

Deliberative Democracy: A Binding Methodology?

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In a democracy, decisions may be taken in a number of non-violent ways. Some are taken by everybody in referendums or, after an election, by the members of parliament; almost all of these ballots and elections of the general population, as well as decisions by elected representatives, are binding. Other, usually non-binding decisions, may be made by independent commissions or public enquiries, albeit sometimes subject to a government veto; while yet further decisions of government may be influenced by consultations, public opinion surveys, deliberative polls and focus groups.

Given the ever-increasing sophistication with which some forms of deliberative democracy operate, it is time to ask whether they too should be legally binding if, that is, (a) the representative sample meets certain minimum criteria, and (b) the outcome, the social choice or ranking, has passed a pre-determined threshold of support.

Accordingly, this article first examines the way a social choice or ranking can be identified; next, with frequent reference to instances from across the globe, it takes an overview of the more common means of public participation; and then, in regard to item (b) above, it advocates criteria by which the outcomes of some of these democratic instruments may be deemed to be binding.

Keywords: Consensus, consensors, Modified Borda Count (MBC), consensus coefficient.

'Although many sectors of society have innovation as their motto – corporations, science, culture, sports – innovation is seen as superfluous for one sector only: democracy. That can't be correct!' (G1000 2012, 13)

Introduction

People have long since had the right to petition, to assemble, and to protest, subject only to the rule that such campaigning must be non-violent. In addition, most notably in Switzerland, some also have the right to a citizens' initiative.¹ Then,

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1 This right is shared by many electorates, and they include those of Finland, Malta, New Zealand, Philippines and, somewhat surprisingly perhaps, Russia. It is also used in 24 states in the US, while Italy has abrogative referendums.

especially in times of crisis and/or great change, many jurisdictions have held constitutional conventions, while on more routine matters, some have resorted to public enquiries and independent commissions.

In today's world, there are many other forms of identifying 'the will of the people', such as citizens' assemblies, public enquiries, consultations, *opinion surveys*, *deliberative polls*, and *citizen panels* or *focus groups*, and many of the latter (shown here in italics) are conducted under rigorous standards to ensure (a) that the sample chosen is representative; (b) that the questions asked are open and balanced; (c) that those concerned are well informed; and (d) that the analysis is accurate. Is it not reasonable to expect, therefore, that the outcome of such a process, if and when support for that outcome is sufficiently strong, should be binding?

After all, there are times when the governors become remote from the governed. In 1992, when Denmark prepared to vote on the Maastricht treaty, nearly all the political parties in parliament, those with 80 per cent of the seats in the Folketing (*Folketinget*) were in favour, and yet a majority, of admittedly just 50.7 per cent of the public, was opposed (Bogdanor 1994, 72). On a more serious matter, prior to the 2003 war in Iraq, protests in the UK (and elsewhere) against the use of force were huge. As history relates, however, the prime minister of the day, Tony Blair, ignored them all.

It has often been said, as for example in connection with the 2013 demonstrations in Gezi Park in Istanbul, that democracy should be more than just the exercise of the vote every four years or so. There is an overwhelming need, therefore, for various measures of democratic opinion, and not just regular elections and occasional referendums, to have some form of legal standing.

Accordingly, having first examined the nature of decision making, this article looks at the various forms of participatory democracy, if need be with reference to historical precedents, before then proposing some criteria by which the outcomes of certain forms of participatory democracy could indeed be deemed to be binding.

The Nature of Decision Making

Over 2,000 years ago, democratic decision making was devised as an alternative to war. The latter, of course, is binary: it is win-or-lose, and it always involves two supposed enemies, even when, as currently in Syria, alliances on one side and/or the other are frail and fickle. Some forms of democratic decision making are also dichotomous, most obviously the two-option majority vote. Furthermore, because of its no-compromise nature, binary voting can easily act as a provocation towards violence. Indeed, 'all the wars in the former Yugoslavia started with a referendum,' (*Oslobodjenje*, Sarajevo's now legendary newspaper, 7.2.1999).

Democracy, however, was never intended to be a means by which one faction could then dominate the rest; there were no political parties in ancient Greece; rather, it was intended to be inclusive – democracy is for everybody, not just a majority. Accordingly, the identification of ‘the will of the people’ or ‘the will of parliament’ – which, if the electoral system is a good one, should be roughly the same – needs a decision-making voting procedure which is more sophisticated than a binary ballot.

Alas, while electoral systems vary from the simplistic first-past-the-post (FPTP), to preferential forms of proportional representation (PR), such as the single transferable vote (PR-STV), decision making is invariably a (simple or weighted) majority vote. The latter is used in many international forums such as the UN Security Council; in most elected chambers, parliaments and councils; in most referendums, national and local; in many courts of law; in unpteen company AGMS; and in civic society and in countless community group meetings. This is partly because ‘the public is deeply imbued with the mystique of the majority’ (Dummett 1997, 81), and many of those involved in polling companies appear to be of the same bent (see below). ‘There is [also] a surprisingly strong and persistent tendency in political science to equate democracy solely with majoritarian democracy’ (Lijphart 2012, 6).

As a consequence, many a contentious and/or complex subject is reduced to a dichotomy or to a series of such binary choices; on many occasions, other options are not included on the ballot paper and are sometimes, therefore, not even debated. Binary voting can thus be very inaccurate. Hence, when the outcome is declared, the question of whether or not the given electorate has gained what a majority (or merely the largest minority) actually wanted is often still in doubt. Little wonder, then, ‘that some forms of direct democracy may include protection against [the] tyranny of the majority’ (Fishkin 1991, 51).

In fact, all too often, a majority vote identifies, not so much the will of the many who voted, but rather the will of the few who set the question. In Wales, for example, in 1997, a majority of just 50.3 per cent voted in favour of devolution rather than the status quo; this result was achieved not least because Mr. Blair had not allowed a third option, independence, to be on the ballot paper, as Plaid Cymru, the Welsh nationalist party, had suggested (Wigley 1996, 16). The outcome, then, identified not necessarily what the people of Wales wanted, but what Blair wanted them to want.

A much larger majority emerged in Kosovo in 1991, when 99.9 per cent of an 87.0 per cent turnout – that is, most of the Albanian-speaking population, with few if any of the Serbian speakers – voted in favour of independence. If, however, instead of independence, the question had proposed unity with Albania or a Greater Albania, it too would probably have received majority support. So even when the majority in favour is of Stalinist proportions, the precise ‘will of the people’ may still be uncertain.

Given, then, that the outcome of any majority vote is largely determined by the question, it is not surprising to note that this exclusive methodology has been used by such notable personages as Napoleon, Lenin – the original meaning of the word ‘bolshevik’ was ‘member of the majority’ – Mussolini, Hitler, Duvalier, Khomeini, Saddam Hussein and others (Emerson 2012, 143–50).

To identify ‘the will of the people’ or that of their elected representatives, a more inclusive procedure is required, one that is not of the ‘win-or-lose’ category, but a non-majoritarian ‘win-win’ methodology: of such is the Modified Borda Count (MBC). Those concerned first participate in choosing (a short list of) the options; next, they cast their preferences; then comes the analysis, the outcome of which is that option which gains the highest average preference... and an average, of course, involves everyone who submits a valid vote, not just a majority of them. Consideration shall now be given, therefore, to the nature of consensus voting, be it in a national referendum, a parliamentary vote, a public meeting, a focus group or other form of deliberative democracy, or on the web.²

The Modified Borda Count

The Modified Borda Count (Emerson 2007, 15–38), is a preferential points system of voting which is primarily designed for use in decision making. In an MBC of n options, a voter may cast m preferences where

$$n \geq m \geq 1$$

Points are awarded to (1st, 2nd ... penultimate, last) preferences cast according to the rule

$$(m, m-1, \dots, 2, 1)^3$$

The MBC Vote

Consider, then, a ballot of five options. In such an MBC, the voters are asked to cast (a maximum of) all five preferences. If a voter does indeed cast all five, his first preference gets 5 points, his second preference gets 4, and so on. If another voter casts only two preferences, then her first preference gets just 2 points, and her second choice gets 1 point.

2 The author facilitated a web-based discussion and decision in 2007 (Emerson 2010, 83–101).

3 Compared to the more usual Borda count (BC) rule of $(n-1, n-2, \dots, 1, 0)$, the $(m, m-1, \dots, 2, 1)$ rule *can*, but the former cannot, both cater for partial voting and encourage full voting. In an MBC of N options, where $N > 10$, it is suggested that voters should be asked to list a smaller number of just n options, where $n = 6$.

In effect, (in reverse order), he who abstains has no influence on the outcome; she who votes partially has a partial influence; and those who participate fully have a full influence. At all times, the difference between a voter's x th preference and her $(x+1)$ th preference is 1 point, regardless of whether or not she has cast that $(x+1)$ th preference. There is no especial weighting. The format is as shown in Table 1 below.

| Number of preferences cast by voter | Points awarded to Preference 1 | Points awarded to Preference 2 | Points awarded to Preference 3 | Points awarded to Preference 4 | Points awarded to Preference 5 |
|-------------------------------------|--------------------------------|--------------------------------|--------------------------------|--------------------------------|--------------------------------|
| 1 | 1 | 0 | 0 | 0 | 0 |
| 2 | 2 | 1 | 0 | 0 | 0 |
| 3 | 3 | 2 | 1 | 0 | 0 |
| 4 | 4 | 3 | 2 | 1 | 0 |
| 5 | 5 | 4 | 3 | 2 | 1 |

Table 1: The MBC count

The voter is thus encouraged to submit a full ballot; and experience over the years shows that, to a large extent, most do exactly that. In 2014, for example, the de Borda Institute commissioned a six-option survey in Scotland, just before the September independence referendum: of the 805 valid responses, 81.8 per cent filled in all six preferences. Furthermore, as compared to the two opinions offered in the referendum itself, in this multi-option survey, over 150 different points of view were expressed.⁴ (See also below, under Elections and Referendums.)

In completing just such a full ballot, the voter in effect acknowledges the validity of the other options and the aspirations of their supporters. In consensus voting, no one votes *against* anything or anybody. Instead, albeit in their order of preference, people vote only *for* the various options. The MBC is inclusive.

The MBC Count

As noted above, the MBC is a points system; the outcome is a social choice and ranking based on the total number of points each option receives. Accordingly, the protagonist knows that, to win, she needs lots of high preferences, some middle ones perhaps, but very few low ones. It will be worth her while, therefore, to talk to her erstwhile (majoritarian) opponents, to try and persuade them to give her option, not a 5th but a 4th, a 3rd or even a 2nd preference. There is thus much to be gained from dialogue – or maybe ‘polylogue’ would be a better word.

⁴ *Scotland - A multi-option survey identifies “the will of the people”* was published by the de Borda Institute, August 2014: <http://www.deborda.org/home/2014/8/22/2014-12-scots-referendum-6-option-survey.html>

So the protagonists are encouraged to engage fully with the voters, and the latter are also incentivised to engage fully with the debate. This, surely, is a sound basis for any democratic debate, no matter what the real or virtual forum.

The MBC Analysis

Invariably, one or more options will get an MBC score above the mean, and some will be below. If there is one leading option, way out in front, it may indeed be regarded as ‘the will of the people’ or even their collective wisdom. If its total is not so great, then perhaps the word ‘consensus’ would be a better description. If lower still, it may be just the best possible compromise. And if it is only a little above the mean, then some if not all of the other options are obviously also at that level, in which case there is no consensus, so no decision should be taken, and the debate should be resumed.

There are two other possible outcomes: (a) maybe a couple of options are both very popular, and way ahead of the rest. In this case, the consensors, whose main role is discussed below, may choose to composite the two, adding to the most popular option any aspects of the second most popular which are not mutually excluded by the former; or (b) maybe, while none of the options gets an outstanding result, the final figures show a cluster of more popular options somewhat separated from the rest, in which case the more popular cluster may be taken as the basis of a resumed debate.

A ballot, then, need never be a wasted exercise. Initially, it may be used to identify a prioritisation,⁵ as when it is desired to form a short list from a large number of items up for consideration; or it may give either an actual result or, as just noted, the outcome may be the equivalent of a straw poll, guiding further discussions, the emergence of other more focused options, and then a more conclusive second ballot.

The Consensus Coefficient

To facilitate the analysis, options are given a consensus coefficient. This is defined as the option’s MBC score divided by the theoretical maximum. It varies, therefore, from one to zero, from most popular to thoroughly unpopular. If in a highly hypothetical five-option ballot, 100 voters, in casting full ballots, all give option *D* a 1st preference, then *D* gets the maximum consensus coefficient of $(100 \times 5 / 100 \times 5 =) 1.0$;

5 In determining a short list of, say, (approximately) six items from an initial list of over ten, those concerned may be asked to cast just their top six preferences. If, then, in the analysis, there appears a group of, say, seven items, all of which are rather more popular than the eighth and subsequent options, then the short list might best consist of seven items.

if, however, all the voters cast a partial ballot of just a 1st preference, again all for *D*, then *D* would get a score of just $(100 \times 1 / 100 \times 5 =) 0.2$.⁶

In a consensus debate, an outcome may be considered to be binding if it gains a minimum consensus coefficient of, say, 0.7.⁷ It is a measure, not only of how much support that option has received, but also of the extent to which the participants have joined in the decision-making process. What is more, as implied above, if any one individual wants to win, she should best submit a full ballot. And if another, though his 1st preference is not a popular favourite, does not want to lose, then he too should participate, at least partially; if he abstains, he might lose by default, so it is better to participate; and, as already noted, it is always better to participate fully.⁸ What is more, if his own favourite does fairly well, there is always the prospect of it forming at least part of a composite.

Altogether, then, the MBC encourages both dialogue and participation. Furthermore, 'the Borda count is significantly more consistent' (Saari 2008, 95) than other voting rules, and 'Borda's criterion is the soundest method of identifying the [option which] is most generally popular' (Dummett 1997, 71). In a nutshell, the MBC is more accurate and, therefore, more democratic. In addition – and this is utterly relevant to this text – this methodology can be used to identify both the social choice and the social ranking, in all scenarios: in referendums, commissions, consultations, deliberative polls, surveys, and in executive decision making.

In 2013, Dublin City Council used a BC twice. The Council first asked the public to propose a name for a new bridge over the Liffey; there was a huge response and well over 80 suggestions. A BC was first used in a naming committee to draw up a short list of five options; and then another BC was used in plenary, when the entire council cast their preferences on this short list, to choose the name of Rosie

6 There will only be five options on the ballot paper if at least five individuals/parties have proposed these various options. In theory, therefore, there will never be an instance where 100 per cent of the participants cast their 1st preference for the same single option.

7 This figure must be pre-determined prior to the debate. In a cohesive group, a figure of 0.7 may indeed be realistic. In parliamentary circles, especially among those more used to an adversarial polity, a lower figure may be more appropriate, at least initially. It should also be noted that, in a post-conflict society, the figure could be set at a threshold which ensures decisions are accepted only if both/all communities are involved to a sufficiently high degree. Unlike other formulas used in Bosnia, Lebanon and Northern Ireland, the MBC methodology is ethno-colour blind.

8 Admittedly, in an MBC, if a large number of people do indeed boycott the ballot or submit only partial ballots, then the winning outcome may not gain a sufficiently high consensus coefficient to be implemented.

Hackett. It is understood to be the first time ever that a democratically elected chamber has used a BC in decision making.⁹

The Democratic, Multi-option Debate

Having decided that complex and/or controversial matters should be resolved by the above MBC form of multi-option, preferential voting, there then comes the question of who chooses the options and how. The guiding principle is stark: *in any participatory democracy, all concerned (or their representatives) must be enabled, not only to cast their preferences on the options listed, but also to participate in formulating that list.*

If and when a serious but non-urgent problem arises among any democratic group of people, the problem should be discussed and resolved by those concerned: either the electorate and/or their elected representatives in the local council or parliament; or the members and/or the executive committee of the relevant community/business group. The first task, then, is to identify the format of the decision-making process. Is it to be subject to a debate and then, perhaps, a vote in a national referendum or in parliament; or is it to be based on the findings of a deliberative poll, an independent enquiry, or some such; or again, is the matter to be resolved at an Annual General meeting or Extraordinary General Meeting or a more general public meeting?

Next comes the double question of (a) who is eligible to participate in the debate, and (b) who may partake in the decision-making process with which the debate concludes. Either might involve all concerned, a representative sample of all concerned, or their elected representatives. No matter which answer is applicable, there will invariably be a need for an up-to-date list of relevant persons and a voters' register.

If it has not been done already, it will be necessary to appoint or, better still, elect the chair plus deputy/ies, one or more commissioner(s) or facilitator(s), as well as a team of at least three consensors. All of these persons shall be impartial and non-voting.

The forum for the debate may be a physical place, and/or it could be in part or in full on the web. In the former setting, use may be made of a computer and screen, and maybe of a dedicated website too, the *sine qua non* of the second setting. In both, resort may be made to plenary sessions, workshops and/or world-café discussions, and in all of these real or virtual meetings, agendas, prioritisations and themes can be determined by MBC preference voting.

9 <http://www.deborda.org/home/2013/9/6/2013-12-dublin-city-council-a-record.html>. A BC is used in elections in Slovenia and, in a modified form, in Nauru.

In the debate itself, any individual or party (depending on the total number of participants involved) may have the right to make a proposal which, as long as the consensors judge it to be relevant and in accordance with a given set of norms like the UN Charter on Human Rights, may then be added to the list of options 'on the table.' Every proposal must be a complete package for the debate in question, (which implies the demise of the wrecking amendment) In compiling their list of options, in attempting to best represent the debate, the consensors may choose to edit or composite some of the proposals; and then they can display this list both (in summary) on the computer screen and perhaps too, in full, on the web.

The discussion then starts. While every contributor is limited in time (in the forum) and/or in number of words (on the web), all participants/parties shall be entitled to ask questions, seek clarifications, suggest amendments, propose composites, advocate new options, or whatever; and at all times, the consensors shall maintain an up-to-date list of what is currently 'on the table.' If at the end of the debate there is only one option, the latter may be deemed to be the outcome, the verbal consensus. If, as is more likely in any contentious dispute, there are still quite a few options on the list, the chair may call for a vote; at which point, the consensors shall draw up a final (short) list – when the subject is complex and/or controversial, the ideal number of options for any one ballot is between four and six. In this case the chair will ask all concerned if they are satisfied that the content of the (paper or electronic) ballot, at least in regard to the participants' own suggestions, is inclusive.¹⁰ Finally, depending on the outcome and the level(s) of support expressed for the various options, the vote may be regarded either as a definite decision, or at least as a straw poll indicating the basis of further debate.

Various Forms of Participatory Democracy

The next question refers to the respondents themselves: who does and who does not participate in all the various forms of participatory democracy? The latter include constitutional conventions, independent commissions, citizens assemblies, public enquiries, consultations, public opinion surveys, deliberative polls, citizen panels or focus groups, participatory budgets, petitions, citizens' initiatives and referendums, and each will now be discussed in turn.

10 This methodology was first tested at a 1986 public meeting in Belfast – the New Ireland Group's *People's Convention* – in which over 200 persons participated. Though still eight years *before* the cease-fire, those present included both Unionists (the late Sir Edward Archdale among others) and Sinn Féin (Alex Maskey, now Member of the Legislative Assembly, and colleagues). In a further experiment in 1991, with an even greater degree of cross-community involvement, use was made of a computer program – paper votes but an electronic count – and data screen projection of both the options and then the results.

Constitutional Conventions

A constitutional convention can cover a range of topics. The most famous is undoubtedly that which took place under the chair of George Washington in Philadelphia in 1787, when the nation's future governance was under discussion. Participation was limited to white males only, 'the well-bred and well-fed.' Interestingly enough, the future President was bitterly opposed to the party system of politics: as he said in his farewell address of 1796, 'the alternative domination of one faction over another... has perpetuated the most horrid enormities [and] is itself a frightful despotism.' Unfortunately, however, while the founding fathers and their contemporaries devised both a more consensual way of electing the President and various formulas for proportional representation, they did not question the root cause of two-party politics – the two-option majority vote (Emerson 2012, 54).

Of less historical import perhaps, there have been several other conventions. For example, in the wake of the financial crisis of 2008, Iceland held a national assembly of 950 randomly selected persons, and then elected a constituent assembly of 25 from a short list of 522 (Gylfason, 2013). Meanwhile in Ireland, a constitutional convention of 33 serving politicians and 66 randomly selected individuals was inaugurated in 2012 to review certain (fairly timid) aspects of Ireland's democratic structure; its recommendations were then considered by parliament.

Independent Commissions

In many countries, commissions have been used to try and establish the truth after years of often bitter turmoil. The first was the National Commission on the Disappearance of Persons, which was initiated in Argentina in 1983. In 1991, in the wake of Augusto Pinochet's dictatorship, a Truth and Reconciliation Commission was deployed in Chile, and a similar body to analyse the tragedy of apartheid was successfully initiated five years later in South Africa, under the chair of Bishop Desmond Tutu. Similarly, in the wake of the 1994 genocide in Rwanda, the Kigali government set up a system of *gacaca*,¹¹ little 'peace and reconciliation commissions' under the National Unity and Reconciliation Commission (NURC). Sadly, the British Government never saw fit to hold a similar investigation into the Troubles of Northern Ireland, maybe because, alongside some other dubious figures, it too would have been in the dock; hence its resort to piecemeal measures, like the Bloody Sunday inquiry.

11 This Kinyarwanda word means 'grass' and it refers to the traditional decision-making processes in which the village elders would meet, as often as not under a big tree – where there is some grass – to resolve in verbal consensus any local disputes. Unlike many Western courts, where one of the plaintiffs is assumed to be guilty and the other innocent, sub-Saharan African disputes used to be investigated on an initial assumption that both were in the right (Kapuściński 2002, 315).

Going back a little and on a less violent theme, in 1985, New Zealand used a Royal Commission to study the question of electoral reform (Harris 1993, 53–57); despite considerable opposition and delay from the two main parties, this was eventually followed by a five-option referendum in 1992. The ballot was counted under a rather unusual form of the two-round system (TRS), such that the *status quo*, FPTP, got an automatic bye into the second round (Mackerras 1994, 36–40). As a result, New Zealand adopted a form of the German mixed system, multi-member proportional (MMP), a two-tier system which is part FPTP and part PR-list.

On the same topic, the late Lord Jenkins was asked by the British Government to head an ‘Independent Commission on the [UK] Voting System’ in 1997. The terms of reference specifically laid down that it should recommend an alternative (singular) rather than a (plural) number of options, as in New Zealand; this, it could be argued, infringed on the Commission’s independence. The report referred to the antipodean experience – indeed, members of Jenkins’ Commission actually went there to study everything in detail – but there was not one word about the multi-option nature of NZ’s referendum in the final report (Jenkins 1998),¹² so confirming his lack of independence.

After the UK’s 2010 elections resulted in a coalition government, electoral reform was once again on the agenda; hence, one year later, a referendum on the electoral system. The question was closed: FPTP or AV, the alternative vote. In other words, the British electorate was asked, ‘Would you like David Cameron’s first preference or would you like his second?’ Even the Lib-Dem first preference of PR-STV was not allowed. It was another classic example of unparticipatory democracy! Furthermore, for the supporter of PR – whether the latter wanted a mixed system like the German MMP, a list system like the ones used in Belgium or Switzerland, the more preferential PR-STV of Ireland and Malta,¹³ or whatever – the question was similar to that of the waiter who asks the vegetarian: beef or lamb?¹⁴

12 In his own submissions to the Jenkins Commission, the present author argued, in vain, that the prospect of a multi-option referendum would allow for a more comprehensive debate.

13 Interestingly enough, both Ireland’s PR-STV and Germany’s MMP were imposed by the British, in 1920 (unilaterally) and in 1949 (with the Allies) respectively.

14 For reasons unstated, the UK’s supposedly impartial Electoral Commission refused (and still refuses) to consider any form of multi-option voting; instead, in 2011, it ruled that the FPTP or AV question was adequate. What is even more surprising is the fact that the press went along with this charade: BBC Radio 4 did a one-hour documentary on referendums and, despite this author’s prompting beforehand, said not one word about multi-option ballots.

Citizens Assemblies

On the same theme of electoral reform, British Columbia held a Citizens' Assembly and then a binding referendum in 2005. The question posed – another closed question – was FPTP or PR-STV? It was yet another two-option question, even though the menu was multi-optional. The outcome, a 57.7 per cent vote for PR-STV failed to pass the pre-determined threshold of 60 per cent, so the outcome was bizarre: the 42.3 per cent minority won. If, however, as was suggested in a submission from this Institute, the final poll had been a multi-option ballot, then maybe the outcome would have been a more accurate reflection of 'the will of the people.'

At the height of a constitutional crisis in Belgium – the 2010 election produced a parliament which found it difficult to form a government and the process eventually took 541 days (a world record!) – a group of concerned citizens initiated the very successful G1000 Platform for Democratic Innovation, an exercise in deliberative democracy involving a random sample of over 700 direct participants. It was, and continues to be, a form of direct democracy which strongly supports (and hopes to improve) the indirect arm of representative democracy.¹⁵

Public Enquiries and Consultations

In a public enquiry, which nowadays could be held *in situ* and/or on the web, participation is based on self-selection. As in constitutional conventions and the like, a degree of confidence is placed in the commissioner(s) to be impartial and independent in their findings, which the government may or may not accept.

Likewise, in a consultation, participation is open and often largely confined to another self-selected group of lobbyists and activists. Here too, the government may reject any of the recommendations expressed and, in most instances, need not pass a judgement on them let alone express its own preferences.

Public Opinion Polls

A public opinion survey¹⁶ is normally based on a scientifically balanced random sample of respondents. Questionnaires invariably seek information on gender, social status, neighbourhood, political affiliation if any (as and when appropriate) and so on, in order to ensure that those chosen do indeed represent society as a whole. Obviously, the larger the number, the more accurate the survey, and the normally accepted minimum is 1,000 respondents.

15 <http://www.g1000.org/en/>

16 In contrast to most public opinion surveys, telephone polls can be hopelessly unscientific, again because the participants are self-selecting: the Eurovision Song Contest is a prime example.

As has already been noted, in a brave attempt to overcome the legacy of the appalling 1994 massacre, Rwanda set up its system of *gacaca*. Later, with aid from the British and Swedish governments, the NURC commissioned an independent (European) company to undertake a 'Gacaca and Reconciliation Opinion Survey'. The findings – an analysis of the 72 questions asked – were presented at a press conference held in the Hôtel des Milles Collines in Kigali in January 2003, and in the formal discussions which followed (and which this author attended), Dr. Ephraim Kanyarukiga of the Adventist University of Central Africa simply stated, 'Asking yes-or-no questions is very un-African.'

In complex scenarios, as noted earlier, the answers to any binary questions may be not only very un-African but also very inaccurate, not least because, by their very nature, these binary questions are closed. In an effort to overcome this deficiency, some surveys are done on the basis of multi-option graded answers,¹⁷ usually on the following or similar pattern: support strongly, support mildly, indifferent, oppose mildly and oppose strongly. This methodology, however, may also be inaccurate, partly because the respondent, in order to boost his/her favourite option's chances, may be tempted to support strongly the option he/she favours and oppose strongly all the other options – (a similar criticism can be made of approval voting and, even more so, of range voting); and partly because some analysts tend to bunch the responses together as being positive or negative, thus somewhat undermining the original purpose of the gradings.

At best, then, both of these methodologies – a two-option question followed by either a yes-or-no answer or a graded response – identify those items which the respondents may or may not favour; in many instances, however, this methodology cannot declare one particular option to be the most popular overall, that is, they cannot identify the social choice let alone the social ranking. There would therefore be little or no point in giving the outcome of polls (or other forms of deliberation) taken in this way any binding status.

Deliberative Polls and Citizens' Panels/Focus Groups

Deliberative polling involves a smaller number but still representative sample of persons, with the advantage that rather more time can be devoted to the topic; indeed, as was the case in Belgium's G1000, such formats may be residential. The outcomes of most such polls are of an informative, non-binding nature.

17 As part of the Northern Ireland Peace Process, the de Borda Institute commissioned a multi-option preference survey in 1998 (Emerson 1998, 1-41). Respondents were asked to put a shuffled pack of ten cards, on each of which was a political party's most preferred constitutional option, into their order of preference. The analysis identified both a social choice and a social ranking.

Efforts are made to ensure that, in an initial educational process – and again, full use may be made of a dedicated website – any ‘experts’ called to discuss the relevant pros and cons are balanced. Despite using many high-tech devices in their discussions, however, some deliberative polls involve majoritarian (i.e., low-tech) decision making; G1000 used preferences, but Australia’s new Democracy Foundation dislike all forms of voting and, though only *in extremis*, resort to an 80 per cent weighted majority vote.

Citizens’ Panels and Focus groups involve smaller numbers than is the case in deliberative polls – tens rather than a hundred or so – partly because, to allow for a greater educational input, the format is almost certainly residential. The representative nature of these groups is, therefore, a little more suspect. Again, their conclusions do not have a binding status.

Participatory Budgets

Participatory budgeting has a specific function and a fixed location, and the process of discussions, decisions and implementations may extend over months if not years. While the direct deliberations may include a relatively small sample of individuals – the first one, in Porto Alegre in Brazil in 1989, was self-selected – the final decision-making process usually involves the entire local community. Hence the nature of such decisions may be binding.

Petitions

Unless the government of the day so decides, its own petitions, let alone any others, are only advisory. By their very nature, these involve self-selecting participants and may, therefore, be very inaccurate measures of the collective will.

Citizens’ Initiatives

Unlike most of the above, citizens’ initiatives are binding. Those who decide to initiate such a referendum are self-selecting but, firstly, as in Switzerland, there has to be a large number of them – 100,000; secondly, in the subsequent referendum, the entire electorate is entitled to participate. They tend to involve a binary question, but see below.

Elections and Referendums

General and local elections are of course binding, as are most referendums.¹⁸ Depending on the particular electoral system in use, the former may be reasonably open, and this is certainly the case with any multi-candidate system such as the particular form of PR-list used in Switzerland and the two main preferential systems: PR-STV and the quota Borda system (QBs). In most referendums, however, the question is closed – either only two options are presented, or worse still, the voter has a choice of ‘yes’ or ‘no’ on just the one option.

As noted above, a recent case occurred in Scotland. In theory, the question was actually multi-optional, with three possible outcomes – the status quo, maximum devolution (referred to as devo-max) and independence. As so often happens, however, the politician does not like pluralism: so Mr. Cameron insisted on a two-option ballot – independence, yes or no? In theory, then, the outcome would be either independence or the status quo, and those whose first preference was devo-max were faced with a dilemma. Just before the vote took place, however, and after *postal voting had already started*, when many opinion polls suggested independence might actually be more popular than the status quo, Cameron and other London-based politicians made ‘the vow’, so to promise devo-max if the ‘no’ vote won. This left any status quo supporters with a problem.

In the event, on an 84.6 per cent turnout, the ‘no’ vote won 55.3 per cent to the ‘yes’ total of 44.7 per cent. So the winner was devo-max. But nobody voted for it. They could not. It was not on the ballot paper. This only serves to emphasise the point made earlier: participatory democracy, by definition, must allow either all concerned and/or their representatives to participate in forming the list of options, and not just in the vote.

The two-option referendum nevertheless has a purpose. In Switzerland, majority-vote ‘instruments of direct democracy serve to supplement rather than to replace representative government’ (Bogdanor 1994, 65); and interestingly enough, the Swiss Government has recently started to use multi-option voting (Bochsler 2010, 119–131).

18 In Zimbabwe, Robert Mugabe suspected he was going to lose the 2000 referendum, so he declared, in advance, that it would be non-binding. He lost, the vote that is, by 54.7 per cent; but he won the day. It should also be noted that some state-sponsored referendums are held, not so much to identify the will of the people, rather so that the government concerned may avoid a topic over which its own party is seriously split: in the UK, for example, the 1975 referendum on Europe resolved an issue over which the Labour Party was very undecided.

The world's first multi-option referendum was held in New Zealand in 1894, and there have been quite a few since then, not only (as noted above) in New Zealand on electoral reform, but also in Australia, Finland, Sweden and Uruguay, for example, with most held under a system of TRS. One of the most interesting, again under TRS, was conducted in Guam in 1982, when the electorate was presented with a choice of six possible constitutional arrangements, along with another 'blank' option. So anyone(s) wishing to (campaign and) vote for a seventh option could do so, but only two per cent of the electorate took advantage of this (Guam Election Commission, 1982).

Like so many things in life, there are the good and the bad. At worst, the two-option plebiscite exacerbates divisions in society; it can be manipulated by those who write the question, as was the March 2014 ballot in Crimea, to take a glaring example;¹⁹ it can alienate minorities, as happened in Northern Ireland in 1972;²⁰ and it can in effect disenfranchise those who might otherwise want to vote for compromise, as was often the case in the Balkans and the Caucasus.

There is also the problem of turnout. Some jurisdictions, like Denmark, lay down a minimum: not just 50 per cent of the turnout but 40 per cent of the entire electorate. Such a rule, however, can be problematic: in a 1939 referendum, when the threshold turnout was 45 per cent of the electorate, 91.9 per cent voted to reform the Danish upper house, but only 44.5 per cent voted, so there was yet another bizarre outcome: the minority of 8.1 per cent won (Bogdanor 1994, 44)! A similar instance occurred in Scotland's first referendum on devolution in 1979, when the prime minister of the day, James Callaghan, wanted the vote to be lost, so he imposed a similar threshold of 40 per cent of the total electorate. A majority of 51.6 per cent supported the measure, but the turnout was only 63.7 per cent, that is, just 32.9 per cent of the electorate, so yet again, the proposal failed, and democracy was bizarre.

The above, then, is an overview of the various instruments of participatory (or non-participatory) democracy in current use. The task of this paper now is to suggest that, if conducted in accordance with certain criteria, not just the outcomes of elections and referendums, but sufficiently accurate and convincing results of some of the other methodologies should also enjoy a binding status.

19 Voters were asked if they (a) wanted to join the Russian Federation or (b) restore the 1992 constitution; 97.7 and 96.6 per cent of voters in Crimea and Sevastopol voted for (a). Like the Azeris in Nagorno-Karabakh in 1991, the Orthodox in Croatia and Bosnia in 1991/2, and the Georgians in Abhaxia in 2006, the Ukrainian and Tartar minority did not vote.

20 The Unionists voted; the Nationalists held a boycott. On a 58.7 per cent turnout, 98.9 per cent voted to stay in the UK.

To refer again to the referendums on the New Zealand, UK, or British Columbian electoral systems, a more participatory process could have involved an independent enquiry tasked to format a multi-option referendum. If such an instrument were to be deployed, the enquiry would be open to all so, admittedly, participants would be self-selecting; but it would be required to draw up a short but balanced list of options, which would then be presented to the entire electorate in an MBC referendum, the outcome of which would be binding on the executive if it gained a minimum consensus coefficient of, let us say, 0.4.²¹

Another format could be based on a deliberative poll, for example, a one-week gathering of, say, a minimum of 200 persons, again set to draw up a short list for a subsequent referendum. This process would require those involved in the poll to use an MBC to identify a prioritisation, that is, a list of those options which would then form the basis of the national referendum, and the exact number of options would be determined by the nature of any cluster in that social ranking (as suggested above: see MBC analysis). Such a national MBC referendum would identify the nation's social choice.

Criteria for a Deliberative Democracy

To a large extent, the nature of the decision-making process to be used at the end of the debate determines the nature of the debate itself. If the chosen methodology is to be a majority vote, participants may well divide into two opposing camps, and the debate itself may become polarised, if not vitriolic and abusive. If, instead, the vote is to be conducted under the above rules for the MBC, then experience suggests that the debate is likely to take place in a more civilised milieu. There are, of course, certain rules which must apply, some of which have already been alluded to:

1. Every option presented shall be a complete package, with perhaps certain sections common to those of other options (if need be, on editing, the consensors may choose to highlight those parts which are dissimilar).
2. On any one topic, any one participant or party, as appropriate, shall advocate a maximum of only one complete option; as the debate proceeds, if thus persuaded, the mover(s) may agree to a composite or even to his/her/their original proposal being withdrawn.

21 This figure is much lower than that proposed for other settings (see fn. 7). In like manner, minimum turnout figures for majoritarian referendums are usually on the low side. Unlike the New Zealand or other forms of TRS, the MBC has the added advantage that it definitely requires only one ballot.

3. In plenary and/or on the web, participants shall be limited to a certain quantity of time or number of words respectively. And in both, at any one time or under any one theme, participants shall be limited to only one workshop. Furthermore, in both plenary and workshops, those concerned shall be limited in the quantity of their contributions.
4. In the final decision-making vote, every voter shall be entitled to exercise an equal influence on the outcome.
5. In opinion surveys, deliberative polls and focus groups, (as well as in the elected chamber), if a sufficiently large and representative sample of persons (or a minimum quorum of elected representatives) has participated in the decision, a social choice which gains a pre-determined minimum consensus coefficient shall be deemed to be binding. It must be emphasised that with an MBC, an option's consensus coefficient is a measure of both the level of its support and the degree to which those concerned participated in expressing that support.

Conclusions

The more sophisticated a people become, the more they will want to participate in the decision-making processes by which their lives are determined; so the more sophisticated should be the structures by which they *can* participate. Given the potential that cybernetics now offers, it is vital that democratically elected representatives devolve power from their parliamentary 'bubbles' and involve the electorate in a more meaningful way. This can best happen if, subject to certain criteria as outlined above, the outcomes of various forms of participatory democracy are deemed legally binding.

Abbreviations

| | | |
|-------------------|---|--|
| AGM | annual general meeting | |
| AV (= IRV/PV/STV) | alternative vote | as it may be called in Britain/ Ireland |
| BC | Borda count | |
| EGM | emergency general meeting | |
| FPTP | first-past-the-post | |
| IRV (= AV/PV/STV) | instant run-off voting | as it is called in North America |
| MBC | modified Borda count | |
| MLA | Member of the Legislative Assembly | Northern Ireland |
| MMP | multi-member proportional | |
| NURC | National Unity and Reconciliation Commission | Rwanda |
| PR | proportional representation | |
| PV (= AV/IRV/STV) | preferential voting | as known in Australasia |
| QBS | quota Borda system | |
| STV (= AV/IRV/PV) | single transferable vote | as in Britain/Ireland |
| TRS | two-round system | |

References

- Bochsler, D. (2010) 'The Marquis de Condorcet goes to Bern', *Public Choice*, 144, 119–131.
- Bogdanor, V. (1994) 'Western Europe', in D Butler and A, Ranney (eds), *Referendums around the World*, Washington: AEI Press.
- Dummett, M. (1997) *Principles of Electoral Reform*, Oxford: Oxford University Press.
- Emerson, P. (1998) *Referendum Social Survey*, Belfast: The de Borda Institute.
- Emerson, P. (2007) *Designing an All-Inclusive Democracy*, Berlin Heidelberg, New York: Springer.
- Emerson, P. (2010) 'Consensus Voting and Party Funding: a web-based experiment', *European Political Science*, 9 (1), 83–101. Available at: <http://www.palgrave-journals.com/eps/journal/v9/n1/full/eps200940a.html>
- Emerson, P. (2012) *Defining Democracy*, Berlin Heidelberg, New York: Springer.
- Emerson, P. (2014) Scotland – A multi-option survey identifies “the will of the people”, Belfast: The de Borda Institute.
- Fishkin, J. S. (1991) *Democracy and Deliberation*, New Haven and London: Yale University Press.
- G1000 (2012) *Final Report, Democratic Innovation in Practice*, Brussels: G1000.
- Guam Election Commission (1982), *Plebiscite Election*, Guam: Guam Election Commission.
- Gylfason, T. (2013) Democracy on ice: a post-mortem of the Icelandic constitution. Available at: <http://www.opendemocracy.net/can-europe-make-it/thorvaldur-gylfason/democracy-on-ice-post-mortem-of-icelandic-constitution>. Accessed 29.6.2013.
- Harris, P. (1993) 'Changing New Zealand's Electoral System: The 1992 Referendum', *Representation*, 31, 53–57.
- Jenkins, R. (1998), *The Report of the Independent Commission on the Voting System*, London: The Stationery Office.
- Kapuściński, R. (2002) *The Shadow of the Sun*, London: Penguin.
- Lijphart, A. (2012) *Patterns of Democracy*, second edition, New Haven and London: Yale University Press.
- Mackerras, M. (1994), 'Reform of New Zealand's Voting System, 1985–1996', *Representation*, 32 (118).
- NURC (2003) *Participation in Gacaca and National Reconciliation*, Kigali: NURC.
- Saari, D. G. (2008) *Disposing Dictators, Demystifying Voting Paradoxes*, Cambridge: Cambridge University Press.
- Wigley, D. (1996) *A Real Choice for Wales*, Caernarfon: Plaid Cymru.