, governing is an arcane and jargon-filled process, and most of us simply do not have the know-how or vocabulary to discuss public policy. Nor do politicians or public servants typically want to engage us. After all, there is little political will to do something that could result in a loss of power, especially in a hyper-partisan environment. This is most likely why, now that Italy’s Five Star Movement is in power, it no longer meaningfully uses the Rousseau online system it created for campaigning, preferring to tightly control how policy is made.

Another reason for failure is bad design. Each stage of decision-making, from identifying to evaluating problems, demands distinct forms of information and action. Identifying problems requires large-scale input from diverse members of society whereas solving them often requires more time and expertise, which means investing a substantial amount of time into designing workable solutions. The best crowdlaw projects—and we are only just beginning to understand which ones result in enhanced problem-solving—offer different ways of participating, such as consultations, competitions, and participatory budgeting, each of which are designed for a distinct phase of decision-making, be it spotting or evaluating problems.

To be sure, more research is needed to understand what incentives will get both individuals and institutions to collaborate. But the reality is that new technology has the potential to unlock approaches that enable more individuals to weigh in on how to solve our collective problems, and it has the potential to offer city councils or parliaments rapid counsel from entrepreneurs, artists and engineers.

Advances in science and technology are set to transform the way we live together, with profound consequences. We need to use some of those same tools to redefine democracy, not as a once-a-year or less sporting competition between

warring teams, but as robust conversations about how to solve our greatest challenges together.

As Michael Cottakis reports, the millennial organization Generation 89 used crowdlaw survey methods to determine the commonly held preferences of young people across the 27 European Union states. “Across the board,” he writes, “young citizens express a desire to become more involved in policy making at the EU level” and favored “citizen debate” over consequential issues. The data also showed that while young voters are less likely to join political parties, they are keen to be engaged on single issues that affect their lives.

LEX ISCRITTI

The Five Star Movement in Italy advertises the civic software of its Lex Iscritti program that operates over its internet platform, Rousseau, as allowing its members “to become real legislators.”

Every month there is a vote on bills proposed by the members. The two with the most votes are assigned “tutors”, who will have the task of formalizing the proposal into draft legislation. In the last three votes up to the end of January 2019, more than 40,000 votes were cast by members on a total of 83 proposals.

Among the “most voted” proposals were a bill for free broadband and the introduction of secure and certified digital voting for elections. Among the measures that made it to the Parliament and was passed was a prohibition on public managers taking up positions when they leave office in the private sector in companies that were involved in public tenders.

The members who have uploaded the proposals to Rousseau that qualify for legislation come to Parliament to shoot a video presenting the proposal together with the tutor. The proposal transformed into a drafted bill after being submitted to the scrutiny of drafting experts will be tabled in the Chamber or in the Senate. The name of the proposing member will also be quoted within the tabled text to highlight the voluntary work for the good of the community.

CITIZENS’ ASSEMBLIES

The Citizens’ Assemblies most widely heralded as successful were held in Ireland from 2016 to 2018. As a result of their success, many others are now considering using this deliberative process in other countries.

The details of how the Irish Assemblies were set up and executed are important to understand in terms of how their legitimacy was established in the first place, how the process itself lent legitimacy to the outcome and how the outcome informed the actual implementation of that outcome into binding law.

Here are the details of the Irish Assemblies:

- The Citizens’ Assembly was an exercise in deliberative democracy, placing the citizen at the heart of important legal and policy issues facing Irish society.
- It was the second deliberative democracy exercise in Ireland, following its predecessor the Convention on the Constitution, which ran from 2012–2014.

Establishment

- The Programme for a Partnership Government 2016 committed the Government to ‘the establishment of a Citizens’ Assembly, within six months and without participation by politicians, with a mandate to look at a limited number of key issues over an extended time period.’
- Establishment of the Assembly was approved by resolution of both houses of the Irish parliament (the Houses of the Oireachtas) in July 2016.

Members

- The Chairperson was appointed by the Government and was former Supreme Court judge, the Honourable Mary Laffoy.
- There were 99 citizen Members of the Assembly, in addition to the Chairperson. Members were chosen at random to represent the views of the people of Ireland, and were broadly representative of society as reflected in the Census, including age, gender, social class, regional spread, etc. They must also have been on the electoral register to vote in a referendum.

Topics

- The five issues the Assembly was mandated to consider were:
 - the Eighth Amendment of the Constitution (which concerns abortion);
 - how to best respond to the challenges and opportunities of an ageing population;
 - how the State can make Ireland a leader in tackling climate change;
 - the manner in which referenda is held; and
 - fixed term parliaments.
- In respect of each topic, the resolution stated that ‘all matters before the Assembly will be determined by a majority of the votes of members present and voting’. Therefore, the output of the Assembly was a series of voted recommendations following the development of a Ballot Paper in consultation with the Members.

Expert Advisory Group

- The resolution provided for the establishment of an Expert Advisory Group to assist with the work of the Assembly in terms of preparing information and advice.
- The Chairperson put in place four distinct Expert Advisory Groups throughout the lifetime of the Assembly. The members of the Expert Advisory Group were academics and practitioners across a number of specific fields of interest, depending on the topic being considered.

Steering Group

- A Steering Group comprising the Chairperson and a small representative group of Assembly Members elected by the Assembly Members was in place to support the Assembly in the efficient and effective discharge of its role and functions. In practice, the Group assisted with planning and operational issues associated with the work programme.

Meetings

- There were five meetings on the Eighth Amendment, two meetings each on both how best to respond to the challenges and opportunities of an ageing population and how the State can make Ireland a leader in tackling climate change, one meeting on the manner in which referendums are held and one meeting on fixed term parliaments.

Reports

- The final report on the manner in which referendums are held and fixed term parliaments was published on Thursday, 22 June 2018. In Chapter 8 of the report, the Chairperson takes the opportunity to outline her recommendations around citizens’ assemblies, and the views of the Members taken at the final meeting form part of this.

The Assembly met on 12 occasions between October 2016 and April 2018, which includes an inaugural meeting. Each Assembly meeting was a full weekend (Saturday morning until Sunday afternoon) at a venue on the outskirts of Dublin.

The Assembly has published a final report and recommendations on the Eighth Amendment, how we best respond to the challenges and opportunities of an ageing population and how the State can make Ireland a leader in tackling climate change.

The report and recommendations on the Eighth Amendment was considered by a joint committee of politicians from both Houses of the Oireachtas, who in turn also recommended a referendum to remove the Eighth Amendment from the Constitution. This referendum took place on May 25, 2018 and passed by a majority of 66.4%.

PERMANENT CITIZENS' COUNCIL, ROTATING ASSEMBLIES

In 2018, the German-speaking areas of Belgium (Deutschsprachige Gemeinschaft or DG) put in place a hybrid system that includes both a permanent Citizens' Council and Citizens' Assemblies that rotate membership for specific issues. Here is how they work:

Mini-publics, or long-form deliberative processes (citizen assemblies), are the type of deliberative democratic innovation that have already been used and proven in many places around the world, including within the DG in 2017.

Rather than having ad hoc citizens' assemblies, it is preferable that their agenda is set, and their activities followed-up, by a permanent body (also controlled by citizens) that provides a continuous and stable underpinning for the different citizens' assemblies. Moreover, this creates a separation of power within the citizens' process where the same people do not set the agenda and decide on the content of a proposal.

The DG model consists of three separate entities:

1. A Citizen Council that will decide on the topics that will be discussed by citizens in separate deliberative processes throughout the year. This Council will also follow up what is done with recommendations of past deliberative processes and prepare those that are upcoming. It is the permanent body of the model.
2. A Permanent Secretariat (PS) that does most of the logistical work to prepare the separate deliberative processes. This involves doing the sortition to select citizens for these processes, preparing the information packages for them and inviting experts. The Permanent Secretariat also provides support to the permanent Citizen Council.
3. Single-topic Citizens' Assemblies, of which a number of these will be organized every year and will discuss one topic set forward by the Citizen Council. They will make recommendations for policy on that topic to the political actors in the DG.

The Citizen Council (CC)

This is a permanent body, but with annually rotating membership. It sets the agenda for the individual Citizens' Assemblies (CA's), monitors these CA's to see whether they are run according to best practices and finally, it does the follow-up on the recommendations so that they are attended to in a timely way by parliament.

The CC has two distinct tasks:

1. Agenda setting: Because agenda-setting is a crucial role, the CC would do this in a way that differs from its normal routine meetings.

Once every year at the end of September, members take one or two weekends to determine what the topics should be for the CA's that will take place in the following year. This meeting only takes place after the yearly 'state of the union' by the Minister-President (September) to ensure that the CC does not set a topic that is subsequently earmarked by the government for policy-making that year. The minimum number of CA's is to be set by the parliament of the DG, and the expert group would suggest a minimum of two per year.

The CC will set the topic in cooperation with a legal expert from the DG parliament. Both the CC and the CA's should also have access to the parliamentary services that ordinary commissions also have such as the legal service, archive, etc.—this way they can define the elements of the topic that are within the jurisdiction of the DG parliament. The questions asked should be broad and open enough so as not to constrain the specific CA in their ability to explore creative solutions to the topic at hand. The CC will take its input for this agenda-setting from different sources, but these will be suggestions and the CC is free to choose the topics it deems most important after thorough deliberation. Among the sources for this input are parliament, the government and the citizens of the DG, which can be consulted through many and varied forms of public consultation. (See a more detailed note on organizing this input later.)

2. 'Routine' tasks: The CC will convene monthly to assist new CA's being set up and to follow-up past ones—monitoring the preparations for the next CA to take place. For example, the Permanent Secretariat will present a list of experts it has earmarked for the topic and the information it will provide for the participants in the CA, which the CC will review for balance and can therefore request be changed. (More on the PS below.)

Beyond this, the operating process foreseen for a CA (facilitator, sessions, etc.) will also be presented to the CC ahead of a CA so it can monitor that the CA will take place according to the agreed upon *standards*. The CC can also decide that a certain CA requires a larger number of participants if the CC feel this is needed for the topic. This could be if this is a sensitive political topic so a larger group is useful to increase the legitimacy. Similarly, the CC can decide that a CA on a specific complex topic will need more time than usual and plan this together with the PS. The CC also monitors the yearly budget together with the PS and the impact that different CA sizes and duration have on it. According to how it

plans to spend this budget, more or fewer CA's per year can be delivered, but there should always be a minimum number of CA's per year as agreed with parliament (as stated above, we suggest two for the DG as a minimum).

Finally, the CC will also follow-up the recommendations of previous CA's that are to be handled by parliament. The head clerk of parliament (who can sit as 'liaison' and advisory member) will provide information on what has been done with recommendations from previous CA's in parliament and at which stages of implementation some of these are (or why not). The CC will also follow-up that an official feedback moment is organized in parliament with the members of a specific CA. (See a specific note on how recommendations could be handled later.)

Composition of the CC: The CC consists of 24 randomly-selected citizens who have been members of previous CA's. They will be selected from the pool of participants of previous CA's, with a maximum number of years that one stays in the pool (e.g. after three years one is removed from the pool). The membership in the CC rotates, where one-third (i.e., eight) of the members change every four months.

This means every member sits for one year on the CC, but every four months there is a change in composition. This ensures that there is stability in the working of the CC, but also that the limited term means that citizens on it do not become entrenched in their role. Having very long terms would mean that they become too socialized in their role, not unlike elected politicians, and lead to a concentration of power in the hands of a few citizens. Long terms also make membership in the CC too heavy a burden for many citizens and thus impair recruitment.

The rationale for having members of the CC drawn from previous CA members is because they will already have a clear understanding of the process and the workings of CA's from their own experience. This allows them to be more efficient and insightful in monitoring and following-up CA's. If CC members had never sat on a CA themselves, they would have to rely on others to get acquainted with how a CA works rather than having an in-depth understanding of what this entails from the outset.

In the first year, as a transition measure, six members would come from each of the parties represented in the DG parliament and the others from the mini-public held in 2017.

The CC has as non-voting members the member of the permanent secretariat (see next), the Ombuds(wo)man of the DG and, for its relationship with the parliament, the head clerk.

The Permanent Secretariat (PS)

This consists of at least one permanent employee. The PS is responsible for organizing process logistics and coordinates the content of the CA's in several ways. The person holding this position should therefore, ideally, be highly knowledgeable about participatory and deliberative processes, and capable of understanding the many kinds of bias. Because the PS plays such a central role, it is important that it has an independent and neutral position. This could be achieved by having this person work for example under the office of the Ombuds(wo)man of the DG.

The PS is responsible for:

- Managing the sortition process to assign members to a specific CA: This is the organization of the recruitment and lottery itself.
- Sending out invitations, following-up replies, and responding to queries: This also includes helping potential participants with practical issues such as sorting out their travel, childcare, etc.
- Organizing basic logistics for CA's such as providing rooms, catering, etc.
- Recruiting the facilitator(s) to a specific CA: This needs to be done with great care as these are crucial to having a high-quality deliberation process. One could even institute over time a form of accreditation by the PS for facilitators for CA's in the DG.
- Preparing and managing the yearly budget: This is the budget for specific CA's and for the annual budget for the CC. The CC supervises this budget and the PS reports at regular intervals to the CC.

Beyond these logistical tasks, the PS coordinates the preparation of information and documentation for the specific CA's. This includes asking various diverse stakeholders for input, balancing views, and ensuring that all perspectives on the topic at hand are available. This involves setting up an ad-hoc advisory group for every CA. The PS is also responsible for reviewing the final program with balanced questions and methodology to be used by the facilitators for the CA's. It also involves preparing a list of experts and stakeholders that will come to talk to the CA.

Because the PS holds a crucial position in the organizing of the whole process, it is necessary that the CC is involved when this person is appointed or when the person holding the position is replaced. The CC monitors the work of the PS to see that it holds to a strong standard of neutrality and impartiality.

The work of the PS is very important and requires a good knowledge of how deliberative processes are set up. The person that will hold this post will therefore need excellent skills and be knowledgeable on this. But the G1000 organization has also foreseen in its current planning and budget that it would assist and monitor the process developing in the German speaking communities for the next two years. This will also include giving advice to the PS in the first two years.

The Citizen Assemblies (CA)

These are single-topic citizen assemblies that bring together a minimum of 25 citizens for a number of days, at least for four to six days depending on the complexity of the topic.

As stated above the topic is decided by the CC. The CA's are professionally facilitated and deliver a set of recommendations to the parliament of the German-speaking community of Belgium.

The citizens in each CA are drawn by lot and are remunerated for their time. The topics that they can discuss are *a priori* limited to the policy areas in which the DG has its competences.

A CA will propose recommendations to the parliament of the DG on the topic it was given to discuss. There should be a clear regulation as to how these recommendations will be handled by parliament. The extent to which they are seen as binding to some degree is up to the political actors of the DG to decide, but the most important element that previous experiences with CA's tell us is that expectations should be clearly set at the start of a CA and should be kept after it. A separate note below goes into possible ways parliament can work with these recommendations.

Perhaps as important, as one citizen participant noted, sitting down face to face with those of opposing opinions, and arriving at a consensual agreement on the facts, prompted each to see the point of view of others as reasonable disagreement and not as enemies in the other camp.

DELIBERATIVE POLLING: DIGITAL UPDATE

Stanford University's James Fishkin is the global guru of deliberative polling, which he has been perfecting in practice since the 1990s.⁸⁰

Just such an exercise took place outside Dallas, Texas in September, 2019 in a project called America in One Room that was organized by the Stanford political scientists James Fishkin and Larry Diamond along with the farsighted network of young social entrepreneurs, Helena, and the University of Chicago research institution NORC.

"As the presidential primaries approach and a new impeachment crisis looms, America seems to be careening toward a doubling down of our partisan polarization," Fishkin and Diamond said. "But are our divisions really so entrenched and unbridgeable? What if we had civil and evidence-based dialogue across our great divides of party, ideology and identity?" they ask.

As they describe it, a scientific sample of 523 registered voters from around the country gathered over a weekend in September where "diverse small group discussions facilitated by moderators featured experts and presidential candidates from both parties who answered questions from participants" on issues ranging from immigration to the Iran nuclear deal abandoned by President Trump.

"The participants were guided by a 55-page handbook," they note, "prepared by policy experts from both parties, offering arguments for and against each proposal. The participants had been surveyed on the policy proposals in advance, and they took the same opinion survey again upon completing the four days of deliberation."⁸¹

The conclusion: "The most polarizing proposals, whether from the left or the right, generally lost support, and a number of more centrist proposals moved to the foreground. Crucially, proposals further to the right typically lost support from Republicans and proposals further to the left typically lost support from Democrats."⁸²

Perhaps as important, as one citizen participant noted, sitting down face to face with those of opposing opinions, and arriving at a consensual agreement on the facts, prompted each to see the point of view of others as reasonable disagreement and not as enemies in the other camp.

Snap and YouTube along with other media organizations broadcast the content and results from the event to millions of people. It was extensively covered by the *New York Times*.

⁸⁰ In this video link, he explains how the process works: <https://www.youtube.com/embed/D2KV2nkpwoM>.

⁸¹ James Fishkin and Larry Diamond, "This Experiment Has Some Great News for Our Democracy," *New York Times*, October 2, 2019, <https://www.nytimes.com/2019/10/02/opinion/america-one-room-experiment.html>.

⁸² *ibid.*

CITIZENS' BALLOT INITIATIVES

During the Progressive Era at the turn of the 20th century, many American states as well as cities adopted the direct democracy of citizens' ballot initiatives that originated in Switzerland at the end of the 19th century. California, America's largest state, has used the initiative more intensely than any of the others. Oregon has introduced one of the more innovative ways for citizens themselves to vet and review propositions so as to inform their fellow citizens before they vote.

Switzerland: The federal popular initiative is the instrument of direct democracy in Switzerland that allows citizens to propose changes to the Swiss Federal Constitution. A vote will be organized for every proposition of modification that collects 100,000 valid signatures in 18 months.

The most frequent themes tackled by initiatives are healthcare, taxes, welfare, drug policy, public transport, immigration, asylum, and education. There's been a surge of ballot initiatives: more than 75 since 2000, and there are about two dozen in the pipeline. That's more than all the ballots in the 80 years after they began in 1891.

There are only two kinds of restrictions on the content:

- Formal criteria (the initiative should deal with one topic at a time, etc.)
- The initiative should not infringe on the core of the human rights, known as *jus cogens*.⁸³

Unlike a mandatory referendum, a proposition to change the constitution is initiated by the citizens and not by the parliament. The legislative authorities cannot reject a qualified initiative but they can make a counter proposal, known as counter-project, that appears on the ballot alongside the original proposition with the additional option of "neither of the above." A double majority of people and cantons is required to change the constitution.

As Bruno Kaufmann reports, "unlike the Brexit process, which was based on a single piece of paper asking the people of Britain to vote 'Remain' or 'Leave', the Swiss approach is an elaborate one. It seeks to ensure that every voter is properly informed, clearly detailing both the government and the opposition positions. The ballot paper in four languages is actually accompanied by a small multi-page dossier, a voter pamphlet, ensuring that anyone who has not followed events can quickly read up on the basic

pros and cons. So there is no excuse not to be informed." To ensure the impartiality of the ballot language, a non-partisan office of experts is assigned to write it according to this dictum that hangs on a sign in that office: "Think like a philosopher, write like a peasant."

And while there are criticisms that Switzerland holds far too many popular votes—there is one every three months with about half the electorate taking part—the process is done professionally, credibly, and always in the interests of the citizen. And when decisions really matter, people turn out to vote in huge numbers.

Popular initiatives exist at the federal as well as the cantonal (cantons) and communal (town) levels.

California and Oregon: Though it has a governor and legislature, California is, in essence, a direct democracy. The most consequential decisions of recent decades—on taxes, budget, the environment, and other areas—have been made at the ballot box directly through citizen-initiated legislation.

The Citizens Ballot Initiative was adopted from Switzerland in the early 20th century as a way to circumvent a corrupt legislature controlled by the westward-expanding railroad trusts, alongside the referendum (to amend legislation) and the recall of officials by popular vote. In the original enabling legislation in 1911, proponents who gathered signatures equivalent to five percent of the last statewide vote presented a petition to the legislature, which then had 40 days to replace the measure with its own. If the Legislature did not act, the measure would go to the people. That process was dropped in the 1960s when the California legislature became a full-time body.

Present requirements for signature qualification are a number equal to eight percent of the previous general election vote for Governor for a constitutional amendment and five percent for a statutory measure. Initiatives are limited to a single subject and require the submission of the full text of the proposed law, from which the state's Attorney General writes a brief "title and summary" that appears on the ballot on election day.

Legislative measures initiated in the state's Assembly or Senate go through committees and are debated and reviewed and amended. This process, known as a "second reading," can strengthen bills and eliminate problems with them.

By contrast, the review process for citizen ballot measures is woefully inadequate and sometimes leads to the passage of initiatives that don't stand up to legal scrutiny. That's what happened with Proposition 8, which outlawed same-sex marriage, and Proposition 187, which limited public services

⁸³ Pierre Cormon, *Swiss Politics for Complete Beginners* (Geneva: Editions Slatkine, 2015).

to immigrants who are here illegally. Both measures won at the polls but were later thrown out by the courts.

Citizen legislation has also produced a dysfunctional tangle of fiscal policies. Take the seminal case of Proposition 13, passed in 1978. Because property taxes were locked down, while spending for schools and public services continued to rise, deficits were inevitable.

And there was Proposition 55, passed in 2016, which has left California with a tax system so dependent on a tiny base of wealthy taxpayers that the budget is exceedingly vulnerable to economic cycles. A mere one percent of the state's residents now pays nearly 50 percent of all income and capital gains taxes, the primary source of general fund revenue. That has meant that an economic downturn can lead to as much as a 25 percent drop in the budget.

Ballot measures have proven easy to hijack by special interests over the years. Real estate, tobacco, and oil interests, as well as some unions, introduce measures aimed at protecting their spoils in the guise of the public good. One example of this was Proposition 23 in 2010. A ballot measure misleadingly titled "The California Jobs Initiative" was sponsored by mostly out-of-state oil interests aimed at undoing legislation stemming greenhouse gas emissions. In the end, fortunately, the public voted against the measure. But \$75 million, a record at the time, was spent by the battling sides in the campaign to sway voters to one side or the other.

Still, ballot measures are powerful tools when they work. On the upside, Californians have passed initiatives that ended

gerrymandering by shifting redistricting to citizen commissions and that busted partisan gridlock by requiring only a simple majority vote on budgets.

far-reaching environmental laws to protect the coast and address climate change.

There has been some progress in fixing problems with the initiative process to introduce the deliberative filter of a "second reading." Legislation sponsored by the Berggruen Institute's Think Long Committee that passed in 2014 amended the state's initiative law for the first time in 40 years, requiring the Secretary of State to notify the

Legislature when 25 percent of qualifying signatures have been gathered for a ballot measure. At that point legislators can seek to work with sponsors to get rid of flaws and unintended consequences or even decide to pursue the matter through legislation rather than an initiative if the sponsors agree. The Legislature is also required to hold hearings on the subject of the measure no later than 131 days before the date of the coming election.

Under the law, sponsors can withdraw their measure from the ballot by the 131-day deadline if they are able to reach a negotiated consensus on legislation. This process has already led to passage in the Legislature of landmark minimum wage and digital privacy legislation, both of which began as ballot propositions but were instead enacted by lawmakers.

Organized special interests, however, were quick to exploit the loophole in this law, enabling virtual "extortion" of the legislature by some ballot sponsors, such as the soda companies in 2018, who refused to withdraw an initiative that would have required 2/3 vote on all local taxes and fees (which would have devastated local government finances) until the legislature agreed to grant them a 12-year moratorium on local taxes on sugary drinks.

The best way to respond to this problem of leveraging the legislature is to further borrow from the Swiss system by enabling the legislature to place a counter-measure on the ballot if they can't reach agreement with a sponsor whose measure they believe to be against the public interest.

At present, the legislature can do this with a 2/3 vote. We propose that this can be done by retaining the 2/3 vote when constitutional change is involved, but require only a simple majority vote on statutory matters. As in the Swiss system, that competing legislative measure would go on the ballot alongside the sponsor's measure with three options for voters. They could vote either their preference for a or b, or c—no to both.

By 2019, business-sponsored initiatives aimed at pressuring the legislature were becoming common practice. In that year, Uber, Lyft, and other ride-hailing services announced they would file ballot initiatives to counter AB5, a bill backed by some private-sector organized labor groups that would define drivers as employees. The initiative would instead offer portable benefits, a minimum of \$21 per hour pay, accept bargaining across the entire ride-hailing sector instead of within individual companies and define drivers as a category—"dependent contractors"—other than employees. Whatever one thinks of these competing causes, this increasingly habitual use of the citizen's initiative by businesses at odds with legislation leaves out the citizens entirely—all the more reason for the

proposals below to establish citizen review panels for ballot propositions so the voice of the general public interest is also heard.

Two further reform steps seem sensible. The first is to require a 2/3 approval vote by the public on any initiative that imposes a 2/3 threshold to pass measures either on the legislature or to implement an initiative. As it is now, if 20 percent of registered voters turn out to vote, and a majority defeats or passes the measure, that means only slightly more than 10 percent of registered voters have made law and policy for the entire body politic, including requiring a 2/3 vote to change the passed measure. The second reform should consider making voting on ballot initiatives, especially constitutional amendments, mandatory for all citizens. Thus, any such vote would more faithfully reflect “the will of the people” than at present.

Another good next step for California would be to adopt the kind of citizen review panels already up and running in Oregon. The state impanels a randomly selected group of voters to hear from a ballot measure’s proponents and opponents as well as experts on the implications of the proposed policy. The panel, which could follow the form of policy juries or a Citizen’s Assembly, then would present its findings to the public through a 750-word summary published in the voter guide. When voters go to the polls, they have the advantage of being informed by the disinterested considerations of a body of their fellow citizens.

For now, the Oregon process is funded by private foundations, a model California might follow as a first step. Ultimately, however, these panels should be institutionalized in the Secretary of State’s office as part of the regular electoral landscape.

Another alternative might be for the Governor, or the Speaker of the Assembly, or the Pro Tem of the Senate, to call on the Secretary of State to organize a citizen’s assembly/jury on a given controversial or hot topic ballot initiative once 25 percent of the qualifying signatures are

gathered. This would turn what is often merely a pro forma “public hearing” that involves mostly insiders and self-interested stakeholders into a rigorous “second reading” deliberation by an impartial citizens group. If done early in the process it can inform legislators and sponsors in their negotiation and in fixing mistakes and unintended consequences. If negotiation between sponsors and legislators is not successful and the measure proceeds to the ballot, a summation of the citizens’ review would appear on the ballot alongside the title and summary of the sponsor’s measure as well as the legislature’s alternative measure if they chose to place one on the ballot.

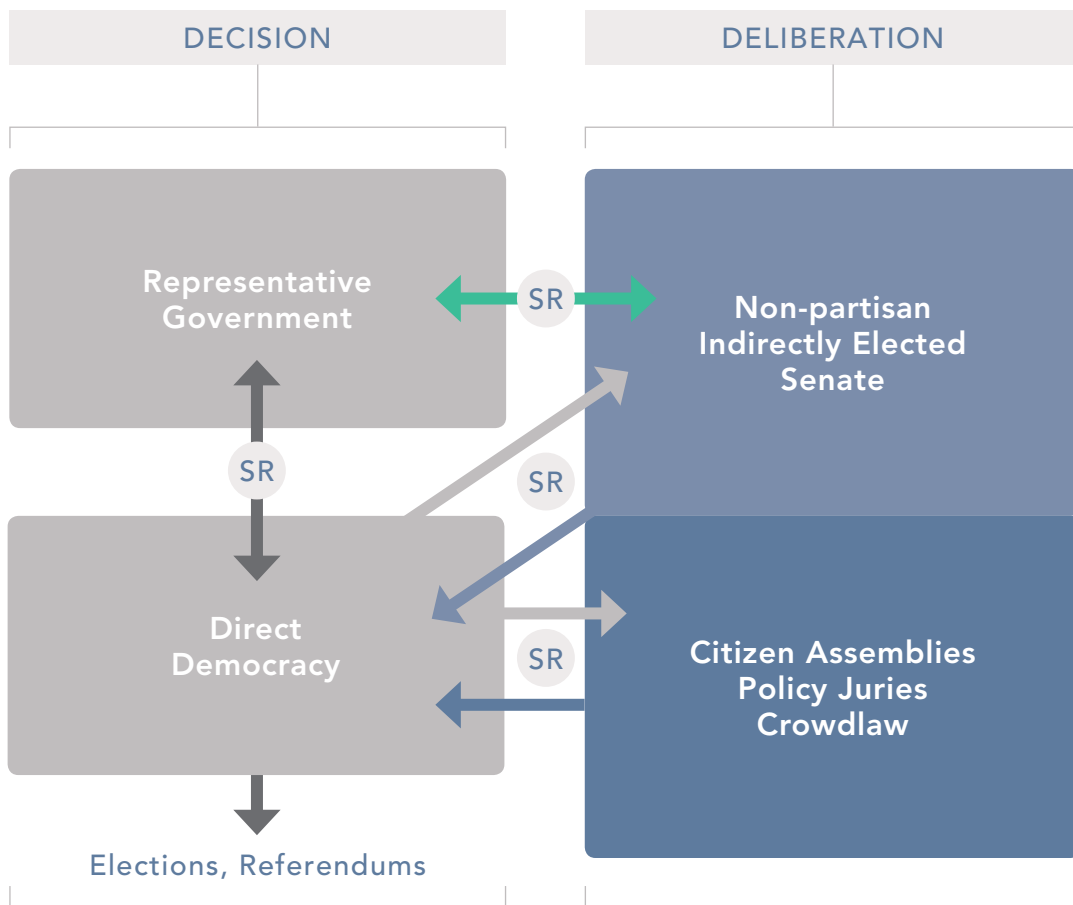
Ultimately, the aim would be to collapse the present state Senate (40 members) and Assembly (80 members) into one lower house, reducing the size of districts so there is closer engagement between legislators and constituents. A new indirectly elected Senate would be constituted through appointment by a combination of local elected officials, the Governor and legislative leadership based on the criteria of expertise, and experience to serve as a permanent body for the “second reading” of citizen ballot initiatives as well as legislation originated in the lower house. This permanent body can be leavened through adding a rotating membership of citizens chosen through sortition to serve for a more limited period of time.

Appointed members of that body would serve for eight years to insulate it from electoral cycles and to be well-staffed so as to play a “think tank” role both to thoroughly vet and improve citizen initiatives and to initiate legislation in response to crowdlaw-type engagement to determine citizen concerns and priorities.

While this body would deliberate and propose measures, the ultimate decision would have to be confirmed by either the elected legislature or the public at the ballot box.

The following chart describes a proposed design template using the California example described above.

CONSTITUTIONAL DESIGN FOR THE DIGITAL AGE



Assumes Independent Institutions:
Courts, Election Commission, Regulatory Bodies
(including digital media platforms)

SR SECOND READING

APPENDIX C:
RENOVATING DEMOCRATIC INSTITUTIONS

THE EUROPEAN CITIZENS' INITIATIVE/CITIZENS HOUSE OF EU PARLIAMENT

Michael Cottakis

The European Citizens' Initiative has been on the books since 2011, conceived as a means to help close the “democracy deficit” between EU citizens and its legislative bodies in Brussels—the EU Parliament, the European Commission, and the European Council.



Because of the high threshold of gathering signatures (one million from all 27 states in one year), the capacity of the law-initiating European Commission to ignore or reject initiatives as outside its “competence,” and the absence of a civil society organized on a European instead of national basis, European Citizens' Initiative (ECI) has so far largely failed as a mechanism of citizen engagement. Of the four initiatives that met the qualification criteria over the last eight years, none have seen any legislative follow up in the European Commission other than recommendations for further “evaluation.”

I recommend the following steps to make the ECI a viable proposition:

- Reducing the qualifying signature threshold to 750,000 over two years instead of 1 million over one year while reducing the complex registration requirement of “statements of support” to a simple e-signature system;
- Employing crowdsourcing platforms like Crowdfunder for citizens to debate and decide on proposals to bring forward under ECI;
- Establishing civil society partnerships on a European level with pan-European NGOs that don't rely on funding from national sources—a “single market” for NGOs;
- Enacting a “European Citizen's Bill” that requires a debate and indicative vote in the EU Parliament once a certain threshold of signatures has been reached;
- Launching a pilot “citizen-institutional pact” that will have a demonstrated legislative outcome in areas of European Commission competence or will move the measure to a referendum once a higher threshold of signatures is reached;
- Ultimately, establishing a Permanent Citizens' Assembly as the “second chamber” of the European Parliament

APPENDIX C: RENOVATING DEMOCRATIC INSTITUTIONS

DIGITAL TECHNOLOGY AND GOVERNMENT

Jamie Susskind

In the past, politics and theology were closely intertwined. Political leaders claimed divine authority. Success in office was considered the product of godly inspiration. Failure was believed to be the cost of divine displeasure. Progress was treated as the gift of deities, spirits, and stars.

In the modern era, the work of government came to be seen less as the plaything of unseen forces and more as a field of earthly endeavour. Rational analysis, public reason, and methodical administration gradually replaced religion as the basis of political legitimacy. Revolutions in America, France, and elsewhere were followed by intensive periods of rationalisation and reorganisation. Languages were standardised. Unified weights and measures were rolled out. Codes and constitutions—numbered, systematic, lexically consistent—were introduced in an effort to bring precision and structure to the work of government. By 1922, sociologist Max Weber could hail the “precision instrument” of *bureaucracy*—“speed, unambiguity, knowledge of the files, continuity, discretion . . . unity”—as the most advanced method of social organization known at the time.

Nearly a century later, we are witnessing another transformation in the way humans live together. Digital technology has begun to alter, irrevocably, the nature of our collective life. New political forms are emerging which have not been seen before. The purpose of this recommendation is to outline three ways in which politics might change. The first concerns the democratic process. The second concerns public administration. The third concerns the enforcement of laws. This is not a comprehensive overview, even of these topics. It is intended simply to illustrate the nature of

the issues now facing political scientists and technologists. For a detailed consideration of developments in digital technology and their philosophical implications, see *Future Politics: Living Together in a World Transformed by Tech* (Jamie Susskind, Oxford University Press: 2018).

THE DIGITAL LIFEWORLD

Three important developments are happening at once:

1. **Increasingly capable systems:** a growing number of digital systems are able to perform tasks which were previously thought to require conscious, creative human beings. Many of these systems are referred to as being or possessing ‘Artificial Intelligence’ (AI).
2. **Increasingly integrated technology:** Technology is no longer confined to desktop ‘computers’ or the glass tablets we keep by our side. Increasingly it is dispersed into the physical world around us. Twenty-first century cities will be dense with sensors, interfaces, and processing power, with billions of (previously inanimate) objects connected to each other and to their human users. The distinction between cyberspace and ‘real’ space will grow less meaningful.
3. **Increasingly quantified society:** Humans generate roughly as much data every two hours as they did from the dawn of civilisation until 2003—and that rate is increasing exponentially. In the past, most human activity was forgotten and lost to time as soon as it took place. In the future, more and more of the human experience—what we say, where we go, what we do, what we buy, how we feel, who we know—will be caught and stored as data.

In the first instance, it is not necessary to dwell on the possible challenges posed by artificial general intelligence—those AI systems that have consciousness and creativity, or which can ‘think’ or act laterally across multiple domains like human beings. Perhaps one day we will elect robots to parliament or submit the general will of the people to a singular superintelligence. But we are not there yet—or even close. It is prudent, instead,

to proceed on the conservative basis that AI will continue to develop in a range of narrower domains—with distinct systems increasingly capable of performing discrete tasks. The task for political scientists and policymakers is to discern how such systems might affect the institutions of government and politics which we have inherited from the past—and to develop the concepts and arguments needed to analyse and critique any such effects.

Digital Technology and Politics

Why should we expect political consequences from technological change?

It is tempting to consider that politics might be different from other fields of endeavour being transformed by technology: commerce, entertainment, transport, social life, education, and the like. In reality, however, politics may well be *more* sensitive to technological change. This is because of the close connection between (i) the way we gather, store, analyse, and communicate our information, and (ii) the way we structure our collective life.

In the past, revolutions in information and communication technologies were usually accompanied by revolutions in politics. In fact, politics as we understand it was impossible before the invention of language. And the first empires rose to prominence shortly after the invention of writing—in its time, the most advanced information and communication technology. In *Empire and Communications* (1950) Harold Innis notes that the empires of Egypt, Persia, and Rome were all “essentially products of writing.” Nearly 5,000 years later, the introduction of the printing press was followed by seismic political upheaval in Europe, as new and subversive ideas were disseminated with unprecedented speed and accuracy (see Elizabeth Eisenstein: *The Printing Press as an Agent of Change*: 2009).

In the twentieth century, bureaucracy and technology developed hand-in-hand, and the apparatus of government grew increasingly reliant on the effective gathering, storage, and communication of information. It is no coincidence that the punch-cards and tabulating machines used to process the 1880 U.S. census provided the technological foundation for what later became the International Business Machines Corporation—IBM. Technological progress is often followed by changes in the political sphere.

What changes can we expect in the future?

THE DEMOCRATIC PROCESS

The Internet has already caused the democratic process to evolve in various ways: how parties mobilize activists, the way analysts aggregate public sentiment, citizens’ means of interacting with politicians and lobbying government, the tools used to monitor political developments, and so forth. But if we examine the two fundamental elements of the democratic process as we currently

understand it—*deliberating* and *deciding*—it is possible to glimpse more substantial changes in the future.

Deliberation is the process by which members of a community discuss political issues in order to find solutions that can be accepted by all (or most) reasonable people. The Internet has already revolutionised the nature of the forums we use for deliberation. For ordinary citizens, a growing proportion of political news-gathering and debate takes place on digital platforms owned and controlled by private entities. This has its benefits, but the risks are also becoming clear: algorithmic polarisation, social fragmentation, and the proliferation of ‘fake news’. Another source of growing unease is the privately-made determinations about who may participate in the deliberation process (and who is blocked or banned) and what may be said (and what is prohibited). Every time a controversial public figure is exiled from a social network, the prohibition is met with equal choruses of derision and approval, usually along predictably partisan lines.

Looking ahead, it is entirely foreseeable that humans may cease to be the only participants in their own deliberative processes. AI systems—sometimes called chatbots—are increasingly able to converse with human beings using natural language. Most of their political interventions are crude, limited to slogans like “#LockHerUp” or “#MAGA.” And they do not “think” in the way that humans do. But they already have an appreciable impact on political discourse. Around a fifth of all tweets discussing the 2016 U.S. presidential election, for instance, and a third of Twitter traffic relating to the 2016 Brexit referendum, are thought to have been generated by digital systems. In the buildup to the 2018 U.S. midterms, around 60 percent of the online chatter relating to “the caravan” of Central American migrants was initiated by chatbots. In the days after the disappearance of journalist Jamal Khashoggi in October 2018, Arabic-language social media erupted in support for the Saudi Crown Prince Mohammed bin Salman, widely rumored to have ordered his murder. In one day, the phrase “we all have trust in Mohammed bin Salman” featured in 250,000 tweets, and “We have to stand by our leader” was posted more than 60,000 times, along with 100,000 messages imploring Saudis to “Unfollow enemies of the nation.” The majority of these messages were generated by chatbots.

It is important to recognize that bots in the future will be able to deliberate in ways that rival—and even exceed—human levels of sophistication. Last summer, a bot reportedly achieved a score of 81 percent in the clinical examination for admission to the Royal College of General Practitioners in the United Kingdom. The average score for human doctors was 72 percent. It is not difficult to imagine that AI systems in the future might come to surpass us in our ability to debate, and not just because of the dismal state of political discourse. And tomorrow’s bots will have faces and voices, names and personalities—all engineered

for maximum persuasion. Early “deepfake” videos—showing celebrities and politicians speaking words which they never said—show the early potential for the synthesis of persuasive human speech by nonhuman actors.

The obvious risk is that citizens are crowded out of their own public discourse by lightening-fast systems ready to swat aside the feeble contributions of their human creators. Realistically, the most capable of such bots would most likely be owned and controlled by the wealthiest actors, whose interests would inevitably be rewarded with a greater share of the public discourse.

A more positive prospect is that bots could be deployed in a public-spirited fashion, prompting and nudging us toward dialogue that is more constructive, well-informed, and balanced. What ultimately matters, therefore, is (i) how these systems are engineered, (ii) who owns and controls them, and (iii) the uses to which they may permissibly be put. (For instance, the Bot Disclosure and Accountability Bill introduced by Senator Dianne Feinstein in the U.S. Senate seeks to prohibit candidates and parties from using any bots intended to impersonate or replicate human activity for public communication. It would also stop political action committees (PACs), corporations, and labour organizations from using bots to disseminate messages advocating candidates.)

Aside from deliberation, digital technology could change how we *decide*, i.e., the voting process itself.

The notion of direct democracy—disregarded for centuries because of the size and complexity of modern polities—is no longer a fantasy. It is possible, if not necessarily desirable, that future citizens might be able to vote on several policies each day, using smartphones or whatever replaces them, in an unending process of plebiscitary engagement. It will also be possible for people to delegate their vote on certain issues to others whom they trust—for instance, allowing a consortium of architects and urban planners to cast their vote on matters of city design. This is so-called ‘liquid democracy.’ Looking to the longer term, as Pedro Domingos has suggested (*The Master Algorithm*, 2015), it is possible to conceive of ‘democracies’ in which AI systems ‘vote’ hundreds or thousands of times a day on citizens’ behalf. How better to represent the people, the argument might run, than by deploying systems which (i) analyse data that offers an accurate portrait of citizens’ actual lives, interests, and circumstances, and (ii) have been told their values and mandated to vote consistently with them? Such a process could make a convincing claim to being more ‘democratic’ than one which merely permits citizens to scratch a tick in a box every few years as a means of choosing between a handful of candidates.

More democracy, of course, is not always better. We would not, for instance, want our choice of cancer treatment to

be determined by the crowd rather than by a single trained oncologist. Theorists in the modern liberal tradition have long sought to identify the proper *limits* to what the people should decide—with human rights and the rule of law carefully curtailing the untrammelled will of the *demos*. But the issue is not closed. On the contrary, as technology enables more aspects of public life to be democratised, certain voices are likely to claim that more democracy is *always* better. That claim, in turn, is likely to form the faultline for several new political divides.

PUBLIC ADMINISTRATION

Much of the business of government involves officials making and implementing decisions without immediate democratic oversight. In their totality, such decisions are of great social significance. They shape our interaction with the state and our experience of being a citizen. Sound public administration—efficient and informed decision-making, good record-keeping, appropriate accountability, the absence of corruption, fair allocation of resources, proper exercise of discretion—is integral to the political health of a nation. What might the role of technology be?

In truth, we already trust digital systems with important decisions. Algorithms trade stocks and shares on our behalf. Machine learning systems diagnose our lung cancers and skin cancers. It should not be controversial as a matter of principle that digital systems might play a part in the work of government: if such systems are better able (for instance) to manage a city’s water supplies, regulate its traffic flows, monitor tax compliance, record its property ownership, administer social security benefits and the like, then why would they not be put to use? It would make a welcome change from the application of such technologies solely for the pursuit of profit. It may reasonably be predicted that the ‘precision instrument’ of bureaucracy will, in time, be superseded by the superior system of digital technology.

What about decisions that involve moral or political judgments? Is it desirable for algorithms to be making choices about the distribution of vital social goods or the ambit of individual liberty (such decisions not always being put to the people)? One response is that they already do. For instance, in most modern economies, algorithms play a significant and growing role in determining: (i) whether and on what terms individuals receive insurance, (ii) whether and on what terms people and business can access mortgages and credit, (iii) the distribution of employment opportunities (it is said that 72% of resumés are no longer read by human eyes), and (iv) the appropriate length of prison sentences for offenders. Because some (though by no means all) of these algorithmic usages originate in the private sector rather than the state, they are sometimes mischaracterised as ‘merely’ commercial and therefore apolitical. But the way these algorithms are engineered, the data on which they are trained, and the values they embody,

are not, and in any event should not be treated as, matters of mere corporate policy. They determine citizens' rights and their access to social goods. They are unquestionably of political and moral significance. It is a quintessentially political question whether the operation of such algorithms should be left to the free market (often operating in 'black box' obscurity), or wholly adopted by the state, or perhaps merely overseen by the state or public agencies acting in a regulatory capacity.

There is, of course, a legitimate concern that systems should not independently be making moral decisions—in ways which we might not agree with or even understand. Behind every digital system, however, is a human designer, owner, or controller who ultimately decides (or fails to decide) the moral direction which that system must follow, either by the way it is engineered or the data on which it is trained. The substance of such decisions, and the processes by which we make them, will require the closest political scrutiny. We are not yet in a world of morally autonomous AI systems, albeit that is the direction of travel. The need for transparency and accountability will grow in line with the number and importance of the functions assumed by technology. Tech firms and government agencies will need to report, voluntarily or otherwise, on the operation of their algorithms and their use of data, so that citizens are better able to understand their relationship with the forces that govern them. It is sometimes said of some machine learning systems that the decisions they reach are genuinely out of the control or understanding of their human creators. Even the best engineers cannot explain why they do what they do. If that is so, then there is a strong principled argument that such systems should not be used in the work of public administration at all. Likewise, the same may be said of systems whose decision-making processes cannot be adequately explained or described.

One persistent concern is that replacing bureaucracy with technocracy might deprive citizens of the 'human touch' in their interactions with the state. This fear is not new. But it is also not necessarily determinative of the issue. First, one may doubt whether bureaucracy (as Weber understood it) is itself particularly humane. Many organs of government, not to mention individual bureaucrats, are unhelpful, inaccessible, and obdurate. Secondly, many citizens would prize efficiency over the human touch in any event: I would rather my social security payments were distributed on time through a faceless blockchain system than late by a friendly but incompetent official. Finally—and more radically—the so-called "human touch" may not be the exclusive preserve of humans for long. AI systems are increasingly able to read our emotions and respond to them in sophisticated ways. "Artificial emotional intelligence" and "affective computing" are developing at an impressive speed.

ENFORCEMENT OF THE LAW

A third domain in which digital technology might be expected to transform the work of human self-government (and the final domain considered in this paper) is in the enforcement of the law.

Much commentary has focused on the problems of constant surveillance and data-gathering—and the problems are no doubt significant—but it often misses a deeper issue for the long term. As we come to rely on digital technology for more and more of our basic daily needs and functions, we will increasingly be subject to the rules and laws that are coded into such technologies. The best early example is digital rights management technology, which has already made it almost impossible to commit certain copyright breaches. Looking further ahead, a self-driving car which refuses to drive over the legal speed limit (or a limit determined by its manufacturer) is a quite different socio-legal construct from a human-controlled vehicle which may be driven over the limit subject to the risk of likely (but not definite) penalty if caught. To use an analogy employed by Lawrence Lessig in a different context, it is the difference between a locked door and a door which says "do not enter."

Digital technology not only introduces the prospect of self-enforcing laws, but also laws that are *adaptive*. A self-driving vehicle may well be subject to changeable speed limits depending on the time of day, the weather conditions, traffic, and the identity of the passenger.

It has long been recognised by legal scholars that in "cyberspace", *code is law*. The rules contained within the code that constitutes a program or platform stand (usually) as unbreakable constraints on action. A document cannot be accessed without the correct password; a tweet may be no longer than 280 characters. But the precept that code is law must now be updated and expanded to encompass (i) the fact that code is no longer confined to 'cyberspace' (see the example of the self-driving car), and (ii) code is increasingly dynamic and "intelligent" rather than just an immutable architecture like in the past.

Code, therefore, constitutes a new and strange form of power which will benefit the state—if laws are embodied in code—but also the private entities who write that code, and who can choose which *additional* rules they wish to see enforced.

Humankind's journey into the future ironically marks a reversion as well as progress: to a time when we entrusted our political affairs to powerful unseen forces whose workings we cannot always claim to understand. The consequences cannot with confidence be expected either to be wholly benign or malign: what matters is how the technologies in question are engineered, who owns and controls them, and the uses to which they are put. To what extent should our lives be governed by powerful digital systems—and on what terms? That is the central political question of this century.

SPECIAL THANKS TO

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