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3 *Epistocracy for Online Deliberative Bioethics*

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8 **Abstract:** The suggestion that deliberative democratic approaches would suit the man-
9 agement of bioethical policymaking in democratic pluralistic societies has triggered what
10 has been called the “deliberative turn” in health policy and bioethics. Most of the empiri-
11 cal work in this area has focused on the allocation of healthcare resources and priority
12 setting at the local or national level. The variety of the more or less articulated theoretical
13 efforts behind such initiatives is remarkable and has been accompanied, to date, by
14 an overall lack of method specificity. We propose a set of methodological requirements
15 for online deliberative procedures for bioethics. We provide a theoretical motivation
16 and argue that, regardless of its merits as a general political theory, a more refined
17 version of its normative claims can generate a useful framework for the design of
18 bioethical forums that combine maximal inclusiveness with informed and reasonable
19 deliberation.

20 **Keywords:** bioethics; deliberative democracy; participation; epistocracy

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25 **Introduction**
26 The so-called deliberative turn in health policy and bioethics has been character-
27 ized as lacking in method specificity.¹ Disputes regarding institutional design for
28 bioethical forums essentially concern competing political theories for the han-
29 dling of moral disagreement. It is sensible, therefore, to take a genuinely politi-
30 cophilosophical stance as to what the institutions that deal with moral disagreement
31 ought to look like. In fact, any attempt at designing a public forum for the discus-
32 sion of health policies and bioethical issues can be said to embed the features of
33 the political theory its proponents endorse. It is therefore essential, for both practi-
34 cal and theoretical reasons, to lay out in detail the methodological requirements
35 for carrying out deliberative attempts, and to be explicit about the normative
36 claims that lie behind these requirements.

37 In this contribution, starting from an analysis of a recent defense of epistocracy—
38 that is, the form of government in which the rulers are those who know the
39 most²—and of its shortcomings, we argue that, although problematic as a gen-
40 eral political theory, if restricted in scope to specific ethical issues arising in the
41 domain of the life sciences, some epistocratic constraints might be useful. Taking
42 into account specific methodological considerations,³ we show how soft episto-
43 cratic constraints can be reconciled with deliberative participatory democracy
44 in the case of policymaking in bioethics. We do this by advancing some suggestions
45 on how to design participatory online forums for public decisions on bioethical
46 issues.⁴

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1 Brennan's Epistocracy

2 Jason Brennan has recently argued in favor of an alleged right to a competent elec-
3 torate.⁵ His point, at least apparently, is not that incompetent voters will simply
4 harm other people and hence ought to be disenfranchised. Rather, just like juries,
5 electorates *lack* authority and legitimacy whenever they decide incompetently
6 or on the basis of morally unreasonable claims and not necessarily because their
7 decisions are incorrect or harmful. Incompetent voting is unjust in that citizens
8 have a basic right not to be deprived "of life, liberty or property . . . as a result of
9 decisions made by an incompetent or morally unreasonable deliberative body."
10 Brennan calls this the *competence principle*.⁶ He suggests screening out incompetent
11 voters using written voter exams.

12 Brennan defends his claims from two main objections put forth by Estlund
13 against previous versions of epistocracy.⁷ He argues that the first objection does
14 not apply to his form of epistocracy, whereas the second one is not decisive. Estlund's
15 first objection attacks the *authority tenet*, which justifies giving more power over
16 others to those who know more. The authority tenet should be rejected—so the
17 objection goes—in that it commits the expert/boss fallacy, which amounts to
18 unduly assuming that being an expert is sufficient grounds for someone to hold
19 power over others. However, Brennan argues that his case for epistocracy relies
20 not on the authority tenet but, rather, on a negative version of it, which he calls the
21 *antiauthority tenet*. This asserts that moral unreasonableness and ignorance are
22 sufficient reasons to justify *not granting* someone political authority over others.
23

24 Yet, Brennan admits, his argument is vulnerable to a second kind of (he claims
25 nondecisive) objection. Epistocratically restricted suffrage can be said to violate
26 what Estlund calls the *qualified acceptability requirement*. Widely shared in liberal
27 political philosophy, the principle states that "no one has authority or legitimate
28 coercive power over another without a justification that could be accepted by all
29 qualified points of view."⁸ The procedure that embodies the debatable justification
30 for distributing political power is, in Brennan's case, the written test that he sug-
31 gests ought to be used in order to prevent morally unreasonable and ignorant
32 people from participating. A polity could agree that there is a difference between
33 competent and incompetent people; nonetheless, it might not be possible to find
34 an agreement among reasonable people as to the proper means to track the dis-
35 tinction between competence and incompetence. Hence, epistocracy is unjust
36 insofar as the test for competence is qualifiedly objectionable. However, given that
37 a choice must be made, Brennan argues, one cannot but opt for the lesser injustice
38 between (1) the enforcement of policies picked by an incompetent deliberative
39 body and (2) the enforcement of a specific way, not universally accepted, to track
40 the distinction between competence and incompetence. He argues for the second
41 option in two ways:

- 42
43 1. Democracy with universal suffrage violates the competence principle. Epis-
44 tocracy violates the qualified acceptability requirement. The former violation
45 is inherently worse than the latter, as shown by the fact that we promptly
46 accept voting age laws, which already are a form of weak epistocracy. We
47 ought to accept, then, other—namely, better—forms of epistocracy.
- 48 2. Epistocratic policies are likely to be "better able to achieve prosperity and
49 various humanitarian goals."⁹

1 Regarding the first point, we notice that Brennan fails to effectively support
2 the claim that his epistocratic proposal is morally preferable to democracy with vot-
3 ing age laws. Even if it is conceded that the justification for this institution is
4 epistocratic, one can argue that the institution is better able to satisfy the qualified
5 acceptability requirement and is thus less morally troublesome than Brennan's
6 voting licenses. This is the case because every voter, at some point in his or her
7 life, has been underage, thereby making this threshold for political participation
8 more likely to be acceptable to every qualified point of view. After all, "age groups
9 do not age, but birth cohorts do."¹⁰ Recognizing a threshold that makes refer-
10 ence to age groups—as voting age laws do—is thus a measure that does not
11 favor any distinct group of people and should therefore be seen as *prima facie*
12 acceptable. With Brennan's epistocratic test, there is a possibility that some indi-
13 viduals will never be able to pass voter exams.

14 Regarding the second point, we notice that its truth depends on empirical evi-
15 dence, and currently no evidence supports the claim that epistocratic institutions
16 produce better policies. A rich literature is developing concerning the output that
17 more inclusive institutions tend to have on the governance of local and regional
18 administrations.^{11,12,13} We are not aware of even small-scale experiments that
19 try and build a case for epistocratic institutions. Moreover, grounding the assess-
20 ment of epistocracy in the goodness of the policies it would yield seems to delib-
21 erately overlook the distinction between the instrumental and the procedural
22 value of political institutions.¹⁴ Such a distinction is crucial for Brennan's own
23 uncoupling of the legitimacy and the correctness of decisions.

24 Despite these considerations, the idea that only those who are not ignorant and
25 unreasonable can legitimately participate in certain kinds of policymaking is a
26 plausible one. In particular, it is plausible in the context of policymaking on bio-
27 ethical issues, in which the ignorance and the unreasonableness of those who par-
28 ticipate in the decisionmaking can certainly result in illegitimate and otherwise
29 undesirable outcomes. Whereas the main goal of political participation within
30 representative democracies *à la* Schumpeter¹⁵ can be roughly reduced to the mere
31 selection of a leader (and his or her underlying political platform) under condi-
32 tions of free competition, republican democratic governance seems to entail a
33 multifaceted array of modes of participation that extend well beyond the selec-
34 tion of some ruling leader or elite. Brennan's tests seem to act as constraints on the
35 former kind of participation, whereas the kind of constraints we envisage are
36 instead conceived of as applying to issue-specific participatory forums that clearly
37 appeal to the latter (republican) democratic framework and should be seen as an
38 attempt at broadening the scope of participation in democracy. Constraints on the
39 first sort of participation look unpromising for at least one set of reasons: the
40 selection of a leader depends in a very indirect way on the identification of his or
41 her political platform. The relation that links a candidate's political platform to the
42 actual implementation, once elected, of policies based on that platform is in turn
43 even more tortuous. In this context it is hard to think of sensible criteria to pin
44 down what constitutes the relevant knowledge to be possessed in order to cast a
45 reasonable and competent vote. On the one hand, this means that voters exercise
46 (whether competently or not) very indirectly a fairly little amount of power over
47 others, and therefore the demand that they do so competently seems to put the
48 burden of proof on those who claim that this power will result in some harm
49 to others. On the other hand, deciding whether one does exercise his or her

1 negligible power competently (whether in harmful ways or not) is indeed very
2 likely to lead to controversy. In contrast, direct participation in issue-specific delib-
3 erative forums can, when such forums are endowed with recommending powers,
4 exercise precisely the kind of authority over others that demands that the com-
5 petence principle be held in due consideration.¹⁶

6 Thus, in the context of designing procedures for bioethical policymaking that
7 are as democratic, participatory, and inclusive as possible, considering the intro-
8 duction of epistocratic constraints seems useful, though much depends, as we
9 will see in the subsequent discussion, on exactly what kinds of epistocratic
10 constraints are implemented.

11 12 **The Shortcomings of Voter Exams**

13
14 Brennan claims that “a written voter exam is not the only way to attempt to enforce
15 the competence principle. I can think of other ways, but most of them are either
16 prohibitively costly or unrealistic.”¹⁷ He proposes written general exams aimed at
17 testing for politicoeconomic knowledge and moral reasonableness. These would
18 be tests that citizens need to pass only once, in order to be granted a lifelong voting
19 license.

20 There are various problems with this proposal. One issue concerns whether
21 only politicoeconomic knowledge would be an essential part of a responsible citi-
22 zen’s knowledge. It is unclear, for instance, why some basic understanding of
23 science ought not to be a condition for the responsible exercise of political rights,
24 especially in societies in which science and technology play an important role.
25 Another issue concerns the requirement that people be morally reasonable, which,
26 given how controversial the notion of moral reasonableness is, seems too diffi-
27 cult to test in any sensible way. A further issue concerns the lifelong nature of
28 the licenses granted according to Brennan’s proposal. Both political economy and
29 morality are progressive endeavors frequently undergoing changes within the
30 span of an individual’s lifetime. The belief that racial segregation is legitimate
31 would probably not feature as a trait associated with moral unreasonableness in
32 the 1920s in the Southern states of the United States, whereas it clearly would
33 now.¹⁸ The only way to remedy this would be to have periodic exams. But this
34 would make the procedure much more costly and organizationally cumbersome.

35 Given these theoretical and practical shortcomings, which are central to the
36 very legitimacy and workability of epistocracy, we propose instead ways of test-
37 ing the competence relevant with specific and particular deliberative issues rather
38 than with the competence that, according to Brennan, is required for the general
39 exercise of one’s voting rights.

40 41 **Online Epistocratic Participation for Deliberative Bioethics**

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43 In policymaking regarding bioethical issues, epistocratic constraints on partici-
44 pation seem morally desirable. Though in this contribution we are focusing spe-
45 cifically on bioethical issues, the same seems to apply to policymaking for the
46 governance of most technoscientifically complex issues. These are areas in which
47 it is hard to see how decisions could be legitimate when made by deliberators who
48 do not know enough about the matters deliberated on. On the one hand, nonex-
49 perts do not have the relevant kind of knowledge to produce legitimate decisions.

1 On the other hand, it would be wrong to leave the decisions about bioethical and
2 more generally technoscientific issues to the experts, partly because the experts
3 might be unreliable—for a variety of reasons—at tracking the interests of the non-
4 experts and partly because the nonexperts have a noninstrumental interest in
5 participating directly in decisions about bioethical and technoscientific issues
6 that affect them. Paradoxically perhaps, soft epistocratic constraints like those
7 suggested subsequently might be a way of making participation in the decision-
8 making as inclusive as possible while at the same time ensuring that the outcomes
9 of the deliberation are legitimate.

10 One specific reason why Brennan’s proposal is highly problematic is that his
11 test affects political rights across the board. Tests that apply to specific moments
12 of political participation are likely to be less problematic, in that they do not
13 involve a generic disenfranchisement of incompetent voters but rather deploy the
14 reasonable requirement that the legitimacy of recommending decisions that con-
15 cern extremely complex scientific issues ought to depend on whether the deci-
16 sion is made as inclusively *and* as competently as possible. Issue-specific restrictions
17 to participation in online deliberative forums designed to deal with bioethical
18 issues might provide a good example of how good epistocratic solutions can be
19 reconciled with inclusiveness and provision of opportunities for participation.

20 A number of contemporary political philosophers have articulated a wide range
21 of deliberative approaches to democracy.^{19,20,21,22,23} Despite the differences, all
22 these approaches share a broad conception of deliberative democracy that relies
23 on two main kernels: (1) the *democratic kernel*, according to which decisions affect-
24 ing people’s lives ought to be made, in general and when possible, by those
25 affected people themselves, and (2) the *deliberative kernel*, according to which col-
26 lective decisionmaking ought to be the result of argument and the use of public
27 reason by free and equal citizens.²⁴

28 Public bioethics essentially concerns the pursuit of collectively binding deci-
29 sions that are legitimate in the face of moral disagreement. Thus, if politics is the
30 means by which people’s views inform the way they are governed, then public
31 bioethics is a political endeavor throughout.²⁵ Institutions meant to deal with bio-
32 ethics can therefore be designed according to different political theories. Gutmann
33 and Thompson suggest that the political theory that would best suit bioethical
34 debates might be one that asks “citizens and officials to justify any demands for
35 collective action by giving reasons that can be accepted by those who are bound
36 by the action.”²⁶ Such is a deliberative approach to bioethics. It has four main
37 purposes: (1) to promote the legitimacy of collective decisions; (2) to encourage
38 public-spiritedness in public decisionmaking; (3) to foster an economy of moral
39 disagreement, encouraging the use of moral rationales for collectively binding
40 decisions that would minimize the rejection of opposing positions; and (4) to help
41 correct mistakes due to partial understanding.

42 The enforcement of laws or policies touching on morally sensitive spots
43 demands both that people who are constrained by those laws have a say in their
44 making and, importantly, that people who participate by presenting their argu-
45 ments do so competently precisely in order for the resulting decision to be quali-
46 fiedly acceptable. This suggests that, within the domain of bioethics, the
47 competence principle ought to have some priority over the qualified acceptability
48 requirement. Such a priority, restricted in scope to the political management of bio-
49 ethical issues, does not share the problematic aspect of Brennan’s suggestion: in fact,

1 subjecting participation in bioethical public forums to epistocratic constraints,
2 in contrast with Brennan's proposal, entails no disenfranchisement of rights
3 to political participation.²⁷ Citizens retain their political status regardless of their
4 competence in, say, stem cell research, and they will therefore retain their right
5 to contest the very legitimacy of the competence test deployed. Furthermore, citi-
6 zens' ability to contribute competently to public forums for bioethics, given their
7 proper motivation, is encouraged by the kind of pedagogical setting outlined
8 subsequently.

9 It is worth noting here that, even though we list a series of procedural con-
10 straints on the contributions that citizens might make to policymaking in bio-
11 ethics, the main purpose of our methodological proposal is that of *increasing* the
12 inclusiveness of deliberation in bioethics rather than that of generating barriers
13 to participation. Ours is an attempt to provide citizens with the proper means for
14 considered judgment and thereby with the means for legitimate active participa-
15 tion.²⁸ This implies that the epistocratic tools ought to be used *cum grano salis*,
16 namely, by complementing their availability with proper efforts to contain the
17 risk of exclusion of those sections of the population that do not master (for reasons
18 that might be morally neutral) the science and the ethics relevant for proper delib-
19 eration about specific bioethical issues. This can be done, for instance, by keeping
20 the forum open but selectively recruiting,²⁹ that is, encouraging the outreach of
21 public forums targeting those populational subsets whose low civic engagement
22 decreases the legitimacy of morally controversial, collectively binding decisions.

23 A number of attempts at deliberative bioethics prompted by such theoretical
24 considerations have already been made. Essentially, bioethical forums can lie
25 along a continuum that goes from blunt technocracy to grassroots participation.
26 At the former end of the continuum, power is granted directly to experts, picked
27 through more or less public and more or less reasonable procedures. At the latter
28 end, institutions are meant to be as inclusive and as open as possible. Democratic
29 deliberative efforts such as the initiatives promoted by the Human Fertilisation
30 and Embryology Authority (HFEA; instituted in 1990 with the purpose of over-
31 seeing and regulating the use of gametes and embryos in research and clinical/
32 medical practice) try to be as inclusive as possible without sacrificing the consid-
33 ered argumentative nature proper of deliberation. In order to strike this balance,
34 articulate public consultations that resort to methods ranging from standard
35 opinion polls to public conferences to deliberative workshops are organized.³⁰
36 These kinds of workshops usually host no more than 100 people and go on over
37 a long period of time, hence demanding a series of encounters meant to lay out
38 the facts and outline and openly discuss the arguments. Considered judgment
39 requires, indeed, time and a definite effort of moderation and encouragement on
40 the part of the hosting institution. If scaled up to the entire population, face-to-face
41 deliberative workshops are very unlikely to be an efficient way of implementing
42 epistocratic constraints on political participation. Online participatory and delib-
43 erative tools provide an alternative worth exploring. Hosting the deliberation
44 online might allow for a number of advantages, for example, cost containment,
45 longer availability of the forum, ubiquitous accessibility, and so on. Indeed, parts
46 of the consultations led by the HFEA, for instance, were hosted online. This solu-
47 tion was, however, implemented without any mechanism confirming that partici-
48 pants had actually gone through the information material or that they were
49 familiar with the relevant issues. Moreover, the online participatory process did

1 not allow participants to present their own reasons and arguments and to discuss
2 the reasons and arguments of others, which is crucial for the deliberative kernel.

3 The alternative online participatory process we propose is structured as follows:
4

- 5 1. In a preliminary phase, citizens are asked to set the agenda of the deliberative
6 process, selecting issues they feel demand public deliberation. These issues
7 are then translated into specific yes/no questions whose formulation is tested
8 for impartiality and perspicuity by participants in a given span of time prior
9 to the deliberation.
- 10 2. Following insights drawn from experiences falling within James Fishkin's
11 deliberative polling scholarship,³¹ the participants to the deliberative process
12 are asked to provide their intuitive and unreasoned answer to the deliberative
13 question in order for the transformative potential of deliberation to be gauged
14 quantitatively. Somewhat differently from Fishkin's approach, though, we
15 propose to complement the measurement of the shift in preferences with a
16 genuinely deliberative effort that does not rely merely on the aggregation of
17 individual preferences subsequent to the information and discussion phases
18 described subsequently.
- 19 3. The participants are individually exposed to the relevant scientific information.
20 Again, differently from deliberative efforts that rely on information
21 provision, this participatory process provides information via a two-way
22 instrument. This allows for the contestation and reformulation of specific por-
23 tions of the information provided (in a fashion similar to that of *Wikipedia*
24 entries). Participants are tested on their knowledge of basic (theoretically
25 uncontroversial) facts contained in (or implied by) the information materials.
26 Those who fail the test are not allowed to proceed to the next phase. These
27 participants receive feedback, and they can restart this phase of the delibera-
28 tive process if they wish.
- 29 4. The participants are individually exposed to the known repertoire of relevant
30 moral arguments concerning the deliberative issue in question. They are then
31 required to object to a selection of arguments supporting their answer to the
32 deliberative questions and to provide some arguments in defense of their
33 view. This is meant to foster the understanding of people with different per-
34 spectives, hence discouraging and counteracting the ideological opposition
35 that sometimes characterizes this kind of confrontation. The arguments and
36 counterarguments produced by participants are tested for logical consis-
37 tency and rhetorical correctness. Those participants who provide very poor
38 arguments (meaning arguments that are either logically inconsistent or rely
39 on premises whose terms are not acceptable, at least in principle, to those
40 who are committed to finding fair terms of cooperation) in defense of their
41 view or against views they dislike are not allowed to proceed to the next
42 phase. These participants receive feedback and can restart this phase of the
43 deliberative process if they wish.
- 44 5. The participants are given access to an online asynchronous open forum in
45 which they discuss their respective positions with one another. The process of
46 discussion results in the draft of a deliberative document akin to the ones that
47 bioethical committees generally produce. In case consensus among partici-
48 pants is not forthcoming, "dissenting opinions" can be noted and underwritten
49 by participants.

1 The structure of the participatory process described is meant to embed the com-
2 petence principle in the technological support, thus screening out ignorant and
3 unreasonable participants. But the process is also maximally inclusive, partly
4 because it allows participants to acquire the relevant competence and partly
5 because it allows the participants to reenter the process in case they are unable
6 to satisfy the requirements for proper participation at one point or another. The
7 epistocratic constraints are soft constraints on participation. The aim is to com-
8 bine two values singled out as central by influential theorists of democratic
9 innovations^{32,33}—namely, considered judgment and inclusion.

10 Proposals of this kind have a series of advantages over Brennan's tests and
11 face-to-face deliberative workshops. As compared to Brennan's exams, (1) they
12 provide properly motivated citizens with the actual chance to be competent and
13 reasonable enough to participate in the deliberative process, giving them the
14 means for a nondominated and nondominating choice;³⁴ (2) because the process
15 is issue specific, a quiz testing for a subset of basic knowledge considered uncon-
16 troversial is more likely to be found and agreed on; (3) general political rights are
17 unaffected; (4) not granting lifetime licenses it is more likely to screen out people
18 lacking relevant knowledge, and there is no risk of outdated information. As
19 compared to face-to-face deliberative workshops, (1) this process significantly
20 lowers costs and barriers for large-scale participation; (2) it allows for longer
21 spans of time being allocated to constructing one's informed participation; (3) it
22 allows for easy handling of situations in which participants do not have the relevant
23 competence to start with but are motivated to acquire it.

24 25 **Conclusion**

26
27 In the context of deliberative processes that aim to be as inclusive, democratic, and
28 participatory as possible, especially when the issues discussed are bioethical, there
29 is a need to make sure that ignorant and unreasonable participants are prevented
30 from disrupting the deliberation. But, given the value and importance of partici-
31 pation, this idea needs to be applied very carefully, and in some contexts it may
32 not be applicable at all. We argued that it is possible to apply soft epistocratic
33 constraints on deliberative forums limited in scope, such as issue-specific online
34 bioethical forums, and that this can be done in a way that is consistent with the
35 tenets of deliberative democracy. In fact, we believe, procedures like those we
36 have outlined are an extremely useful tool capable of allowing for both the maxi-
37 mization of civic engagement and the moral legitimacy of the output of the delib-
38 erative process. Competent citizens would be empowered to influence the process
39 itself in a way that can advance the interests of the participants and of the com-
40 munities to whom they belong.

41 **Notes**

- 42
43 1. Abelson J, Blacksher EA, Li KK, Boesveld SE, Goold SD. Public deliberation in health policy and
44 bioethics: Mapping an emerging, interdisciplinary field. *Journal of Public Deliberation* 2013;9(1):4.
45 2. Brennan J. The right to a competent electorate. *The Philosophical Quarterly* 2011;61(245):700–24.
46 3. Boniolo G, Di Fiore PP. Deliberative ethics in a biomedical institution: An example of integration
47 between science and ethics. *Journal of Medical Ethics* 2010;36(7):409–14.
48 4. The participatory methodology outlined in this contribution is being deployed in a pilot online
49 consultation, which will provide useful empirical information for further developments (available at
<http://bioeticadeliberativa.scienzainrete.it/> [last accessed 15 Dec 2014]).

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- 1 5. See note 2, Brennan 2011.
- 2 6. See note 2, Brennan 2011, at 704.
- 3 7. Estlund D. *Democratic Authority: A Philosophical Framework*. Princeton, NJ: Princeton University
4 Press; 2009.
- 5 8. See note 7, Estlund 2009, at 33.
- 6 9. See note 2, Brennan 2011, at 717.
- 7 10. Daniels N. *Just Health: Meeting Health Needs Fairly*. Cambridge: Cambridge University Press; 2008,
8 at 169.
- 9 11. Stutzer A, Frey BS. Political participation and procedural utility: An empirical study. *European*
10 *Journal of Political Research* 2006;45:391–418.
- 11 12. Smith G. *Democratic Innovations: Designing Institutions for Citizen Participation*. New York: Cambridge
12 University Press; 2009.
- 13 13. Wampler B. *Participatory Budgeting in Brazil: Contestation, Cooperation, and Accountability*. University
14 Park: Pennsylvania State University Press; 2007.
- 15 14. Ottonelli V. *I Principi Procedurali Della Democrazia*. Bologna: Il Mulino; 2012.
- 16 15. Schumpeter JA. *Capitalism, Socialism and Democracy*. New York: Routledge; 2003:269–83.
- 17 16. Most deliberative democrats do argue for some version of what is called “considered judgment,”
18 but they generally trade this value off for inclusion in a way that, according to Brennan’s argument,
19 might end up affecting the legitimacy of the decisions taken.
- 20 17. See note 2, Brennan 2011, at 714.
- 21 18. Roth AE. Repugnance as a constraint on markets. *Journal of Economic Perspectives* 2007;21(3):37–58.
- 22 19. Bohman J. *Public Deliberation—Pluralism, Complexity and Democracy*. Cambridge, MA: MIT Press;
23 1996.
- 24 20. Elster J. *Deliberative Democracy*. Cambridge: Cambridge University Press; 1998.
- 25 21. Dryzek J. *Deliberative Democracy and Beyond: Liberals, Critics, Contestations*. Oxford: Oxford
26 University Press; 2000.
- 27 22. Gutmann A, Thompson D. *Why Deliberative Democracy?* Princeton, NJ: Princeton University
28 Press; 2004.
- 29 23. Boniolo G. *The Art of Deliberating: Democracy, Deliberation and the Life Sciences between History and*
30 *Theory*. Heidelberg: Springer; 2012.
- 31 24. See note 20, Elster 1998, at 8.
- 32 25. Parker M. Deliberative bioethics. In: Ashcroft R, Dawson A, Draper H, McMillan JR, eds.
33 *Principles of Health Care Ethics*. 2nd ed. Chichester: John Wiley and Sons; 2007:185–92.
- 34 26. Gutmann A, Thompson D. Deliberating about bioethics. *The Hastings Center Report* 1997;27(3):38.
- 35 27. People may be disenfranchised of some rights as a result of decisions taken in public forums
36 from which they are excluded. However, (1) the output of such forums does not directly acquire
37 the status of a binding law, (2) the fact that a woman enjoys her right to political participation
38 means that she can make use of democratically available contestatory institutions/practices, (3) the
39 decision reached by the forum is up for grabs and revisable (clearly only insofar as the extent to
40 which this revisability is exercised does not disrupt the intelligibility of a polity’s legal framework),
41 and, most importantly, (4) the legitimate reasons why the recommendations have been made are
42 made available to everyone who is affected by the decisions informed by the recommendations.
- 43 28. See note 3, Boniolo, Di Fiore 2010, and note 23, Boniolo 2012.
- 44 29. Fung A. Varieties of participation in complex governance. *Public Administration Review* 2006;66(s1):67.
- 45 30. HFEA. *Hybrids and Chimeras: A Report on the Findings of the Consultation*; 2007. The public consulta-
46 tions carried out by the HFEA can be found here: <http://www.hfea.gov.uk/122.html> (last accessed
47 16 Nov 2013).
- 48 31. Fishkin JS. *When the People Speak: Deliberative Democracy and Public Consultation*. Oxford: Oxford
49 University Press; 2009.
- 50 32. See note 12, Smith 2009, at 8–29.
- 51 33. Dahl R. *On Democracy*. New Haven, CT: Yale University Press; 1998, at 37–8.
- 52 34. Pettit P. *Republicanism: A Theory of Freedom and Government*. New York: Oxford University Press;
53 1997.