

## **Building a Better Referendum: Linking Mini-Publics and Mass Publics in Popular Votes**

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### **Introduction**

Popular votes – referendums, initiatives, and other devices for allowing all citizens to decide on specific policies – are sometimes seen as the purest instrument of democracy (Bogdanor, 1981, p. 93; Saward, 1993). Many citizens, distrustful of traditional electoral politics, have turned to “embrace referendums as a more reliable tool to exert democratic influence” (Schuck & de Vreese, 2015). However, popular votes are also frequently derided as non-deliberative events that allow elite actors to manipulate ill-informed citizens (Parkinson, 2001, p. 132; Setälä, 1999, p. 79; Smith, 2009). For instance, James Fishkin (2011, p. 91) contends that during referendum campaigns “people have little reason to think about the power we would have them exercise” and Claus Offe (2017, p. 22) argues that popular votes are plebiscitarian devices that “de-emphasize requirements of consistency, compromise-building, and the reflection on consequences.” Others are more measured in their evaluations. Simone Chambers concludes that while popular votes are not deliberative exercises, “they can be more or less deliberative” (Chambers, 2009, p. 331).

While popular votes provide a rare opportunity for citizens to deliberate about political matters between elections (Daly, 2015, p. 48), the quality of this deliberation seems to depend largely on the broader political and institutional context (LeDuc, 2015, p. 147; Parkinson, 2006a, p. 171). In recent years, mini-publics have been grafted onto popular votes in Canada, Iceland, Ireland, the United Kingdom, and several U.S. states to institutionalize deliberation prior to popular votes. Mini-publics are small groups convened to deliberate, often made up of lay-citizens and selected by sortition or random stratified sampling from the broader population in order avoid self-selection models of participation that incentivize those with vested interests in a way that undermines deliberation (Bagg, 2015; Beauvais & Bächtiger, 2016; Warren, 2017, p. 50). The participants of mini-publics can thus be understood as “citizen representatives” who represent those who are not present in these deliberative forums (Warren, 2008).

Deliberative democrats have found the pairing of mini-publics and popular votes an “encouraging” way of increasing the deliberative capacity of popular votes (Setälä, 2017, p. 2). The underlying logic is that mini-publics provide “imperfect, but informative *signals* of what observers themselves might conclude about a policy if they had the same opportunity to engage in meaningful deliberation” (Ingham & Levin, 2018, p. 1; see also Setälä, 2017, p. 5). In other words, they can serve as information proxies who provide trustworthy and credible cues to voters to help them overcome cognitive biases and elite manipulation (Warren & Gastil, 2015, p. 567). Proponents suggest that these cues have a ‘recommending force’ due to their deliberative origins (Chambers, 2003; J. S. Fishkin, 1997, p. 162; Warren & Pearse, 2008) and the fact that they are not provided by the ‘usual suspects’ but instead originate with a group of ‘ordinary citizens’ (Boswell, Niemeyer, & Hendriks, 2013, p. 173; Landwehr, 2014; Warren & Gastil, 2015, pp. 567–568). Yet, critics have pointed out that mini-publics are not fully inclusive (Lafont, 2015; Pateman, 2012), remain vulnerable to strategic manipulation (Fuji Johnson, 2011, 2015, Hendriks, 2006, 2011), and often encounter problems communicating their arguments to the broader public (Curato & Böker, 2016; Felicetti, Niemeyer, & Curato, 2015; Olsen & Trenz, 2014).

The recent systemic turn in democratic theory provides a basis for reconciling some of the pessimism and optimism about mini-publics and popular votes by acknowledging that a division of labor is necessary to meet a wide variety of democratic functions (Mansbridge et al., 2012; Warren, 2017). Scholars have begun to consider how institutions could be designed to work together, suggesting that the introduction of new institutions, like mini-publics, may require altering existing institutions, like the design of voting procedures, to bring about democratically desirable system-level results (Böker & Elstub, 2015; Curato & Böker, 2016; Hendriks, 2016). This stands in contrast to the common assumption that mini-publics can simply be grafted onto the common ‘Yes’ or ‘No’ design of popular votes (Chambers, 2009, p. 332; J. Fishkin, Kousser, Luskin, & Siu, 2015; Gastil & Richards, 2013; Goodin & Dryzek, 2006; Hendriks, 2016; Lang & Warren, 2012).

Building on the insights of several deliberative democratic theorists (Barber, 1984, pp. 284–285; Chambers, 2001; Mendelsohn, 2000; Smith, 2009, pp. 131–132), I suggest that multi-stage voting procedures might provide one way of improving the connection between mini-publics and the broader public in a way that increases the influence of deliberative cues. I suggest that coupling mini-publics with multi-stage popular votes – a design I refer to as an *iterated popular vote* – can allow each part to mitigate the weaknesses of the other. The multi-stage popular vote increases the number of opportunities for deliberation and allowing

citizens a greater role in setting the agenda, while mini-publics facilitate high-quality deliberation that can inform mass deliberation by providing cues to the broader public.

### Popular Votes and Mini-Publics

Existing typologies of popular votes frequently use the initiation process as a way of making preliminary distinctions between constitutionally-required, government-initiated, and citizen-initiated devices for popular voting (Altman, 2011, p. 11; Butler & Ranney, 1978, p. 23; Setälä, 2006). Popular votes can also be reactive or active, depending on whether they respond to an existing proposal or propose a new one (Altman, 2011; Parkinson, 2009). As a result, I provide a simplified classification of popular votes in Table 1 (adapted from Parkinson, 2009; Setälä, 2006). To date, mini-publics have only been paired with popular initiatives and ad-hoc referendums.

**Table 1: Types of Popular Vote**

	Constitutionally Required	Citizen-Initiated	Government-initiated
Proactive	–	<ul style="list-style-type: none"> <li>• Popular initiative</li> <li>• Indirect initiative</li> </ul>	<ul style="list-style-type: none"> <li>• Ad-hoc referendum</li> </ul>
Reactive	<ul style="list-style-type: none"> <li>• Mandatory referendum</li> </ul>	<ul style="list-style-type: none"> <li>• Reactive referendum</li> </ul>	<ul style="list-style-type: none"> <li>• Counter-proposals</li> </ul>

Popular votes also occur in stages. First, a problem is defined during the initiation of the popular vote, followed by public discussion during the campaign period, then a moment of decision when citizens vote, concluding with a process of implementation (Gastil & Richards, 2013; Parkinson, 2009). Mini-publics are unable to directly participate in the decision-making stage of referendums – the period in which citizens actually vote on a proposal – although the rest of this outlines how mini-publics have been differently integrated into popular vote processes.

#### *The Initiation Stage*

The British Columbia Citizens Assembly (BCCA) was a mini-public designed to deliberate about alternatives to the province’s single-member plurality electoral system and then decide whether to recommend the adoption of an alternative

system. The mini-public was empowered to trigger a 2005 referendum on the issue if it recommended such a change. The BCCA was made up of 160 randomly selected citizens from across the province who were descriptively representative of the population of the province in terms of age, region, and gender.<sup>1</sup> The BCCA proceeded in three phases: a learning phase in which they heard from interested parties and read written materials, a public consultation phase in which members attended community meetings to engage with other citizens, and a deliberation phase where the members considered alternative systems among themselves (Warren & Pearse, 2008, p. 11). In the end, the BCCA recommended holding a referendum to decide between the existing first-past-the-post system and the single transferable vote (STV). A similar assembly was convened in 2006 in the province of Ontario to look at electoral reform. The design closely resembled the BCCA as it included randomly-selected participants that participated in the same three phases and were empowered to place an alternative on the ballot for a 2007 referendum. Voters in both provinces voted to maintain the existing electoral system.

In 2011, Iceland created a Constitutional Council made up of 25 elected delegates to draft a new constitution that would be voted on in two referendums in 2012 and 2013. The Constitutional Council was preceded by two National Forum processes, one-day events that were designed to gather information about the overarching values that citizens wanted to see reflected in their constitution. Participants were chosen through a process of quota sampling to ensure descriptive representation in terms of age, gender, and geographic origin (Landemore, 2015, p. 177). The National Forums included approximately 1500 and 950 participants, respectively. This large number of participants and short duration of the event may explain why the process of consultation through the National Forum was ultimately more aggregative than deliberative (Landemore, 2015, pp. 183–185).<sup>2</sup> Landemore (2015, p. 189) concludes that a different process, such as a deliberative poll, may have been necessary to facilitate macro-level deliberation. The drafted constitution was approved in the 2012 referendum, although the second referendum was canceled by elected officials, preventing implementation (Landemore, 2015, p. 170).

Ireland's Constitution on the Convention was an assembly made up of 66 citizens and 33 politicians that was charged with studying eight distinct issues. Two of these issues were put to referendums following proposals for constitutional

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<sup>1</sup> James (2008) points out that visible minorities and indigenous peoples were not proportionally represented in this process.

<sup>2</sup> The elected Constitutional Council attempted to engage with the broader public by posting draft constitutional documents online, although relatively few citizens responded with comments.

amendments by the Convention: same-sex marriage and lowering the age required to run for president (Murphy, 2016, pp. 318–319). Both referendums occurred at the same time and the marriage equality referendum overshadowed the vote on the age of presidential candidates. While voters overwhelmingly rejected changing the rules around presidential candidates, 62% of voters aligned with the Convention's recommendation in support of allowing marriage equality (Murphy, 2016, p. 326). More recently, an Irish Citizens' Assembly, comprised of 99 randomly-selected Irish citizens, was charged with making recommendations on a variety of issues, including climate change, fixed-term parliaments, and the Eighth Amendment to the constitution that “acknowledges the right to life of the unborn”. Since constitutional amendment in Ireland must be approved through a referendum, the Citizens' Assembly's various recommendations against maintaining a constitutional amendment that prohibited abortion led to the initiation of a referendum that took place in May 2018. In the end, two-thirds of voters chose to support a constitutional amendment that would change the legal status of abortion in Ireland.

### *The Campaign Stage*

Mini-publics that played active roles in initiating popular votes may remain influential throughout the campaign stage, as in the BC and Ontario Citizens' Assemblies on electoral reform. This may be the result of their capacity to frame the issue in the initiation stage or the result of ongoing activity on the part of the mini-public or its members. Yet, mini-publics might be convened after referendums are initiated in order to deliberate about the existing ballot questions, as in the Oregon Citizens' Initiative Review.

While the BCCA was not obligated to do so, it decided to make a formal recommendation in favor of adopting STV. Some members of the assembly went on to campaign for the Yes side, suggesting that mini-publics might also be a site of ongoing political organization. The BCCA and its members were capable of persuading voters who knew about the BCCA, which was about 60% of the population by the end of the campaign (Cutler, Johnston, Carty, Blais, & Fournier, 2008, pp. 174, 186). Leduc (2009, p. 40) suggests that in Ontario, compared to BC, the Citizen's Assembly “was an unknown quantity for most voters, and its negative portrayal in the media made it more of a liability than an asset in generating public support for electoral reform.” As a result, their recommendation for a mixed-member proportional system only received 37% of the vote (Leduc, 2009, pp. 38–39; LeDuc, Bastedo, & Baquero, 2008, p. 35). A key difference between the two cases may be that Elections Ontario did little to publicize the

recommendation of the Citizens' Assembly, whereas the BCCA's mini-report was sent to every household in the province.

The Oregon Citizen's Initiative Review (CIR) process selects citizens to serve on panels and deliberate about citizen-initiated popular votes (Knobloch, Gastil, & Reitman, 2016). A subset of the initiatives on the ballot is selected to be studied by the CIR. The CIR's findings and recommendations are then distributed to voters in the official voter's guide as a way of providing information from the perspective of lay-Oregonians. Those who read the findings of the citizen panel find them useful, with some voters changing their opinion quite substantially (Gastil, Richards, & Knobloch, 2014, pp. 66–68). Pilot projects in Colorado, Massachusetts, and Phoenix in 2016 have led to similar findings (Gastil, Knobloch, et al., 2016).

### *The Implementation Stage*

An interesting variation on the citizens' assembly model can be found in the recent Citizens' Assembly on Brexit, organized independently of the state by the Constitution Unit at University College London. A mini-public was organized after the referendum and during the implementation stage in order to gain insight into "what kind of Brexit the UK government should seek, focusing on options for trade and migration" (Renwick, 2017, p. 6). Participants concluded that the UK should pursue "a comprehensive trade deal [...] and special arrangements for UK–EU migration" (Renwick, 2017, p. 8). While it is too early to establish the impact of this Citizens' Assembly, its independence from existing political institutions may have been beneficial for the quality of deliberation but might also limit its influence on actual decision-making.

### *Mechanisms of Influence*

This section demonstrates that, despite some variation in design, most mini-publics are used during the initiation and campaign periods. There appear to be two plausible mechanisms to explain the influence of mini-publics on the outcome of referendums. The first is that mini-publics may have capacities to set the agenda in ways that make it more likely that their preferred outcome will be realized. The second is that mini-publics may influence public opinion because they provide "deliberative cues" that reflect the enlightened opinion of ordinary citizens.

Yet, the existing cases demonstrate considerable variation in these two capacities. The Oregon CIR has perhaps the weakest agenda-setting capacity as it has no

influence over the content of the ballot questions. The Icelandic case also had limited capacity to set the agenda, with participants only capable of providing broad preferences to inform the process of drafting a constitution that would be voted on later. The Canadian Citizens' Assemblies provided considerable agenda-setting power, although there were still notable constraints, such as a requirement that the BCCA's proposal did not increase the number of members of Parliament. The Irish Citizens' Assemblies most clearly gave participants a wide berth in making a variety of recommendations that set the agenda for the popular votes that followed.

The existing evidence also suggests that mini-publics vary in their capacity to provide cues to the broader public (Curato & Böker, 2016; Felicetti et al., 2015; Ingham & Levin, 2018). While about 60% of British Columbians were familiar with the BCCA, approximately 80% of Ontarians did not know about the Ontario Citizens' Assembly. In the case of the Irish Convention on the Constitution, 54% of citizens still knew relatively little about the Convention when the referendum was held, with only 12% demonstrating a high level of knowledge (Elkink et al., 2016, p. 2016). This suggests that even in contentious campaigns, many voters remain unaware of deliberative mini-publics.

Oregon's CIR process was introduced in 2010 and, while initial research suggested that most likely voters were unfamiliar with the CIR and its recommendations, recent studies suggest that slightly more than half of voters now aware of its existence (Gastil et al., 2014, pp. 66–68; Gastil, Rosenzweig, Knobloch, & Brinker, 2016). While this number remains relatively low, it demonstrates that mini-public processes that are repeated may allow citizens to learn about the process over time (Knobloch et al., 2016; Warren & Gastil, 2015). Furthermore, the Oregon CIR, like the BCCA, does not rely solely on the media to transmit its findings as these are distributed in the voters' guide that is sent to every household in the state. This is in contrast to the Icelandic case, where citizens would have to seek out drafts that were posted online, or the Ontario case, where media coverage and support from Elections Ontario was sparse (LeDuc et al., 2008).

### **Multi-Stage Popular Votes**

The pairing of mini-publics with popular votes has provided an innovative way of improving the practice of referendums (Setälä, 2017), although further improvement may require moving beyond the common assumption that mini-publics could simply be grafted onto popular votes without redesigning the underlying institutions. Some democratic theorists have suggested in passing that

multi-stage popular votes can encourage deliberation (Chambers, 2001; Mendelsohn, 2000; Smith, 2009, pp. 131–132). These processes might provide clearly institutionalized opportunities for mini-publics to communicate with the broader public. In this section, I provide an overview of two multi-stage popular vote designs that have been put into practice.<sup>3</sup>

### *Runoff Referendums*

Perhaps the most obvious is a runoff referendum to choose between three or more choices as used in the 1948 referendum in Newfoundland (Emerson, 2011, p. 164; Tierney, 2012, p. 269), the 1982 referendum in Guam (Na’puti & Hahn, 2013, p. 2), and status referendums for the islands making up the Netherlands Antilles, such as the 2000 referendum in St. Maarten, the 2004 referendum in Saba, and the 2005 referendums in Curacao and St. Eustatius. An instant runoff procedure does not present an opportunity for deliberation between ballots and so I leave this possibility aside.

### *Two-Stage Referendums*

‘Two-stage referendums’<sup>4</sup> have been used multiple times in New Zealand. The first two-stage referendum was held in 1992 and 1993 to determine whether New Zealand would retain its single-member plurality (SMP) voting system. In 1992, an advisory referendum asked voters two questions on a single ballot. First, whether they wanted to retain the current electoral system or choose a new one and, second, which of four alternative voting systems should replace SMP, which was decided by plurality vote. Nearly 85% of voters supported changing the electoral system and 70% of voters preferred mixed member proportional representation (MMP) over the other alternatives (Jackson & McRobie, 1998, p.

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<sup>3</sup> Another type of multi-stage popular vote is the ‘mandate referendum’ (Tierney, 2012, pp. 266–269) in which voters are asked on a first ballot to authorize negotiations and, if negotiations are authorized, are later asked to ratify the negotiated agreement in a second, binding referendum. A mandate referendum was used in Quebec’s 1980 referendum on sovereignty, proposed for both the 2012 referendum on Scottish independence and the 2016 referendum on UK membership in the EU (Cummings, 2015; Guardian, 2016), and is required to take place if Greenland ever pursues independence (Mortensen, 2016, p. 16).

I leave mandate referendums aside because they are sufficiently different from runoff and two-stage referendums. Unlike these other two designs, mandate referendums do not include a process of narrowing down the set of available choices.

<sup>4</sup> While other multi-stage referendums may have two stages, the ‘two-stage referendum’ is a distinct institutional design currently only in use in New Zealand. I use the term ‘two-stage referendum’ since that is the predominant nomenclature in both official government reports and reporting on this institutional arrangement.



252). The following year, MMP defeated the status quo with 53.9% of the vote in a binding second referendum (Jackson & McRobie, 1998, p. 255). New Zealand initiated another two-stage referendum on electoral reform in 2011, with essentially the same design, with the second stage to be held in 2014 between the status quo of MMP and the winning alternative. However, in the first stage 56.2% of voters chose to keep MMP and so the binding second stage was canceled (Electoral Commission, 2013).

A third two-stage referendum was held in 2015 and 2016 to determine whether New Zealand should adopt a new flag. The first stage presented five proposed designs for a new flag and voters were asked to rank the alternatives in the order of their preference with Kyle Lockwood's *Silver Fern (Black, White and Blue)* design winning in an instant runoff (Electoral Commission, 2015). The second stage asked voters whether they wanted to retain the current flag or replace it with the Lockwood design. In March 2016, the final result was 56.6% of votes in favor of retaining the current flag (Electoral Commission, 2016).

There are several differences in the institutional design of the two-stage referendums on electoral reform and the two-stage referendum on the flag. In contrast to the electoral reform referendum process, the second stage of the two-stage referendum could not have been canceled by the vote in the first stage since the status quo did not appear on the initial ballot. This ensures that the second stage of voting takes place and creates an opportunity for further deliberation between ballots. Additionally, voters had the opportunity to vote on the status quo twice in the electoral reform referendum processes, which was the result of a government manipulating the design of referendum procedures in an attempt to preserve SMP (Vowles, 1995). In contrast, the flag referendum process was designed to allow only one vote on the status quo. Two-stage referendums vary in the voting rules used to determine the winning alternative to the status quo. The two electoral reform referendums used a plurality rule to choose from the set of alternative electoral systems while the flag referendum used an instant runoff voting rule to select an alternative flag design.

These considerations suggest multiple possible configurations for the design of two-stage referendums, although there are more similarities than differences between the electoral reform processes and the flag process. For instance, both processes make a final decision on the status quo by using majority rule. The main difference appears to be that the opportunity to vote on the status quo twice in the electoral reform referendums makes it possible for a two-stage referendum to

conclude after the first stage, as it did in 2011.<sup>5</sup> Voting on the status quo first has the potential to eliminate the distinctive benefits of the two-stage referendum, namely that it allows citizens to deliberate between stages and set the agenda for the final ballot. As a result, I focus on two-stage popular votes that, like the flag referendum process, ask voters to first choose between two or more alternatives to the status quo in the first stage and to choose between the status quo and one alternative in the second stage.

### *Deliberation and Multi-Stage Popular Votes*

The most detailed theoretical account of multi-stage popular votes is Barber's suggestion that a referendum process in which voters can choose between more than two options and vote in a two-stage process would improve the quality of public discourse (1984, pp. 284–285). The multi-choice format provides a set of options beyond the simple “yes or no” format of many popular votes. His proposed process also attempts to also gauge the strength of support for a policy by allowing voters to select options such as “no for the time being – although not necessarily opposed in principle” (Barber, 1984, p. 286). The second vote is intended to prevent rash action and elite manipulation by giving citizens an opportunity to “reevaluate the results of the first vote” (Barber, 1984, p. 286). Barber's procedure is designed to mitigate the shortcomings of majority rule by deliberating prior to taking the vote, a process that occurs twice due to the iterated voting procedure (Barber, 1984, p. 296; Goodin, 2008, Chapter 6; Landemore, 2012, p. 166).

The major difference between Barber's proposal and multi-stage popular votes in practice is that Barber's design asks voters to vote multiple times on the same set of options. While some of Barber's (1984, p. 286) proposed choices, such as “no for the time being – although not necessarily opposed in principle, suggest postponement” attempt to capture richer information about voter preferences, this added level of detail provides little direct guidance as to which alternative formulation voters might prefer instead.<sup>6</sup> This problem would be aggravated in cases where the result of the first popular vote disagrees with the result of the second popular vote. Runoff referendums avoid this problem by asking the same

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<sup>5</sup> This two-stage referendum design is similar to Iceland's proposed use of two referendums to accept the new constitution in that the status quo has two opportunities to prevail, although it differs in that the Icelandic process did not allow for voting to choose between multiple alternative constitutions.

<sup>6</sup> The distribution of votes over the ballot options may provide *indirect* information about workable alternatives by providing clues to whether there is, for example, a passionate minority being overruled by an apathetic minority.

question but gradually eliminating possible options. Two-stage referendums are designed to prevent this kind of inconsistency by allowing voters to deliberate about a feasible set of concrete alternatives, choose one, deliberate about whether they prefer the winning alternative to the status quo, and then vote on the status quo.

Even though both runoff referendums and two-stage referendums are all ultimately decided by majority rule in the final vote, the structure of runoff and two-stage referendums accommodates a wider variety of options in a way that mitigates a common criticism of popular votes, namely “that complex issues tend to be broken down into ‘this option or nothing’, yes/no questions” that are set by powerful actors (Parkinson, 2006a, p. 171). Furthermore, multi-stage popular votes appear to offer citizens more opportunities for deliberation and agenda-setting. For instance, even though New Zealand’s first two-stage referendum was marked by government manipulation of the available options (Vowles, 1995, p. 104, observers have noted that a relatively high level of deliberation still took place (LeDuc, 2015, p. 147). Yet, while multi-stage popular votes offer more opportunities for deliberation than standard popular votes, the addition of deliberative mini-publics could ensure that this deliberation actually occurs. The next section details how the complementary strengths of multi-stage popular votes and mini-publics could be productively combined.

### **Combining Mini-Publics and Multi-Stage Popular Votes**

I adopt a systems approach that acknowledges that democratic functions might be distributed across different institutions (Warren, 2017). This approach suggests designing institutions in tandem, rather than as isolated entities (Curato & Böker, 2016, pp. 186–187; Parkinson, 2006a). Pairing a multi-stage popular vote with a mini-public – a process I refer to as an iterated popular vote (IPV) – may aid in bridging the gap between micro-deliberation and macro-participation. The IPV is an attempt at institutional design inspired by the notion of “designed coupling,” which seeks to “find the optimal strength of linkages between different parts of a deliberative system” (Hendriks, 2016, p. 55).

Relevant institutional variations are discussed below, but the basic insight is that the initiation stage would be followed by deliberation by a mini-public. An initial campaign would culminate in a first vote that allows the mass public of citizens to set the agenda for the second vote. This would be followed by further deliberation by a mini-public, concluding with another campaign and then a final vote. Thus, the IPV would structure a sequence of deliberative moments between the deliberative mini-public and the mass, voting public by institutionalizing

opportunities for the results of deep deliberation within mini-publics to motivate discussion among the broader public, whose votes set the agenda for future deliberation by the mini-public (Goodin, 2005).

A similar process recently took place in the Canadian municipalities of Duncan and North Cowichan. In November 2014, voters in both municipalities were asked: “Are you in favor of spending time and resources to study the costs and benefits of the amalgamation of the municipalities of North Cowichan and the City of Duncan?” Although the study could have been conducted in several ways, a Citizens’ Assembly on Municipal Amalgamation was convened and mandated to make a recommendation. The Assembly reached a consensus in favor of amalgamation, which will only proceed if it is supported by both municipal councils, the provincial cabinet, and a majority of voters in a public referendum. The main distinction between this process and an IPV is that each step of the process was gradually added, rather than being explicitly designed from the outset as a multi-stage process that included a mini-public between votes.<sup>7</sup>

### *Designing the Iterated Popular Vote*

There are numerous institutional design choices to be made regarding both multi-stage popular votes and mini-publics. In this section, I outline the key dimensions of variation before assessing the normative implications of these variations in the final section. In terms of popular votes, I focus on the runoff and the two-stage referendum design used to vote on New Zealand’s flag. The major outstanding consideration for all types of multi-stage popular votes is whether the process is citizen-initiated or government-initiated. It appears that no existing popular vote process currently enables citizens to initiate a multi-stage popular vote or to even ask for more than one alternative to the status quo to appear on the ballot. While I discuss the implications of citizen-initiated multi-stage popular votes below, it is not clear if this possibility will become a reality.

To address the key design choices for mini-publics, I adopt Johnson and Gastil’s (2015) dimensions of variation. Mini-publics have *final* authority when their decisions are implemented directly and *provisional* authority when these decisions are “subject to a further ratification or approval” (Johnson & Gastil, 2015, p. 13).

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<sup>7</sup> The structure of the BCCA also has some parallels to the iterated popular vote proposal in that the BCCA engaged in a deliberative learning process, then consulted with the broader public, then deliberated about a recommended electoral system. The citizens at large were then given the opportunity to make the final decision. The key difference in this example is that there was a non-binding consultation process where the iterated popular vote would include a first stage of voting that is potentially more inclusive than small consultation meetings.

In the context of pairing two-stage popular votes with mini-publics, mini-publics will be provisional since the decision is ultimately taken by popular vote. Mini-publics are also situated over time in space so that they can be *local* or *trans-local* and *recurring* or a *single event*. Whether mini-publics are local or trans-local will depend on whether the popular vote is local or trans-local. For instance, a mini-public that addresses a municipal referendum would be local, while provincial or national referendums will normally produce mini-publics at similar scales. It remains possible that multiple local mini-publics would be convened for trans-local referendums, but such a process is likely to be cost-prohibitive in many circumstances. Lastly, whether mini-publics are recurring or single-events is also dependent on whether the popular vote process is recurring or not. That is, the Oregon CIR is recurring because the initiative process regularly takes place in November of even-numbered years, whereas the BCCA was a single-event because of the ad-hoc referendum process.

Many of the key dimensions of variation in mini-public design will be predetermined by structural features, although designers do need to choose whether the mini-public will be *embedded* or *autonomous*, with the former including traditionally powerful actors so that deliberation translates to implementation and the latter focusing on the preservation of non-elite deliberation. Existing pairings have almost all been autonomous because they have been designed to provide an alternative to elite discourse by excluding actors that are powerful enough to make their views known through existing channels.

However, it is perhaps best to think of embeddedness and autonomy as poles on a spectrum. The Citizens' Assembly on Brexit was organized without any institutionalized link to arenas of decision-making and was quite autonomous. The Oregon CIR is more autonomous than the Icelandic National Forum as the CIR allows citizens to make recommendations to other citizens, whereas the National Forum allows citizens to highlight priorities for the elected Constitutional Council. The Canadian Citizens' Assemblies are also found somewhere in the middle of this continuum as they were a group of citizens largely kept at arms' length from other state institutions but empowered to influence the enabling legislation for the referendum. The Irish Convention on the Constitution is the clearest example of an autonomous mini-public paired with a popular vote, as it explicitly incorporated elected officials as members. Overall, where designers wish to emphasize implementation and decision-making over inclusion, they may pursue embedded mini-publics, while those who wish to emphasize inclusion may pursue more autonomous designs.

The IPV also requires that designers decide when mini-publics will be active in the process. Mini-publics can precede popular votes, such as in Ireland's use of constitutional conventions, or they can be used during the campaign periods prior to each vote, such as the Oregon CIR, or they can follow the results of a popular vote, as in the Citizens' Assembly on Brexit. Another key decision is whether mini-publics are charged with setting the agenda, making a strong recommendation, or assessing the pros and cons of each option. The British Columbia and Ontario citizens' assemblies were both empowered to set the agenda by putting an option on the ballot, while the Oregon CIR process is a hybrid in that it presents key findings as well as statements both for and against the measure, along with a count of how many participants took each position.

Closely related to this matter is whether the same mini-public will be used for all of these stages or if a new mini-public will be convened during the process. Reconvening the previous mini-public may reduce costs and be composed of citizens who had already learned the subject matter in their initial deliberations (Blais, Carty, & Fournier, 2008; Cutler et al., 2008). However, mini-publics may be biased or perceived as biased if they are believed to have a vested interest in their earlier findings or decisions (Bagg, 2015; Morrell, 2013). This concern may be mitigated if mini-publics are seen as deliberative and their members are regarded as legitimate citizen representatives. Mini-publics might then be understood not to have an illegitimate bias, but rather a commitment to a conclusion formed based on acceptable reasons.

On the other hand, maintaining the same participants throughout the course of the IPV process might also undermine deliberation if external parties attempt to influence participants between votes. Additionally, the quality of deliberation may be reduced by participants whose preferred option loses at the decision-making stage of either the deliberative process or the popular vote.<sup>8</sup> Unfortunately, there is insufficient space to address the full set of arguments in favor of or against reconvening mini-publics or creating new ones, although institutional designers should give serious consideration to this problem.

### **A Democratic Systems Evaluation of the Iterated Popular Vote**

To assess this possibility that an IPV might strengthen the linkage between mini-publics and mass publics, I draw on Warren's (2017) account of the three key functions that link individuals and collectives to facilitate self-government. The first of these functions is empowered inclusion, which includes claims to political

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<sup>8</sup> I thank an anonymous reviewer for raising these possibilities.

status and the ways in which citizens are empowered to press these claims, such as by voting. The second function is collective agenda and will formation, which allows agents to engage with others to “identify and understand their preferences, and relate their preferences to others and collective agency” through processes such as bargaining and deliberation (Warren, 2017, p. 43). The third function is collective decision making, which allows collectives to impose binding decisions upon themselves.

### *Empowered Inclusion*

The ability of popular votes to contribute to the function of empowered inclusion appears straightforward at first glance. When paired with universal suffrage, popular votes include all citizens who are eligible to vote and empower them by giving them an equal right to participate in determining the outcome of a popular vote on a specific issue (Dalton, Scarrow, & Cain, 2004). Yet, formal equality does not necessarily translate into inclusion, particularly for structurally disadvantaged minorities. These problems are exacerbated in citizen-initiated popular votes, which are more likely to target minorities (Lewis, 2013).

The process for assembling a mini-public also raises important considerations about inclusion. Critics suggest that the restricted size of mini-publics poses a meaningful threat to their capacity for inclusion (Chambers, 2009; Curato & Böker, 2016; Felicetti et al., 2015; Lafont, 2015). This problem is particularly notable if the public is seen as a “passive consumer, rather than as [an] active participant” in engaging with the recommendations of these processes (Gastil, Rosenzweig, et al., 2016, p. 176). Mini-publics also appear to face problems of empowerment since citizens appear to have little capacity to sanction or select their randomly selected “citizen representatives” (Mansbridge, 2009a; Montanaro, 2012). However, this problem appears less significant when accountability is understood in deliberative terms that require representatives to give “an account of one’s reasoning rather than being held to account for one’s actions” (Brown, 2006, p. 221).

Random sampling gives every citizen an equal opportunity of being selected and produces cognitively diverse groups that can produce epistemically desirable outcomes (Beauvais & Bächtiger, 2016, p. 4; Brown, 2006). However, minorities can still be excluded through random selection or suffer internal exclusion (Young, 2001) if there are too few minority participants to effectively press their concerns (James, 2008). Stratified random sampling provides an alternative method of selecting participants that allows designers to ensure that a panel “proportionally

represents an underlying public on certain socio demographic criteria” (Beauvais & Bächtiger, 2016, p. 5). While the appropriate selection rule is likely to depend on the particular issue and broader political context, it is worth noting that the integration of the mini-public with a popular vote raises concerns about the tyranny of the majority during the final vote.

Mini-publics can contribute to empowered inclusion by carving out a forum for the sharing of discourses that might otherwise be absent from public debates. These discourses might provide a useful way of holding other actors in the public sphere discursively accountable. Popular votes, by contrast, provide citizens with an aggregative, majoritarian form of empowered inclusion. This suggests that all else being equal, mini-publics that are paired with popular votes might be well served by stratified random sampling, which could amplify reasonable perspectives that may otherwise struggle to gain traction in the adversarial context of popular vote campaigns.

Combining mini-publics and popular votes can mitigate concerns about both inclusion and empowerment. Some mini-publics, such as the BCCA, have addressed these problems by facilitating consultation sessions where mini-public members engage with the broader public in town-hall meetings or similar forums. These processes permit both active engagement with mini-publics and create spaces for citizens to demand reasons from participants. Additionally, the integration of the popular vote with mini-publics means that voting remains a tool of indirect sanctioning, particularly in cases where mini-publics have made recommendations rather than simply providing information about different options. The multiple opportunities for voting provide further motivation for mini-public members to take consultation processes seriously and provide acceptable justifications (Böker & Elstub, 2015, p. 139; Curato & Böker, 2016, p. 181).

### *Collective Agenda Setting*

Popular votes are vulnerable to criticisms that governments or wealthy interest groups are capable of manipulating the agenda by deciding how issues are framed or what citizens will be asked to vote on (Garrett, 1999; Magleby, 1994, p. 35; Setälä, 1999, p. 161). Multi-stage popular votes can distribute agenda-setting power in multiple ways, which can mitigate the risk of elite manipulation by giving citizens the capacity to narrow the set of options, rather than having these options curated for them (Dryzek & List, 2003; Niemeyer, 2013; Tierney, 2012, p. 9).



Yet, agenda-setting power is unlikely to be effectively distributed if the decision to hold a multi-stage popular vote is itself the result of elite manipulation. For example, New Zealand's initial use of the two-stage referendum can be seen as an attempt to split the pro-electoral reform vote by placing four alternatives to the status quo on the ballot (Vowles, 1995, p. 104). Elites can also manipulate voting rules in an attempt to bring about their desired outcome, such as when New Zealand's government chose instant runoff for the first stage of the flag referendum process. This appears intended to rally support for an alternative flag by producing an option that received substantial support as a second or third choice, whereas plurality voting might have produced a winning alternative that was popular among only a small segment of the population (Hunt, 2016).

The IPV can allow mini-publics to set the agenda in isolation from traditionally powerful actors (Thompson, 2008, p. 29). In runoff and two-stage referendums where there are already more than two options, mini-publics might be permitted to add an additional option to the ballot. Such a proposal for reactive agenda-setting could be modeled after legislative counterproposals, which allow legislatures to respond to initiatives by voting to place a competing measure on the ballot. Such a procedure would need clear deadlines so that mini-publics can make additions early enough in the process, although the mere threat of this possibility might prevent legislators or petitioners from strategically restricting options.

Even if mini-publics lack the capacity to add alternatives to the ballot, they could counter attempts at elite manipulation by providing trustworthy, deliberative cues. For instance, mini-publics might provide a way of resolving coordination problems among voters where elites have introduced multiple similar options in an attempt to split the vote. However, observational and experimental research have produced mixed findings about the influence of mini-publics on public opinion, particularly in the face of competing cues (Gastil, Knobloch, Reedy, Henkels, & Cramer, 2018; Gastil et al., 2014; Ingham & Levin, 2018). Further study is required to understand the conditions under which citizens find mini-publics persuasive.

### *Collective Will-Formation*

Evaluations of the ability of popular votes to contribute to collective will-formation vary from pessimistic (Haskell, 2000, p. 11), to skeptical (Parkinson, 2001, p. 132; Uhr, 2000), to hopeful (Barber, 1984; Levy, 2013; Na'puti & Hahn, 2013; Tierney, 2012). The IPV exploits the fact that "a referendum is a series of stages – or deliberation opportunities" (Tierney, 2012, pp. 187–188; see also Gastil & Richards, 2013, pp. 266–269). After the initiation stage, there is an

opportunity for intervention by mini-publics during the campaign. Referendums designed as runoffs or two-stage referendums may have first stages that appear daunting when there are more than two alternatives to the status quo, particularly if these alternatives are unfamiliar to voters. Here, mini-publics could provide information about the available options to assist voters in their own process of deliberation. Alternatively, mini-publics could make a recommendation, whether in the form of an endorsement of one of one or more of the options, criticism of one or more of the options, or a suggested ranking for voters to use if the IPV uses an instant runoff voting rule, as in the first stage of the New Zealand flag referendums.

In runoff IPVs, the mini-public could be convened or reconvened after each round of voting to take stock of the result and repeat the deliberative process to provide more information or another recommendation. This might not be necessary if the mini-public only provides information or recommends an option that successfully advances to the second ballot. The two-stage iterated referendum would differ in that the second stage of voting introduces a new option – the status quo – that was omitted from the first stage of voting. After the results of the initial stage of voting are made public, a mini-public would be convened or reconvened for a second round of deliberation to study and evaluate the status quo and its proposed replacement.<sup>9</sup> The mini-public would then publicize its evaluations of the status quo and the proposed alternatives, as well as the supporting arguments. While the two-stage IPV procedure makes the process slightly more complicated, it has the potential to eliminate the status quo bias commonly associated with referendums by encouraging citizens to seriously consider the alternatives during the first stage of voting (Chambers, 2001, p. 251; Tierney, 2012, pp. 12–13). The two-stage design proposed for the IPV concludes with a simple, binary choice between one alternative and the status quo.

Overall, the alternation between popular votes and small-group deliberation establishes a dynamic process in which the mass public receives new information, such as recommendations, from the mini-public and the mini-public receives information, such as voting results, from the mass public at alternating intervals. These multiple pieces of information may keep the popular vote in the public consciousness over time in a way that stimulates rethinking by citizens and mini-public participants as they are faced with new information and new decisions (Goodin, 2008, Chapter 3). Keeping the mini-public tightly integrated with the popular vote process may increase voters' familiarity with the mini-public,

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<sup>9</sup> While mini-publics might be charged with making a recommendation, voters retain the power to choose differently so the alternative that is available to voters in the final stage may or may not be the alternative that was recommended by the mini-public earlier.

improving the possibility that elite-dominated discourse will be interrupted by the findings of citizen representatives (Gastil et al., 2014).

Some democratic theorists have argued that using mini-publics to provide recommendations reduces them to cue-givers that are incapable of facilitating emancipatory discussion (Böker, 2017, pp. 28–29) or transmitting the complex content of deliberation to a broader audience (Parkinson, 2006b). Similarly, Lafont (2015, p. 50) questions why the judgments of mini-publics should “have any more recommending force than those of other experts that may be substantively superior on their merits?” Yet, Fishkin and Luskin (2006, p. 187) contend that the provision of cues is a specific goal of mini-publics and that the benefit of these cues is greatest where there is a clear choice to be made, as in a popular vote. Thompson (2008, pp. 46–49) similarly argues that providing a cue is the “normatively desirable” role of deliberative mini-publics and that these cues may simply need to be better connected to the broader public. Furthermore, citizens do not appear to accept these cues uncritically, as Gastil et al. (2016, p. 187) report that most voters consider the Oregon CIR to be a source of information that aids their decision-making process rather than a guide as to how they should vote. This seems normatively desirable since competing cues and information serve as one way of counteracting any potentially undue influence from mini-publics (Gilens & Murakawa, 2002; Lupia, 1994; Lupia & McCubbins, 1998).

Cues themselves do not need to convey the full content of deliberation and even those who caution against overly optimistic evaluations of mini-publics, like Fuji Johnson (2015, p. 123), suggest that such deliberative cues can “stimulate broader public thought, discussion, and action.” Perhaps most notable is that the cues that originate from mini-publics are deliberative, in contrast to most other sources of cues, such as partisan elites, which are bound up with strategic considerations (Gastil, 2014). Deliberative cues might generate a process of learning and internal consideration that may be even more important than public discussion for people to update their preferences in light of new information (Goodin, 2008, Chapter 3), a finding that is consistent with evidence that campaigns matter most for popular votes on unfamiliar issues (LeDuc, 2015, pp. 158–160).

In some ways, IPVs reflect Moore and O'Doherty's (2014, p. 317) suggestion to use votes as a way of signaling and recording positions as part of an “iterative deliberative decision procedure.”<sup>10</sup> The structure of iterated two-stage and runoff popular votes might motivate deliberation among those whose desired alternative

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10 A similar iterative procedure is the basis for the legitimacy of “decision-controlling” referendums as described in Setälä (2006).

did not win in the first stage and who now have the option to abstain from the second round of voting or choose between the winning alternative and the status quo, knowing that their preferred alternative has been put to a vote and lost. Mini-publics might play a key role in helping citizens assess the remaining, perhaps less familiar, options and make a decision as the context changes.

### *Collective Decision-Making*

One view of popular votes is that they are uniquely positioned to facilitate a “mass, public act of consent” at the end of a longer process (Parkinson, 2009, p. 15). In other words, they contribute to collective decision-making by providing “a clear decision rule which produces decisive outcomes” on specific policies (Mendelsohn & Parkin, 2001, p. 21). Yet, popular votes vary in their level of decisiveness, as some are binding and some are advisory (Suksi, 1993). Variations in the level of decisiveness underwrite two distinct and opposing critiques of popular votes. The first is that popular votes are too decisive and set largely irreversible “super-precedents” that make it politically difficult for legislators to revisit a topic, even if there is no formal prohibition against doing so (Chambers, 2001; Donovan, 2007). The second is that advisory popular votes are often simply ignored, although this problem appears to plague even binding votes in some instances (Gerber, Lupia, McCubbins, & Kiewiet, 2001). Pairing mini-publics and popular votes offers a way of mitigating both concerns.

The problem of irreversibility is particularly troubling where decision-making procedures or voter choices have been manipulated. Mini-publics can provide a basis for objections to the result, particularly where the deliberative recommendation of the mini-public contrasts with the aggregative result of the popular vote. This is not to suggest that mini-publics are inherently correct, but that they can motivate further debate on an issue. For instance, the 57% of voters who agreed with the BCCA’s recommendation to adopt STV failed to meet the unprecedented 60% threshold that had been imposed. The decision to hold a second referendum on the issue in 2009 appears to have been influenced, at least in part, by the tension between the aggregative result of the popular vote and the BCCA’s deliberative recommendation (Pilon, 2010, pp. 79–80). To be clear, this is not to say that mere disagreement between mass publics and mini-publics is grounds for reopening an issue, but that where the results are close, mini-publics can provide additional reasons for not settling an issue.

Concerns about governments who fail to implement the policies selected by a popular vote might also be addressed by an IPV as well. Structuring the vote in multiple stages allows for more options to be included from the outset and makes

it clear to voters that eliminated options had a chance but have been removed from the agenda for the time being. This reduces the significance of a key obstacle to the acceptance of popular vote results as binding, namely arguments that the result should not be considered binding because there was an omitted third option (Weale, 2017). The addition of the mini-public appears to offer little benefit to the function of decision-making since they tend to have only provisional authority. However, mini-publics and their findings – particularly where they have made strong recommendations – have the potential to remain useful for those in the broader public who seek to pressure governments into respecting the results of the vote. Crucially, these findings serve as complements to the result of the vote so that advocates can insist that the result has both aggregative and deliberative legitimacy.

## **Conclusion**

Democratic theorists have been right to consider how multi-stage popular votes might better realize democratic aims. However, this research agenda has largely been overshadowed in recent years by experiments in supplementing popular votes with deliberative mini-publics. Empirical evidence suggests that simply adding mini-publics to binary, one-time popular votes is not always capable of facilitating high-quality deliberation among the mass public. The systemic turn in democratic theory provides an opportunity to bring these two lines of inquiry together. Empirical evidence from both the use of multi-stage popular votes and the pairing of mini-publics and popular votes demonstrates both democratic benefits and shortcomings. I suggest that combining these innovative procedures into an IPV could minimize the functional shortcomings of both mini-publics and multi-stage popular votes.

Like mini-publics and multi-stage popular votes, the IPV is a realistic proposal, although one that is certainly more complicated and costly in the short-term than more traditional popular vote procedures. However, these costs may be worthwhile in the long-term as a way of shoring up democratic practice and building legitimacy for the decisions that are taken. For instance, the IPV shifts processes of deliberation and compromise upfront so that what is being voted on in the decisive stage is clear, rather than the final vote serving as the start of negotiations about the interpretation of the result. Moreover, there seems to be widespread dissatisfaction with the use of referendums. The recent release of reports on referendums from both the Constitution Unit's Independent Commission on Referendums and the Irish Citizens' Assembly suggest that there may be an appetite for more thoughtful referendum processes, even if they impose greater short-term costs.

While there is no certainty that the proposed benefits would all be realized in practice, there are compelling theoretical and empirical reasons to think that the IPV could contribute to the key democratic functions of empowered inclusion, collective agenda setting, collective will formation, and collective decision-making.

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