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Response to Review

Deliberative Democracy: An Empirical Note

RICHARD A. POSNER

THE EDITORS HAVE INVITED ME to comment on Richard Pildes's review of my recent book on legal pragmatism and democratic theory.¹ Pildes's review has a twofold focus: (1) the contrast that I emphasize between deliberative democracy and the Schumpeterian concept of democracy, which is usually called "elite" democracy, though a better term is "competitive" democracy; and (2) the unfortunate preoccupation of legal scholars with what Pildes calls "rights-oriented democracy." He points out that neither the advocates of deliberative democracy nor the rights-oriented theorists express much interest in or insight into the actual workings of a democratic political system. The former want a quite different system, in which reasoning to consensus would displace the unedifying power struggles that characterize real-world politics, while the latter insist on the vindication of abstractly stated rights, such as "one man, one vote," regardless of the real-world consequences. The fiasco of the 2000 Presidential election stimulated some interest in legal academic circles in the actual operation of the democratic process—indeed, it is what first got me thinking about democratic theory—but democracy continues to be a surprisingly neglected subject in the nation's law schools.

Pildes, a leader in the field, is distressed by

this neglect, and he agrees with me that competitive democracy provides a better description of our actual existing political system and therefore a better starting point for the analysis of suggested reforms. He blurs the message a bit, by emphasizing more than I would the overlap (which I acknowledged in my book) between deliberative and competitive democracy; despite the overlap, the differences in tone and orientation are profound. Pildes would like me to have devoted greater attention to specific reforms, but this would not have been practicable; the book was already quite long, and, unlike him, I am not a specialist in election law or the design of political institutions. My aim was modest: to expound a systematic version of Schumpeter's theory (Schumpeter himself had merely sketched the theory) and, in part through such exposition and in part through a critique of competing approaches, to persuade readers of the superiority of the Schumpeterian approach to the other approaches on offer, both as positive and as normative analysis.

Pildes expresses frustration at my use of the term "pragmatic," which he claims I attach to anything that "people like him [i.e., Posner] know and believe."² He illustrates with my statement that "pragmatists are not impressed" by arguments for populist democracy. That is not quite what I said; and the difference be-

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¹Richard H. Pildes, "Competitive, Deliberative, and Rights-Oriented Democracy," 3 *Election Law Journal* 685 (2004), reviewing Richard A. Posner, *Law, Pragmatism, and Democracy* (2003).

²Pildes, note 1 above, at 695.

tween what I said and what he says I said, though small, is significant. The statement “pragmatists are not impressed” follows the sentence in my book in which I say that populist democracy “argues that since democracy means rule by the people, the people are entitled to rule”; and the first reason I give for why pragmatists are not impressed is that they “do not see how entitlement enters the picture.”³ Pragmatism is concerned with consequences, rather than with entitlements defended without regard to consequences. Pildes, with his justifiable disdain for “rights-oriented democracy,” seems to me a pragmatist in just that sense.

What is correct—but it is a point that my book emphasizes at perhaps tedious length—is that pragmatism has no political valence and so cannot be used to arbitrate among suggested reforms. The hope of the pragmatic analyst can only be that, if the consequences of alternative policies are well understood, there is sufficient value consensus to enable those consequences to dictate the choice of policy. This point I shall now illustrate with a short empirical study.

Deliberative democrats regard the low voter turnout characteristic of American elections as a bad thing, a sign of the American people’s refusal to comply with its civic duty of deliberating about political questions; for if persons eligible to vote deliberated and reached a considered conclusion, they would surely take the time to vote. This is by no means clear; the conclusion of their deliberations might be that it was impossible to make a rational choice between candidates, either because of lack of information or because (a closely related point) the candidates had such different strengths and weaknesses that it was impossible to make a net assessment of which candidate was superior.

But deliberative democrats think otherwise; hence the Ackerman-Fishkin proposal of “Deliberation Day,”⁴ a national holiday that would be scheduled shortly before each national election. On that day, registered voters would meet in small neighborhood groups to discuss the forthcoming election. Attendance would not be compulsory, but anyone who did attend and then voted would receive \$150.⁵ Pildes describes the proposal as “grandiose . . . a quixotic and highly contrived academic exercise.”⁶ I am of the same mind. But neither Pildes nor I could

convince Fishkin or Ackerman that “Deliberation Day” was a bad idea unless perhaps we could show that it would not increase turnout. This would not be a conclusive argument against the proposal, because they might counter that those who did vote after having attended a deliberation session would vote more intelligently. But still if there were no increase in turnout, the case for “Deliberation Day” would be greatly weakened, because the implication would be that the only people attending the deliberation sessions were people who *already* took seriously their civic duty of political participation—that the promise of \$150 had not lured any other people into becoming participants. So it is no surprise that Ackerman and Fishkin do claim that “Deliberation Day” would result in increased voter turnout.⁷

Their claim cannot be tested directly, because there is no such holiday. But it can be tested indirectly by determining whether states in which Presidential candidates are picked by caucus rather than by primary have higher turnouts in Presidential elections. (The number of states in which one or both parties used caucuses to pick their Presidential candidates was 35 in 1960 but had declined to 9 by 2000.) Caucuses resemble the deliberation sessions that Ackerman and Fishkin wish to promote. Instead of just casting a vote, the citizen meets with other citizens before voting. If caucuses do not increase turnout, it is unlikely that “Deliberation Day” would do so. Granted, as Ackerman and Fishkin point out, caucuses are decision sessions, rather than discussion sessions as such, although of course discussion takes place; and except in Iowa, only a small percentage of registered voters attend caucuses, fewer than vote in primaries in primary states.⁸ These facts in themselves are telling against the

³Posner, note 1 above, at 155.

⁴Bruce Ackerman and James S. Fishkin, *Deliberation Day* (2004).

⁵Posner, note 1 above, at 136–137 n. 15; Posner, “Smooth Sailing,” *Legal Affairs*, Jan./Feb. 2004, p. 40.

⁶Pildes, note 1 above, at 694. Ackerman and Fishkin call their proposal “realistic utopianism”—an oxymoron if ever there were one. Ackerman and Fishkin, note 4 above, at 13.

⁷*Id.* at 23, 93–94.

⁸*Id.* at 125.

realism of Ackerman and Fishkin’s self-described utopian proposal. But even if there isn’t much discussion at caucuses and most registered voters don’t attend, one might suppose that the existence of an institutionalized opportunity for making political decisions in face-to-face meetings would have a discernible if perhaps slight effect in the direction of that predicted for “Deliberation Day.” The leading study of caucuses, which Ackerman and Fishkin cite with approval, states that “caucuses are probably a more involving and educational form of participation than primary voting, though they fall well short of the strong democratic ideals propounded by many political theorists.”⁹

Tables 1 and 2 present the results of a regression analysis designed to isolate the effect of caucuses on turnout (defined as percentage of the adult voting-age population that voted), in each Presidential election in the period 1960–2000, from the effects of other circumstances that might be expected to influence turnout. The other circumstances include the state’s per capita income (inflation-adjusted), the percentages of the state’s population that graduated from high school and from college, the percentage of young people (who tend not to vote) and of old people (who tend dispropor-

TABLE 2. REGRESSION OF VOTER TURNOUT WITH YEAR AND STATE DUMMIES

<i>Independent variable</i>	<i>Coefficient</i>	<i>t-Statistic</i>
Income	0.00	0.85
High school	0.39	3.91**
College	0.09	0.37
Age 20–24	–1.78	–3.31**
Age 60–100	0.11	0.35
Black	–0.11	–3.22**
Vote ratio	–0.02	–0.46
Caucus	–0.50	–0.95
Constant	50.82	6.33**

No. observations = 408. Prob. >F = 0.0000. R-squared = 0.88.

tionately to vote), the percentage of the population that is black (as they tend to undervote), and how close the Presidential election was in the state. Although the higher a person’s income is, the more costly it is for him or her to vote, because the principal opportunity cost of voting is the time it takes to vote, higher-income people are likely to be more “connected” to society, have more leisure, have greater flexibility in the use of time, are less likely to screw up in the voting booth and cast an invalid ballot, and are less likely to be felons or noncitizens and therefore ineligible in many states to vote. It is unclear how these income-related considerations balance out, and so turnout might be either positively or negatively correlated with income. Education, however, once income (with which education is positively correlated) is adjusted for, should unequivocally increase turnout. The closeness of the election might be expected to increase turnout as well, since closer elections, like other close contests, elicit more interest than elections whose outcome is foreordained. (The variable “Vote Ratio” in the tables measures the ratio of votes for the winning candidate to the total number of votes cast in the state; the lower the ratio, the closer the election.) And because voter turnout fell throughout the period covered by the analysis, year dummies are included to reflect the effect of time on turnout.

TABLE 1. REGRESSION OF VOTER TURNOUT WITH YEAR DUMMIES

<i>Independent variable</i>	<i>Coefficient</i>	<i>t-Statistic</i>
Income	–0.000	–0.86
High school	0.512	7.14**
College	–0.013	–0.08
Age 20–24	–1.932	–3.57**
Age 60–100	0.516	3.31**
Black	–0.207	–4.92**
Vote ratio	–0.035	0.81
Caucus	0.240	0.35
1976	–3.270	–2.52*
1980	–5.845	–3.56**
1984	–7.935	–4.24**
1988	–14.359	–6.65**
1992	–10.469	–3.58**
1996	–19.339	–5.41**
2000	–17.019	–3.53**
Constant	41.131	5.14**

*Significant at 5% level.

**Significant at 1% level.

No. observations = 408. Prob. >F = 0.0000. R-squared = 0.49.

⁹William G. Mayer, “Caucuses: How They Work, What Difference They Make,” in *In Pursuit of the White House: How We Choose Our Presidential Nominees* 105, 145 (William G. Mayer, ed., 1996).

(A dummy variable is a variable that takes a value of 0 if it is absent and 1 if it is present.) The caucus variable is also a dummy variable, which takes a value of 0 if neither party in a state uses caucuses and 1 if both do. In Table 2, state dummies are added to the variables in Table 1 (but the year and dummy variables are not shown), to reflect the possibility that state-specific demographic, cultural, or political factors not reflected in any of the other variables influence turnout. The only significant effect, besides increasing the amount of variance in the data that the regression equation explains, is that the age of >60 variable is no longer statistically significant.

All the independent variables have the predicted sign (remember that income does not have a predicted sign), except the vote-ratio variable in Table 2, and almost all are highly significant statistically. However, the variable of in-

terest—the caucus variable—is insignificant in both tables. The equations as a whole make an excellent fit with the data, as indicated by the value of Prob. > F, and explain almost half the variance in Table 1 and almost nine-tenths of it in Table 2.¹⁰ So there is now statistical evidence against the theory of political participation that underlies the proposal for “Deliberation Day” and, more broadly, that animates the beliefs of the deliberative democracy movement.

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¹⁰Data sources and other details of the regression analysis are posted on my University of Chicago Law School web site, <http://home.uchicago.edu/~rposner/>.