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HOWARD DeLONG†

In a speech before the House of Commons on November 11, 1947, Winston Churchill repeated what had long since become a common opinion among democrats. “No one pretends,” Churchill observed, “that democracy is perfect or all-wise. Indeed it has been said that democracy is the worst form of Government except all those other forms that have been tried from time to time.” Although Churchill’s claim has remained entrenched, it is only partly true. Democracy is certainly better than its rivals. It is also true that the serious faults which democracies exhibit worldwide provide evidence that it may be a bad form of government. But that it must be a bad form is doubtful. I believe that an analysis of political thought from America’s founding era can justify the doubt and thus raise the hope that democratic politics can exhibit a high degree of excellence.

Although democracies have existed at various times in human history—for example, in medieval Iceland and Switzerland—there have been only two important periods of democracy. The first began in Greece toward the end of the sixth century B.C. It lasted about two centuries. The second began in America in the second half of the eighteenth century. So far it has also lasted about two centuries. The American revolutionists took history seriously and tried to learn from past errors. What is surprising is their hostility to the Greek experiment. According to Alexander Hamilton, “[t]he ancient democracies, in which the people themselves deliberated, never possessed one feature of good government. Their very character was tyranny; their figure deformity: When they assembled, the field of debate presented an ungovernable mob, not only incapable of deliberation, but prepared for every enormity.” Modern scholarship has not ratified Hamilton’s sweeping and harsh judgment. Athenian

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Roundtable democracy, for example, was very much concerned with liberty and equality. Yet Hamilton's hostility was not to democracy itself, but to mob rule; in fact, he believed the best form of government to be a "representative democracy." Thomas Jefferson also stressed representation. The ancient Greeks, Jefferson said, "knew no medium between a democracy . . . and an abandonment of themselves to an aristocracy, or a tyranny independent of the people. . . . The full experiment of a government democratical, but representative, was and is still reserved for us. . . . The introduction of this new principle of representative democracy has rendered useless almost everything written before on the structure of government."

The problem of achieving representation in practice, however, was often formidable. As James Madison observed in his notes of the Federal Convention: "if the opinions of the people were to be our guide, it wd. be difficult to say what course we ought to take. No member of the Convention could say what the opinions of his Constituents were at this time; much less could he say what they would think if possessed of the information & lights possessed by the members here." So what could be done? One option was to make legislators statistically representative with respect to profession. The Founders agreed with Hamilton that this option was "altogether visionary." There are too many professions and free elections would not produce such outcomes. Instead a legal model was adopted: as a lawyer represents a client, so government officials represent the people. In the words of John Adams: "Rulers are no more than attorneys, agents, and trustees, for the people . . . ."

Yet the study of ancient democracies convinced the Founders that rulers should not represent all the opinions of the people, but only what Jefferson called the "common reason of society" and Madison "the cool and deliberate sense of the community." The Founders' intention can be understood by looking at the individual. Individuals know that they will have weak moments in the future. Hence they can take a variety of self-paternalistic actions to guard against those moments. Thus, a man might authorize friends to prevent him—with force if necessary—from driving home if he gets drunk at a party. A democratic people might likewise authorize the government to prevent the people—with force if necessary—from lynching a person who has not received a fair trial. A representative democracy, as understood by the Founders, is

structured to insure the triumph, in political matters, of critical reason over irrational desire. "[I]t is the reason of the public alone," Madison maintained, "that ought to control and regulate the government. The passions ought to be controlled and regulated by the government."

Yet it is a mistake to think that representatives need only use their reason and that, since reason is universal, their actions will automatically be consistent with the reason of the people. It is a mistake because reason is not always universal in the requisite sense. "When men exercise their reason coolly and freely, on a variety of distinct questions," Madison points out, "they inevitably fall into different opinions on some of them. When they are governed by a common passion, their opinions, if they are so to be called, will be the same." Madison had no answer to the question of how the reason of the public, which he believed should prevail, could even be known let alone triumph on those occasions when it was different from the reason of the rulers. Jefferson, however, did. In a letter to John Adams, he proposed that Virginia be divided into small political units called wards. Then a "general call of ward-meetings . . . on the same day thro’ the state would at any time produce the genuine sense of the people on any required point, and would enable the state to act in mass, as your people have so often done, and with so much effect, by their town meetings.” Jefferson considered wards so important that he called them the “most admirable of all human contrivances in government.” They were the means by which the common reason of society would be an effective remedy to the ineptitude and corruption that are so characteristic of political life.

Virginia never implemented a system of wards. In a real sense, Jefferson’s idea was ahead of its time because its development requires a host of disciplines, such as sampling theory, and a host of technologies, such as telecommunications, which did not then exist. The proposal is perhaps the first ever made for what is now called teledemocracy (literally, democracy at a distance). In teledemocracy the people do not assemble en masse; only their views, so to say, are assembled into a collective decision. In Jeffersonian teledemocracy those views must be the product of deliberation conducted in small groups. Jefferson saw that the self-interest of rulers corrupts the representative process of democratic government. As a remedy he proposed a political mechanism which would express the common reason of the people and thereby check or destroy the power of rulers who are unfaithful to that reason. In spite of Jefferson’s enthusiastic advocacy, and in spite of his status as one of the greatest democrats of all time, his idea has received little attention either as a theory or as a practical proposal for political reform.

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11. Id at 463.
12. Id at 472.
I will attempt to remedy that neglect by providing a sketch of a deliberative teledemocracy in the spirit of Jefferson. My aim is the comparatively modest one of showing that Jeffersonian teledemocracy might be a fruitful idea. To demonstrate that it is actually fruitful is beyond my competence and would, in any case, require many scholars both to articulate theory and perform political experiments. Since a fruitful idea is one that illuminates many areas, I must of necessity refer to a large variety of topics. For this I apologize in advance, and hope others will pursue what is here only an incomplete summary.

I. A Court of Common Reason

Jefferson states that in the wards "the voice of the whole people would be . . . fairly, fully, and peaceably expressed, discussed, and decided by the common reason of the society." Now let us suppose that Congress creates a court of common reason and establishes a federal department to run it. To insure equality, the court chooses a large, statistically representative group of Americans to serve on an advisory jury. Its members would be chosen so that there would be a high degree of certainty that the deliberative voice of the jury would match the deliberative "voice of the whole people." Of course, infants, the senile, etc., would be excluded, but if, for example, Californians are x percent of Americans, Californians will be x percent of the jury; if there is y percent of the population who earn less than $12,000 a year, then there will be y percent of such individuals on the jury, and so forth. The jury's job would be to deliberate and answer political questions. Their answers could guide the President, members of Congress, judges, and other public officials in the performance of their duties. The kinds of questions that could come before the court are almost endless: What sorts of information may be kept secret from the public? What kinds of taxes should the government impose? Under what conditions should abortion be allowed? What is the social cost of smoking? How many people should be allowed to immigrate? Even second-order questions could be used. For example, one part of the jury could be asked to approve the questions (say, on welfare) which would then be put to another part of the jury. Of course, decisions would not be determined for all time, but would be periodically revisited, so a point of view that fails on one occasion may triumph at a later time, when the people's considered judgments have changed. State and local courts could likewise be established.

As in ordinary courtrooms, the advisory jury would hear opposing arguments, whose presentation is governed by fair and impartial rules. The competition among opposing arguments would help ensure that the jury's decisions are products of critical reason. Before listening to arguments and deliberating, the jury is divided into subjuries, each consisting of twelve people. Each subjury will have its own jury room and be isolated from other subjuries. This

15. Ford, 10 The Writings of Thomas Jefferson at 44 (cited in note 9).
will protect against groupthink and mob decision. As Madison warned, "In all very numerous assemblies, of whatever characters composed, passion never fails to wrest the sceptre from reason. Had every Athenian citizen been a Socrates, every Athenian assembly would still have been a mob." A decision of a subjury counts only if the decision is unanimous. As in a trial jury, the requirement of unanimity promotes the goal of a considered judgment, since each must convince others if his or her point of view is to prevail. The decision of the entire advisory jury is determined by a plurality of the decisions of those subjuries that achieve unanimity. For example, suppose an advisory jury of 12,000 people is divided into 1,000 subjuries. On a given question the total of the subjuries might be 487 affirmative, 301 negative and 212 undecided (unanimity not being achieved in those subjuries). Hence the advice to governmental officials is affirmative. If 10 percent of the subjuries are negative and the rest undecided, the advice is weakly negative; if 85 percent of the subjuries are affirmative, the advice is strongly affirmative. The court of common reason thus measures the strength, as well as the nature, of the people's advice. The probability of a subjury being unanimous can be increased by posing a number of questions at once. Compromise can then be achieved by vote trading: ("I will vote with you on the second question, if you vote with me on the third.") In short, the aim of a court of common reason is to create an environment in which the people could identify their informed values, come to considered judgments, and make responsible decisions.

The size of the advisory jury can be enlarged indefinitely to increase civic participation. Equally important it can be split to increase efficiency. Critics who claim that direct democracy must be inefficient overlook this simple point: just as creating superfast computers requires parallel processing, where a number of computations are carried out by different microprocessors at the same time, so the efficient determination of the common reason of society requires parallel deliberation, where a number of subjuries deliberate on different aspects of that reason at the same time. For example, a 12,000-member advisory jury could decide ten questions simultaneously by being split into ten parts of 1,200 each, so each part—consisting of 100 subjuries—could, in the same time frame, answer a separate question.

A court of common reason is a democratic marketplace for political ideas. In the abstract, one cannot compare the aesthetic value, or taste, of carrots, peaches and shrimp, but an ordinary marketplace enables us to compare concretely their economic value at a given time and place. Similarly, one cannot compare abstractly the commercial claim to exploit a piece of government property for coal versus the conservationist claim that the land should not be disturbed. Yet a court of common reason enables us to compare concretely the political value of these claims at a given time and place. A command polity is no more necessary than a command economy.

By eighteenth-century standards, the American revolution itself was
authorized by deliberative teledemocracy. This is how John Adams described the process in a letter to his wife Abigail on July 3, 1776:

Time has been given for the whole People, maturely to consider the great Question of Independence and to ripen their Judgments, dissipate their Fears, and allure their Hopes, by discussing it in News Papers and Pamphletts, by debating it, in Assemblies, Conventions, Committees of Safety and Inspection, in Town and County Meetings, as well as in private Conversations, so that the whole People in every Colony of the 13, have now adopted it, as their own Act.17

Near the end of his life George Washington, the leader of that revolution, referred to the deliberative standard as guiding his whole career: "It always has been, and will continue to be, my earnest desire to learn, and to comply, as far as is consistent, with the public sentiment; but it is on great occasions only, and after time has been given for cool and deliberate reflection, that the real voice of the people can be known."18 Today our political leaders are in the same position as Washington: they can reliably know the "real voice of the people" only on infrequent occasions. But they have little excuse for their ignorance: the growth of knowledge since the eighteenth century makes possible a new political option, namely, to routinely decipher the "real voice of the people." Our failure to exercise this option is one of desire, not opportunity.

II. The Dearth of Desire

A skeptic might claim that a court of common reason is either impossible or impractical to construct. After all, there are logical problems concerning the fairest way to present a variety of views on a given subject, there are psychological problems of how to motivate citizens to participate, there are political problems getting Congress to authorize a trial of deliberative teledemocracy, and so forth. Yet any large and new undertaking in human affairs produces many skeptics—sometimes very knowledgeable skeptics—who charge that the undertaking is either impossible or impractical. For example, ENIAC, the breakthrough device that marked the beginning of the computer industry in this country, was largely and actively opposed by members of the scientific elite, including Vannevar Bush of MIT and George Robert Stibitz of Bell Labs. Even after ENIAC was operational—it completed its first major computation in December of 1945—there were plenty of distinguished skeptics. As late as 1947, for example, Howard Aiken of Harvard reportedly said that "there will never be enough problems, enough work for more than one or two of these computers."19 American democracy produced its own distinguished skeptics.

Jeremy Bentham thought the American revolutionists had “out done the utmost extravagance of all former fanatics.”\(^\text{20}\) He believed the Declaration of Independence to be “a hodge-podge of confusion and absurdity.”\(^\text{21}\) Nor was Bentham alone in his misunderstanding of American democracy. Misled by a tradition that includes Plato, Aristotle, Montesquieu, and Rousseau, Hegel denied that the example of America “proves that republican states are possible on a large scale,”\(^\text{22}\) even though the Constitution had already been in force for over forty years.

The source of these skeptical errors is a failure of self-examination—the skeptics do not see that their experience and convictions might cripple their imagination as to the feasibility or importance of some new undertaking. ENIAC involved such a novel blend of so many disciplines—mathematical logic, physics, chemistry, electronics, and so forth—that the skeptics were in no position to claim either that it would not work or, if it did work, that it would not be useful. In retrospect, their skepticism seems quite foolish. The same holds true for the formation of the American government which involved novelties of geography, written constitutions, explicit bills of rights, federalism, and so forth. Could Bentham have been more wrong than to call the American revolutionists “fanatics”? Could Hegel have been more wrong about the possibility of large republican states? Distrust of uncritical skepticism is as wise as distrust of uncritical belief. Especially when faced with a fundamentally new undertaking, it is important to ask in what respect one’s own experience and education might be misleading. A court of common reason involves such a novel blend of logic, philosophy, political science, rhetoric, psychology, social choice theory, law, statistics, and so forth, that it is difficult to justify initial skepticism with solid evidence and reasoning. The only way to find out whether a revolutionary technology—such as a computer, or a court of common reason—is actually possible and useful is to make imaginative and persistent attempts to create and use it. The issue cannot be decided ahead of time, even by the most knowledgeable.

In the end, and in the face of strong opposition, ENIAC was funded, not because all doubts had been removed, but because the Army was desperate to solve seemingly intractable problems of ballistic calculations. Are we not also desperate to solve seemingly intractable problems of politics, desperate enough to justify, in spite of doubts, a substantial test of Jefferson’s revolutionary idea? Yet no such test has been conducted. Why? The answer, I think, can be found by looking at why the ancient Greeks did not use their technological capabilities to make laborsaving devices. In my judgment, the most important reason was a dogmatic or unconscious cynicism about the material world, and

\(^{20}\) Timothy L.S. Sprigge, ed, 1 The Correspondence of Jeremy Bentham 341-343 (Athlone 1968).


about people who work with their hands, such as engineers or artisans. For example, in Greek literature, Hephaestus, the divine craftsman, is the only god with physical defects, and he himself is subject to ridicule. In philosophy, both Plato and Aristotle disparaged physical matter and the laborer who works with it. In mathematics, Archimedes thought it demeaning to apply his talents to the physical world. Plutarch tells us that since Archimedes regarded "the work of an engineer and every art that ministers to the needs of life as ignoble and vulgar, he devoted his earnest efforts only to those studies the subtlety and charm of which are not affected by the claims of necessity." The Greeks, then, often assumed that excellence and engineering are incompatible. In retrospect, their view is easily refuted. Archimedes would be astounded to know, for example, that the cattle problem which he made famous, and which confounded mathematicians for twenty-two hundred years, was solved in 1981 in ten minutes by an engineering device—the Cray 1 supercomputer. (The solution, which gives the number of cattle, has 206,545 digits and takes up 47 computer pages!)

The cynicism that Plato, Aristotle, and Archimedes had about the engineering world, we have about the political world. It is typical for us to use political as a pejorative term, to think of politicians as mainly or completely corrupt, and to understand the people as the masses, incapable of any thought or emotion that is not base. This cynicism contrasts strongly with the political optimism of eighteenth-century Americans. Their optimism seems utterly baffling to us. How, we wonder, could men so practical, and so well aware of the defects and limitations of human nature, be so naive about politics? Consider the words of the first four Presidents: Washington declared the purpose of the American revolution was to achieve "the last stage of perfection to which human nature is capable of attaining." Adams thought that the laws that govern our political life were as "uniform or certain" as the laws of biology or physics and that it was crucially important "to make man, as man, an object of respect." He had an absurdly optimistic aspiration for America that nevertheless turned out to be correct. "It has ever been my hobby-horse," he said, "to see rising in America an empire of liberty, and a prospect of two or three hundred millions of freemen, without one noble or one king among them." Jefferson's optimism was expressed by appealing to a scientific conception. "[I]n time," he said, "all these [state governments] as well as their central government, like the planets revolving round their common sun, acting & acted upon according to their respective weights &c distances, will produce that beautiful equilibrium on which our Constitution is founded, and which I

believe it will exhibit to the world in a degree of perfection, unexampled but
in the planetary system itself.” Not to be outdone, Madison thought that
“the destined career of my country will exhibit a Government pursuing the
public good as its sole object, . . . a Government . . . whose conduct within
and without may bespeak the most noble of all ambitions—that of promoting
peace on earth and good will to man.”

The lack of a history of feudalism and the incredible physical assets of the
North American continent, are just two of many reasons that have been given
for the tremendous political achievements of eighteenth-century Americans. In
my judgment, however, the most important reason is their conviction that
politics can be an arena of human excellence, a place where the noble and
talented can aspire to lasting honor and fame. Although the ancient Greeks
invented clever engineering devices—self-moving marionettes, sound-effects
machines in theaters, coin-operated vending machines for holy water, water
clocks, self-opening doors, steam engines—their cynicism crippled their imagi-
nation, and thus they did not develop their technology in ways that are
obvious to us. For example, they did not spend substantial sums of money
trying to create laborsaving devices even when slaves were expensive. And we
do not spend substantial sums of money trying to discover the common reason
of the American people. We have all the disciplines and technology to create
Jeffersonian teledemocracy, but fail to act, even in the face of an avalanche of
unsolved political problems.

Our cynicism may be understandable, but it is certainly paradoxical. In
biology, the human brain is presented as the most sophisticated and complicat-
ed thing in all of nature, with enormous flexibility and awesome powers far
beyond our present understanding. But in political science, ordinary peo-
ple—human beings who possess these wonderful brains—are presented as
forever unwilling or incapable of the deliberative reasoning that excellent self-
government requires. We know that comparing a microprocessor to a human
being is like comparing a candle to the sun. Yet we are willing to spend
billions of dollars to create massively parallel computing that combines 64,000
or more microprocessors, but we do not even think of creating massively
parallel deliberation that combines 64,000 or more autonomous persons. We
treat microprocessors with respect, optimistically confident that we will
eventually make them collectively intelligent. We treat ordinary humans in their
political capacity with disrespect, cynically convinced that they are incapable
of being collectively intelligent. Our colleges and universities have rightfully
created departments of computer science in response to the enormous demand
to understand and improve computation by machines, but they have not
created departments of deliberator science since there is no similarly strong
demand to understand and improve deliberation by humans.

Yet the cynical claim that ordinary humans cannot collectively be intelli-

gent is dubious. Consider a theorem first proved in 1785 by the Marquis de Condorcet. In a generalized form, Condorcet's jury theorem, as it is now called, states that if voters are faced with yes-no questions, if they answer them independently, and if the probability of an average voter's choice being right is better than chance, then, as the size of the group increases, the probability of the group's majority decision being right approaches certainty. Thus we should expect that if each person in a group of people takes an intelligence test which has only binary choices, and if each works independently, the chance of getting a perfect score through majority vote on each question would approach certainty as the size of the group increases. This assumes that the average person in the group is minimally competent, that is, on any given question the person is more likely than a random device to give a right answer. However, suppose that the average person is less likely to give the right answer. Surprisingly, democratic hope is not thereby extinguished. For example, in the classic 1957 movie *Twelve Angry Men*, each member of the jury was wrong in his initial judgment (the jury was, so to say, maximally wrong) but, because one juror wanted to deliberate, the jury eventually made the right decision. In the design of the court of common reason, I tried to increase the competence of the "average voter" by making that "voter" be a subjury whose decisions are arrived at independently and are products of deliberation and unanimous decision. If a majority exists and minimal competence is achieved then, as the number of subjuries is increased, the likelihood that the best binary choice will be made increases without limit. For example, by the mathematics of the jury theorem, if there are at least 13,628 subjuries, where the chance of an average subjury being right is 51%, then the chance that a majority of subjuries is right is greater than 99%. This example shows that even minimal competence by unanimous subjuries can rather quickly generate great proficiency by advisory juries. Advisory juries could thus create new standards of excellence in articulating the voice of the people.

In my judgment, we can better understand collective political decision-making by studying successful deliberations in areas where a correct answer is well-defined, such as in logic, medicine or engineering. By *successful* I mean cases where the knowledge and talents of each individual in the group is insufficient to get the correct answer, but where the group's collective deliberation is sufficient. The greater the divergence between individual and collective achievement, the greater the success of the deliberative system. For example, we might be able to devise a system which would rather consistently allow a jury, whose subjuries are all made up of individuals with an IQ below average, to deliberate and collectively achieve an IQ well above average. The experience of devising successful systems for a variety of topics in which correct answers

are known could then be applied to political decisions. These decisions generally involve judgments of preference or value, but such judgments, no less than factual judgments, can be guided by deliberative reason. If that deliberation is careful and thorough, the judgments become the informed preferences, or the informed values, which the Founders argued should be the basis of public policy. We verify that computers are sound by having them calculate the decimal expansion of \( \pi \). Perhaps exercises in critical thinking, where answers are known, could verify that advisory juries have deliberative competence in politics, where answers are controversial. For example, imagine an advisory jury where each subjury is given instruction in critical thinking, and then practices on questions with well-defined answers until some level of deliberating competence is reached. (That level could be chosen by another advisory jury.) Next the subjuries take up a series of questions concerning political issues. After answering the political questions, each of the subjuries again achieves the prescribed level of deliberating competence on questions with well-defined answers. For advisory juries meeting this standard, we might be justified in assuming that their average subjury is more likely than chance to descry the true, long-term interests of the American people. If so, a series of advisory juries exploring those interests could give an authoritative statement about the political aspirations of the American people, in effect, an authoritative expression of the American dream.

It is a melancholy reflection that, after all these years, the theory has not been sufficiently developed, nor the experiments performed, which are required for carrying out Jefferson’s teledemocratic agenda. What is the practical effect of changing the size of subjuries? What arrangements will ensure that the views of shy people are fairly represented? What kinds of instructions should be given to advisory juries? How should political questions be broken up into binary choices? How could we use random devices and second-order questions to frustrate anyone who attempts to manipulate advisory juries? In seeking “the cool and deliberate sense of the community,” how, in practice, can the passions which interfere with deliberative reason, such as racial or sexual prejudice, be minimized or checked, while at the same time strengthening the passions for truth and justice? The answers to these and hundreds of other relevant questions are largely unexplored. Even my quite incomplete design of a court of common reason contains guesswork because the tests necessary to create successful “deliberator software” have not been carried out.

III. The Versatility of Courts of Common Reason

Now, as an experiment to stimulate our imagination, let us adopt the political optimism of the eighteenth century. After all, if Jefferson, given the meager resources available in his time, could conceive of the possibility of finding “the genuine sense of the people on any required point,” should we not be able to imagine doing it with the enormous resources at our disposal? Let us further imagine, with eighteenth-century Americans, that the common reason so revealed would express, on average, good judgment. If we do so, then it is
easy to see that a court of common reason could be as revolutionary in the
moral and political world as the computer is in the scientific and business
world. For instance, Jefferson wanted the people, through their wards, to be
able "to crush, regularly and peaceably, the usurpations of their unfaithful
agents."31 We can imagine an advisory jury giving a searching review of an
incumbent toward the end of his or her term of office. The jury would then
answer the question: Has this person, by lying or other means, betrayed the
public trust? If the answer is "yes," then the person would be ineligible to be
a future candidate. Such a procedure might bring more rectitude to political
office than all the rules of ethics and term limits that have ever been proposed.

Let me illustrate the versatility of a court of common reason with four
more examples. First, advisory juries could be used to nullify laws. Ordinary
trial juries already have this power. Jury nullification was defended by a
variety of revolutionary leaders, among them John Adams, Hamilton, John Jay,
Jefferson, and James Wilson.32 Trial juries have used this power to good
effect. For instance, juries frequently nullified fugitive slave laws by refusing to
convict, even in cases with overwhelming evidence of guilt. This power is
important in American political theory because it allows juries—representing
the people—to place limits on laws that they deem tyrannical or unjust or un-
fair, either generally or in the particular application before them. On the other
hand, there have been abuses, such as trial juries convicting defendants in the
face of convincing evidence of their innocence, or white juries refusing to
convict whites who committed crimes against blacks. Furthermore, the inconsis-
tent application of a law resulted when one jury would nullify a law and
another would not in very similar cases. Hence a trial is not a well-designed
institution for the political task of eliciting the people's judgment about the
nullification of laws. In contrast, a court of common reason is such an
institution, since it would allow the people to decide in a responsible way
whether they approve of existing laws. Madison gave a warning about the
dangers of bad law:

It will be of little avail to the people that the laws are made by men of
their own choice, if the laws be so voluminous that they cannot be read,
or so incoherent that they cannot be understood; if they be repealed or
revised before they are promulgated, or undergo such incessant changes
that no man who knows what the law is to-day can guess what it will
be tomorrow. Law is defined to be a rule of action; but how can that be

31. Ford, 10 The Writings of Thomas Jefferson at 45 (cited in note 9).
1851); William Johnson, ed, 3 Reports of Cases Adjudged in the Supreme Court of
Judicature of the State of New-York 345 (Wiley 1812) (Alexander Hamilton); A.J. Dallas,
ed, 3 Reports of Cases Ruled and Adjudged in the Several Courts of the United States
and of Pennsylvannia Held at the Seat of the Federal Government 4 (J. Ormrod 1799)
(John Jay); Paul Leicester Ford, ed, 3 The Writings of Thomas Jefferson 236 (Putnam
1896); Julian Parks Boyd, ed, 15 The Papers of Thomas Jefferson 283 (Princeton 1958);
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a rule, which is little known and less fixed?\textsuperscript{33}

Given the utter disregard, not to say contempt, that Congress has shown for this warning, why not have the people, after due consideration, judge whether major laws, such as the income tax code, satisfy their own standards of simplicity, reasonableness, and stability? Scientists such as Kepler, Newton, and Einstein tried to reduce the confusing mass of empirical information about the planets to simple laws which experience will not falsify. Likewise, legislators should strive to reduce the confusing mass of empirical information about the people's informed values to simple laws which the people will not nullify. The aesthetic element ought to be as haunting in the search for the best laws to regulate society as it is in the search for the laws which regulate nature.

Second, the court of common reason could be introduced into the operation of our courts of law. "Were I called upon to decide whether the people had best be omitted in the Legislative or Judiciary department," Jefferson once said, "I would say it is better to leave them out of the Legislative. The execution of the laws is more important than the making [of] them."\textsuperscript{34} The people of Vermont apparently agree with Jefferson. In Vermont, lay judges, who are supposed to represent the values of the people, are ordinary citizens who sit beside legally trained judges and participate in their decisions. The legal profession has continually tried to eliminate these lay judges—as it has successfully done in every other state—despite their popularity among Vermonters. One can make legitimate criticisms of lay judges, but the profession has not tried to replace them with a mechanism that would ensure that the day-to-day operation of the court is consistent with the informed values of the people. A Vermont court of common reason could be the mechanism. For example, an advisory jury could review a trial via a videotape, and hear what, in retrospect, the police, judge, attorneys, defendant, trial jurors, et al., have to say about it. The Vermont advisory jury could deliberate about such questions as: Were selection procedures for the trial jury appropriate? Did the defendant have adequate representation? Was the punishment fair? And so forth. Next the advisory jury could be asked: Overall, was the quality of justice in this case excellent, good, fair, poor, or very poor? By applying this procedure many times an index measuring the quality of Vermont justice could be constructed. Nationwide, a similar procedure could be applied to federal courts. Large numbers of polls are now collected concerning the opinions and feelings of the public, but are any of them, or all of them together, as important as an index which would measure the people's considered judgment about the degree to which justice prevails?

Third, a court of common reason could be used to interpret the Ninth Amendment of the Constitution. The Ninth Amendment asserts that the American people have other rights which are not listed in the Constitution and that

\textsuperscript{33} Rutland, 10 The Papers of James Madison at 539 (cited in note 10).
\textsuperscript{34} Boyd, 15 The Papers of Thomas Jefferson at 283 (cited in note 32).
these rights shall not be denied or disparaged. The problem with this Amend-
ment is the inability or unwillingness of courts to make definite the unstated
rights. In fact, the first significant use of the Amendment by the Supreme
Court did not occur until 1964, when Justice Goldberg, in his concurring
opinion, had to find Ninth Amendment rights in the "traditions and [collec-
tive] conscience of our people." Justice Black in his dissent argued that one
cannot avoid using "personal and private notions" in discussing those rights.
He noted sarcastically, "Our Court certainly has no machinery with which to
take a Gallup Poll. And the scientific miracles of this age have not yet pro-
duced a gadget which the Court can use to determine what traditions are
rooted in the [collective] conscience of our people." The court of common
reason is such a "scientific miracle" since it could give authoritative advice as
to what rights the people have under the Ninth Amendment. Actually, it could
be used to give advice about any part of the Constitution.

Fourth, the court could also help to solve problems of group conflict.
Consider racial conflict. Racial prejudice can indeed be strong, but it can be
counteracted by those political passions—such as the passion for justice—which
serve the common reason of society. Dramatic art could be used to arouse
such passions. We know from the ancient Athenian Festival that it is possible,
in a dramatic competition, for ordinary citizens to pick works of the highest
artistic quality. We copied the Greeks by reintroducing the Olympics—an
introduction that has regularly produced unmatched athletic excellence. We
could likewise copy, adapt, and improve upon the Athenian Festival. Imagine
that the court forms an advisory jury to judge a contest for the best dramatic
works whose central theme is racism in America. Suppose they pick the three
best. Then the court forms a new and special advisory jury exclusively from
people of one race. However, this special jury does not begin working until all
its members have seen the three plays. Then, operating as usual, the jury
answers a number of political questions. A second, special advisory jury is
formed consisting of members of a different race. The members also see the
same plays and answer the same questions. A set of issues on which the two
races differ is thereby identified. Finally, the two special advisory juries are
merged into one hybrid jury where each subjury consists of six people from
the first group and six from the second. The issues on which the two races
differ are then presented simultaneously, and compromises are made via vote
trading within each subjury. The decisions of the hybrid jury thereby resolve
the political issues for a given period of time in the same sense in which an
ordinary election resolves who will serve for a given period of time. After all
the centuries of conflict between the races or, for that matter, between the
sexes or social classes, would it not be prudent and wise to collect solid evi-
dence as to where, after due deliberation and reflection, these groups actually

35. Griswold v Connecticut, 381 US 479, 493 (1964), citing Snyder v Massachusetts,
291 US 75, 94-95 (1933).
36. Id at 519 (Black dissenting).
differ from one another? Would it not be sensible to let the members of the groups themselves, rather than their leaders, make any necessary compromises? Since the great problems of race and sex and class can nowhere be solved but in the hearts and minds of the people, would it not be reasonable to construct an institution in which art chosen by the people themselves informs these deliberations, and perhaps transforms their hearts and minds? Maybe jurors who felt transformed would also feel that the transformation itself is a good to them, a possibility which could increase the desire to serve again on advisory juries. When we look at the Mayans we are amazed to find that they used the wheel in their toys, but not elsewhere and, as a result, caused enormous and unnecessary hardship to the workers who moved stones for monumental architecture. When we look at ourselves should we not be similarly amazed to find that we often use art for amusement, but seldom in the political work of building a humane society? As a result we cause ourselves enormous and unnecessary hardship. For instance, suppose that years ago we had set up a hybrid jury in Los Angeles which cost the exorbitant sum of a billion dollars, not including an exorbitant 100 million dollars in yearly costs. If the resulting dramatic art and deliberations prevented the riots following the Rodney King decision, would not those exorbitant sums have been well spent? Referring to Uncle Tom’s Cabin, Frederick Douglass claimed that “[n]othing could have better suited the moral and human requirements of the hour. Its effect was amazing, instantaneous, and universal.” If art could be of help in the fight against slavery, why not use it to unite “the moral and human requirements” in the fight against racism? In the kind of art they choose, in the way they conduct their deliberations, the people could use their common reason to overcome their own base emotions. Unfortunately, without adequate tests, we assume that they are incapable of such self-control and devoid of the aspiration to achieve it.

IV. Democracy and Racism

In discussions of race relations today it is sad that there are often crucial gaps concerning the history of slavery in America. For example, within five years of composing the Declaration of Independence, and at a time when almost everything published in America on slavery was strongly and explicitly in defense of blacks, Jefferson wrote Notes on the State of Virginia, where

37. Frederick Douglass, Life and Times of Frederick Douglass 282 (Collier 1962).
38. For examples from a large body of literature, see Samuel Cooke, A Sermon Preached at Cambridge in the Audience of His Honor Thomas Hutchinson, Esq; Lieutenant-Governor and Commander in Chief; The Honorable His Majesty’s Council, and the Honorable House of Representatives, of the Providence of the Massachusetts-Bay in New-England, May 30th, 1770 42 (Edes Gill 1770); John Allen, Watchman’s Alarm to Lord N—b 27 (E. Russell 1774); Andrew Eliot, Twenty Sermons 50 (John Boyle 1774) (available through National Register of Microform Masters); Daniel Byrnes, A Short Address to the English Colonies in North-America 1 (James Adams 1775); Othello, Essay on Negro Slavery, 4 American Museum 414-17 (Nov 1788); David Cooper, A Serious
he claims that blacks are not as beautiful as whites, that color is important, that they have an inferior form and hair, that male orangutans prefer black women to female orangutans, that blacks give off “a very strong and disagreeable odour,” that “their griefs are transient,” that their imagination is “dull, tasteless and anomalous,” and that they are incapable of poetry. Jefferson’s loathsome views on race were repeatedly attacked while he was alive, but he did not disown them. In private conversation he was even less restrained. Thus Augustus John Foster, a British diplomat who visited Jefferson at Monticello, reported that Jefferson claimed that “little good” would probably come from the abolition of slavery, that Jefferson believed emancipation “was an English hobby, and that the English are apt to ride their hobbies to death,” and that Jefferson “appeared to think that we should only render the Negroes’ fate more miserable by our perseverance in endeavouring to abolish the trade.” Not surprisingly Foster objected to “Mr. Jefferson’s prejudices.” In 1810, when a slave named Jame Hubbard escaped from Monticello and was captured, what was Jefferson’s reaction to Hubbard’s exercise of his unalienable right of liberty? “I had him severely flogged in the presence of his old companions, and committed to jail.” “In the presence of his old companions” is a telling phrase. On another occasion Jefferson conspired to increase the terror of his slaves by having it appear that a refractory slave had been executed. Further, it is unlikely that violence and threats of violence were limited to males. Jefferson said, “I consider a woman who brings a child every two years as more profitable than the best man of the farm. [W]hat she produces is an addition to the capital, while his labors disappear in mere consumption.” But what if a female slave would resist being treated as a sow or mare, what if she would resist becoming what Jefferson called a “breeding

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40. See, for example, Julian Parks Boyd, ed, 9 The Papers of Thomas Jefferson 441 (Princeton 1954); Sidney Kaplan, The Black Presence in the Era of the American Revolution: 1770-1800 116 (Smithsonian 1973); Gilbert Imlay, A Topographical Description of the Western Territory of North America 221-31 (F. Debrett 3d ed 1797); William Linn, Serious Considerations on the Election of a President: Addressed to the Citizens of the United States 13 (John Furman 1800); Samuel Stanhope Smith, An Essay on the Causes of the Variety of Complexion and Figure in the Human Species 267 (J. Simpson 2d ed 1810); St. George Tucker, A Dissertation on Slavery with a Proposal for the Gradual Abolition of It, in the State of Virginia 73-103 (Mathew Carey 1792).
41. Augustus John Foster, Jeffersonian America: Notes on the United States of America Collected in the Years 1805-6-7 and 11-12 at 149 (Huntington 1954).
42. Edwin Morris Betts, ed, Thomas Jefferson’s Farm Book, with Commentary and Relevant Extracts from Other Writings 35 (Princeton 1953).
43. Id at 19.
44. Id at 46.
woman.” What then? While Jefferson kept several hundred slaves during his whole life (manumitting only a few), Robert Carter, the largest slaveholder in Virginia, arranged in 1791 to free all five hundred of his slaves. Even Jefferson’s schemes for general emancipation were morally objectionable. One, for example, would involve the “separation of infants from their mothers;” another argues that slavery should be allowed to spread in order to make the slaves “happier” and “proportionally facilitate the accomplishment of their emancipation, by dividing the burthen, on a greater number of coadjutors.”

These facts do not present a complete account of Jefferson and slavery, but they do show, paradoxically, that Jefferson’s doctrine that slavery corrupts the slaveholder applies to Jefferson himself. Fortunately, his political philosophy transcends the defects of his character. According to that philosophy, decisions made by the common reason of the people are morally superior to decisions made by their leaders. Looking back, we can illustrate this point by noting that in the South, when people educated or freed their slaves, legislatures reacted by making these admirable acts illegal. In the North ordinary people could be equally enlightened. For example, in 1778 a proposed constitution for the state of Massachusetts was sent to the various towns for approval. It was rejected. One of the reasons was Article V which denied “negroes, Indians and mulattoes” the right to vote. Town after town objected to Article V. The town of Spencer gave the following reason: “we Conceive that the Depriving of any men or Set of men for the Sole Cause of Colour from giving there votes for a Representative, to be an Infringment upon the Rights of Mankind.”

Georgetown sarcastically said it rejected the Article because “a Man being born in Afraca, India or ancient America or even being much Sun burnt deprived him of having a Vote.” The towns of Hardwick, Sutton, Boothbay, Blanford, Shelburne, Westminster, Rochester, and Douglass all argued for the rights of blacks. Two years later the town of Hardwick objected to the statement that “all men are born free and equal” in the revised Constitution “lest it should be misconstrued hereafter, in such a manner as to exclude blacks.” The town’s proposed amendment was: “All men, whites and blacks, are born free and equal.” While northern legislatures again and again dodged petitions of freedom for slaves, the common people in juries did

45. Id at 43.
47. Andrew A. Lipscomb, 16 The Writings of Thomas Jefferson 13 (Jefferson Mem Assoc 1905); Andrew A. Lipscomb, 10 The Writings of Thomas Jefferson 158 (Jefferson Mem Assoc 1905).
50. Id at 302.
51. Id at 277.
52. Id at 830.
not. “I never knew a jury, by a verdict, to determine a negro to be a slave,”
John Adams observed, “[t]hey always found them free.”33 Perhaps slavery it-
self could have been weakened and, in time, peacefully abolished, had it been
periodically debated in each state via Jeffersonian teledemocracy. We will never
know, but if we choose, we can know whether or not the people could, acting
through hybrid juries, transform America into a less racist or even a nonracist
society. A critic might object that hybrid juries would increase the divisiveness
of racial issues, but without extensive experiments, the critic, like myself, is
guessing.

V. The Politics of Self-Knowledge

A court of common reason will do more than merely find out what the
people, after due deliberation and reflection, think. It will create a new kind
of politics, a politics of self-knowledge. This politics contrasts sharply with
those chilling conceptions of social engineering—beginning with Plato—in
which schemes are imposed on the people or certain classes of people. Instead,
it requires a process through which an autonomous people can search their
own hearts and minds, and then impose on themselves, as an autonomous
person can, the outcomes of their own reasoning. With a self-conscious control
hitherto unknown in human history, the American people will be able to
examine and shape their national character; they will become their own
philosopher-kings. Genuine and democratic autonomy cannot exist without
deliberative soul-searching among the people themselves; it is the foundation of
political excellence in a free society; in eighteenth-century terms, it is the
foundation of public happiness. “Know thyself,” John Adams declared, “is as
useful a precept to nations as to men.”54

Consequently, a politics of self-knowledge requires that the people be
liberally educated. That is, they should acquire the abilities necessary to partici-
pate in a self-governing society. Thus, just as we need a professional commu-
nity highly trained in science to judge whether something is a genetic disease,
or a dinosaur bone, or a supernova, so we need a political community highly
trained in the liberal arts to judge whether we have equality, or justice, or
liberty. Today we are uncertain about the content of liberal education and
argue endlessly about canons and curricula. Yet we do not collect evidence. A
court of common reason gives us this opportunity. After advisory juries have
taken up some of the great political issues of our time, the participants could
discuss the skills and knowledge they needed to participate in the deliberation.
An analysis of those discussions could determine the core of the curriculum in
public schools.

We can again be guided by Jefferson: “In a republican nation, whose
citizens are to be led by reason and persuasion, and not by force, the art of

53. Massachusetts Historical Society, 5th series, 3 Collections 402 (Mass Historical Soc
1877).
reasoning becomes of first importance."

From the first grade on, students could get practice in the use of reason and persuasion by regularly participating in subjuries, initially dealing with school issues, but later with local, state, national, and international politics. In time they would not only understand, but directly feel, the necessity of free speech for the integrity of their decisions, and thus the importance of the First Amendment in American society. They could play games which would simulate both the ways in which political leaders betray the public trust and the means the people can use "to crush, regularly and peaceably, the usurpations of their unfaithful agents." Conversely, they could be taught to recognize political virtue (as defined by the court of common reason) and the means the people can use to entice the best into serving. Perhaps a judicious use of art and hybrid juries in schools could help abort the rebirth of group prejudice in each new generation. Students could also be periodically asked what knowledge and skills they need to participate in an advisory jury. Deliberating on the answer, they would teach themselves the importance of their own liberal education. By frequently being forced to choose among competing values in a subjury, students would gain practice in the discipline of deliberative soul-searching, so that as adults they would be prepared to make fateful, yet responsible, political decisions. Courts of common reason, we can conclude, are an indispensable part of an education that prepares citizens for excellence in self-government; they enable students directly to learn the nature of free society and to acquire the habits necessary to prosper in one.

VI. Alienation and Meaninglessness

Many citizens today are alienated from government and American society generally. To these feelings of alienation are often added feelings of meaninglessness, the fear that, in some ultimate sense, the universe has no moral foundation. These facts are sometimes given as an explanation, indeed as a justification, for our political apathy and cynicism. Yet some of the Founders had similar feelings. In a remarkable letter, on February 29, 1802, Hamilton wrote:

Mine is an odd destiny. Perhaps no man in the UStates has sacrificed or done more for the present Constitution than myself—and contrary to all my anticipations of its fate, as you know from the very begininning I am still labouring to prop the frail and worthless fabric. Yet I have the murmurs of its friends no less than the curses of its foes for my rewards. What can I do better than withdraw from the Scene? Every day proves to me more and more that this American world was not made for me.

55. Lipscomb, 16 The Writings of Thomas Jefferson at 30 (cited in note 47).
56. Ford, 10 The Writings of Thomas Jefferson at 45 (cited in note 9).
The experience of alienation could hardly be more poignantly expressed, yet Hamilton made outstanding contributions to the cause of freedom. Nor is meaninglessness seen as a justification for political apathy. Thus John Adams ruminated:

A death bed, it is said, shews the emptiness of titles. That may be. But does it not equally shew the futility of riches, power, liberty, and all earthly things? The cloud-capt towers, the gorgeous palaces, the solemn temples, the great globe itself, appear the baseless fabric of a vision, and life itself a tale, told by an idiot, full of sound and fury, signifying nothing. Shall it be inferred from this, that fame, liberty, property and life, shall be always despised and neglected? Shall laws and government, which regulate sublunary things, be neglected because they appear baubles at the hour of death?

Adams means, I think, that even if the earth is destined to dissolve and leave not a rack behind, even if our earthly existence is in some ultimate sense futile, even then, it is worth bothering about "fame, liberty, property, and life," even then, the American revolution is worth pursuing. In that pursuit we might today see some hope of creating a humane existence in a cosmos which may be meaningless, and humanity itself a mere accidental byproduct of a ghastly, evolutionary slaughterhouse.

Of course, eighteenth-century Americans did not know about Darwinian evolution, but they generally accepted the Lockean theory of a state of nature in which humans lived without government. There one had freedom but not the security to exercise that freedom. Law under just governments not only provides that security, it does more. Locke wrote:

For Law, in its true Notion, is not so much the Limitation, as the direction of a free and intelligent Agent to his proper Interest, and prescribes no farther than is for the general Good of those under that Law. Could they be happier without it, the Law, as an useless thing would of it self vanish; and that ill deserves the Name of Confinement which hedges us in only from Bogs and Precipices. So that, however it may be mistaken, the end of Law is not to abolish or restrain, but to preserve and enlarge Freedom....

James Wilson followed Locke when he argued that "civil government is necessary to the perfection of society [and]... civil liberty is necessary to the perfection of civil government." Civil liberty, Wilson believed, "retains the free and generous exercise of all the human faculties, so far as it is compatible

with the public welfare.”  

Human flourishing—"the free and generous exercise of all the human faculties"—is the essence of the pursuit of happiness and it is democratic government alone that can reliably protect and extend that right. To use contemporary terminology, Philadelphia freedom is better and greater than Paleolithic freedom.

Just as deliberative teledemocracy can overcome the moral defects of a state of nature, so it can overcome the moral defects of the dog-eat-dog environment of evolution. The brutal competition among ideas in a court of common reason could prevent that ruthless competition among people which has been so characteristic of human history and prehistory. Let me illustrate the competition among ideas by using a contrived example. Imagine that we have an advisory jury with 6,000 people forming 500 subjuries. They are given a tricky mathematical puzzle to solve where the correct answer is “yes,” but the answer seems to be “no.” After much deliberation only one subjury sees the trick. The vote of the subjuries is thus: 1 “yes,” 499 “no.” However, at a later time the issue is taken up again by another advisory jury of the same size. This second advisory jury would hear all the arguments which swayed subjuries the first time. Learning the trick the vote is 500 “yes,” 0 “no.” This is deliberative teledemocracy in action. A new and favorable idea, as in my contrived example, should spread through successive generations of the advisory juries the way a new and favorable gene spreads through successive generations of living things. In courts of common reason, ideas are subjected to a repeated and brutal competition where only the fittest survive, fittest, that is, at promoting the flourishing of a free and autonomous people. By constantly improving the deliberative skill of the people and the means to express their deliberative sense, we create the conditions for that political excellence which alone can reliably protect the human animal against itself.

VII. The Risk of Experiments

Yet we not only fail to find out the reason of the people, we fail even to improve the integrity of ordinary elections. For example, in 1977 a new form of voting was discovered called approval voting. In approval voting, one may vote for all, some, or none of the candidates who appear on the ballot. The candidate who gets the most votes wins. Social choice theorists have conclusively demonstrated that this form of voting, while not perfect, is superior to those now in use; yet neither the federal government nor any state government has adopted it. If a significant improvement in computers had been discovered in 1977, is it credible that no computer company would now employ it? In our society “the relentless pursuit of excellence” is a slogan for a car, not a fact about our commitment to democracy. Hence we do not study Condorcet’s jury theorem as applied to deliberative decision; we do not

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61. Id at 359.
62. See generally Steven J. Brams and Peter C. Fishburn, Approval Voting (Birkhäuser 1983).
develop the logic of parallel deliberation; we do not determine the core of a liberal arts education by empirically investigating what people now need to know to maintain and improve self-government; we do not systematically explore how to use art, chosen by the people, to inform democratic decision; we do not create indexes of justice; in short, we do not aspire to democratic excellence. A politics of self-knowledge remains a forgotten ideal of the American revolution. The feeble attempts toward teledemocracy that we have made so far—the "electronic town-meetings" of President Clinton or Ross Perot—are founded on statistically invalid samples of the people, and are directed toward influencing, rather than discovering, the views of the people. Such meetings do not provide an appropriate environment for people to deliberate among themselves. Here we must be especially wary. Cyberspace is as fertile a ground for producing mobs as the village green. Radio talk shows and interactive television have the power to create an environment where "passion never fails to wrest the sceptre from reason," an environment where electronic mobs are "not only incapable of deliberation, but prepared for every enormity."

A court of common reason could protect us. There the environment is impartial, a meticulous sense of fairness regulates the presentation of opposing arguments, each subjury is small and isolated, and the conditions for responsible deliberation are the best we know how to create. Designing that environment will not be easy. The effort to create and maintain courts of common reason will be enormous, and there is a substantial risk of complete failure. However, the substantial risk of complete failure did not prevent the creation and adoption of the Constitution. Why should we exhibit only a cloistered virtue in the cause of freedom?

VIII. America as an Ideal

"My most earnest wish," Jefferson dreamed, "is to see the republican element of popular control pushed to the maximum of its practicable exercise." How might that maximum be characterized today? Perhaps we can create a completely pure, but deliberative, democracy. The decision to move in that direction could be made by the advisory jury itself. Just as a client might decide to take over more and more functions which had hitherto been carried out by the client's lawyer, so the advisory jury might begin by giving advice, but gradually act directly, until control by the jury reaches "the maximum of its practicable exercise." Jefferson's dream would then come true. We do not know what that maximum is. Yet we do know one thing: popular control can be improved. Today popular control is hardly pushed beyond the minimum of periodic elections and a few referenda. To end our apathy and cynicism we need a large-scale test of Jeffersonian teledemocracy such as, for example,

63. Rutland, 10 The Papers of James Madison at 505 (cited in note 10).
64. Syrett, 5 The Papers of Alexander Hamilton at 39 (cited in note 2).
65. Lipscomb, 15 The Writings of Thomas Jefferson at 66 (cited in note 5).
creating a court of common reason for one of the smaller states. After all, the
great importance of ENIAC was to prove that an electronic computer is
possible and useful. The enormous demand for computation then led to an
intense competition for computing excellence. And there is no end in sight.
Everyone believes the next generation of computers will be better than the
present generation. The world of computers, like the state of science generally,
is in a state of permanent revolution. Like the ENIAC, the first sizable court
of common reason might break down often and produce a fair amount of
nonsense. But, also like the ENIAC, it might work better than any alternative
and allow unsolved problems to be successfully attacked. If so, the enormous
demand for better democratic government could create an intense competition
for democratic excellence and, like science, democracy itself could become
permanently revolutionary. Our present cynicism about politics would then
pass, and we would cease laughing at Madison's belief that "the destined
career of my country will exhibit a Government pursuing the public good as
its sole object."

Yet how could government officials be persuaded to construct such a test?
In my judgment the American people must be made aware of their ability and
responsibility to directly govern themselves. This could be done through
individual initiative. Theoreticians could turn their attention to the problems of
Jeffersonian teledemocracy. There are many relevant disciplines, from the well-
known, such as group psychology or voting theory, to the arcane, such as the
Delphi method or the logic of question and answer. Some democratic organiza-
tions, such as unions or churches, might be willing to risk tests of the theoreti-
cians' work. A large number of experiments would be necessary to determine
the best deliberator software for a given purpose, but foundations might be
willing to underwrite some of this research. There is no need to await govern-
ment action. Rather, government action could follow successful private initia-
tives.

John Adams claimed that the debate which produced the Constitution was
"the greatest single effort of national deliberation that the world has ever
seen."66 This was no doubt true, but we have the resources to outdo the
eighteenth century in deliberation by as much as we have outdone it in
communications. The superior communications that have allowed us to create
a global village might, in time, make possible a global teledemocracy. We
could create an international court of common reason. It could authoritatively
define "crimes against humanity" and decide what should be done about them.
Hybrid juries might tackle issues such as trade disputes between Japan and
America, or the conflict between the Israelis and Palestinians, or the problems
of the global environment. By applying their skills of political freedom, ordi-
nary people all over the world could promote peace on earth, and might
succeed wherever the experts, politicians, and diplomats are failing. This may
seem to be an unrealizable fantasy. Yet had anyone predicted in 1945 that,

fifty years hence, computers much more powerful than the ENIAC would be microscopic and be made in the millions, that too would have seemed to be a crazy, unrealizable fantasy. But it came to pass. With respect to an innovative technology the future cannot be known.

"So far has our city surpassed the rest of mankind in thought and speech," the Athenian Isocrates boasted, "that her pupils have become the teachers of others, and she has brought it about that the name 'Greek' no longer connotes the race but the mental attitude, and men are called 'Greeks' when they share our education rather than merely our common blood."67 The American revolutionists hoped to create a new paradigm of human society, one which would, in the words of James Wilson, "outshine the glory of Greece."68 America, which had learned so much from the rest of the world, would become its teacher and, in time, the word American would signify not only the people of the United States, but a new civilization, characterized by an enduring democratic revolution relentlessly devoted to improving public happiness and private flourishing. A century earlier the word had a different meaning which Locke expressed when he stated that "in the beginning all the World was America."69 Locke meant that the condition of being without civil government, which then largely prevailed in America, was, in the distant past, the common lot of mankind. Americans aspired to change that meaning by creating a revolution and civilization whose spirit would spread to all parts of the globe: "God grant," Benjamin Franklin declared, "that not only the Love of Liberty, but a thorough Knowledge of the Rights of Man, may pervade all the Nations of the Earth, so that a Philosopher may set his Foot anywhere on its Surface, and say, 'This is my Country.'"70 It was thus the hope of the American revolutionists, a hope which is as attractive today as it was in 1776, that it will become the common lot of all people to share in an enduring democratic revolution, and that thereby, in this revised sense, all the world will again become America.

69. Locke, Two Treatises of Government at 301 (cited in note 59).
70. Albert Henry Smyth, ed, 10 The Writings of Benjamin Franklin 72 (Macmillan 1907).