

Canada's Republican Invention? The Political Ideology of Citizens' Assemblies

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Introduction

Canada's two recent citizens' assemblies (CAs) on electoral reform held in British Columbia and Ontario provide a new model of democratic practice. An initial literature has emerged that analyses the CA model using the BC case. Important considerations about representation and the quality of deliberative dialogue have been raised; however there so far has been a noticeable absence of analysis on the basis of political ideology. Even though Canadian politics is entrenched in a liberal democratic tradition, I will present evidence showing that CAs are decidedly republican in character. To assess the CA ideologically means that the ways in which republicanism and liberalism overlap and conflict with each other must be clarified. As delicate an operation as this can be, evidence from liberals such as Isaiah Berlin and John Rawls, and republicans such as Quentin Skinner and Charles Taylor, offers a productive way forward. In order to contribute to how we understand CAs and these political ideologies I isolate three shared theoretical categories: liberty, citizenship, and democratic representation. Because our age of "democratic deficits" offers an opportunity for political theory to endorse political practices rather than only describe them, making sense of CAs is not a retrospective activity. This practice has influenced comparable initiatives in the Netherlands and Australia, and last year Oregon devised a remarkably similar practice called a Citizens' Initiative Review. But why does establishing the republicanism of CAs matter? Doing so helps us to grasp better the complex interaction of different types of liberty and uncovers that positive liberty in particular is more frequently brought into play than previously realized. This position on liberty contributes to a larger claim about the existence of a unique republican terrain that cannot be absorbed into liberalism's ideological orbit, without wishing to deny that these ideologies overlap in many ways. Only then is it possible to assert that the CA model represents the most vigorous institutional manifestation of the republican revival in political theory that has been in motion for twenty years.

I. What is a Citizens' Assembly?

A citizens' assembly is an independent body of citizens selected by nearly-random means who are brought together to make policy recommendations concerning an issue of public importance. CA members spend considerable time learning about the issue before consulting with the public. Lengthy deliberations about different policy options then inform the final recommendations. There are, then, four phases to a CA: 1) the selection or "civic lottery" phase; 2) the learning phase; 3) the consultation phase; 4) the deliberation and recommendation phase. This is the model that was used in British Columbia in 2004 and in Ontario in 2006-2007, when their provincial governments used CAs to address the merits of their existing electoral systems. Each CA met for almost one year and both recommended new electoral systems (Single Transferrable Vote in BC and Mixed Member Proportional in Ontario) to replace their Single Member Plurality systems (commonly known as First Past the Post). The electorate in each province voted on their respective proposals in referendums that coincided with provincial elections. In both cases the recommendations were defeated (BC in 2005 and 2009, Ontario in 2007) although in the first BC referendum the 'Yes' side advocating the new system won a majority of votes cast without reaching the required threshold.

Regardless of the referendum outcomes, the CA model counts as a significant innovation for deliberative and participatory democracy, as well as direct democracy (the latter insofar as the referendum mechanism is used; arguably CAs have too few members to qualify as a kind of direct democracy). A few comments about each phase will suffice to demonstrate this claim. CA membership is established by sending invitations to randomly chosen members of the public excluding elected officials. Citizens then opt into a pool of candidates from which the selection takes place according to various possible control criteria: geography/electoral riding, sex, age, language, race, education. BC selected one male and one female member for each electoral riding and added two Aboriginal members for a total of 160; Ontario selected one person from each of its 103 ridings (52 females and 51 males, at least one of whom had to be Aboriginal). Although candidates must opt-in to be eligible, the initial random invitations mitigate many dangers of self-selection, such as the prevalence of power cliques to plan ahead to seize a consultation process. The duration involved is what allows for such a rigorous learning phase. In the electoral reform CAs, members spent a minimum of 12 days spread over three months learning from political science experts about electoral systems. What is more interesting is the rationale that informs the learning phase. A CA proceeds on the assumption that citizens can grasp complex and technical problems so long as they are provided with the necessary time, information and resources needed to sort through the issues. The top-of-the-head responses that are so often the bedrock of opinion polling are presumed completely inadequate. Members might not become outright experts, but they are significantly better informed than the average non-member.

Both electoral assemblies accepted public submissions which were put into evidence. Public hearings were held (50 in BC and 41 in Ontario) where CA members met with interested members of the public to explain the assembly's task and its thinking to that point. This should not be mistaken for a romantic return to the polis, but neither should we discount such an addition to our almost non-existent repertoire of mechanisms where citizens engage one another in a formal political forum. Moreover, the deliberation that takes place within the CA body is particularly robust, as others have argued.¹ The recommendations made by the CAs on electoral reform both went to a referendum, although two other possibilities can be imagined: one where the recommendation is tabled in the appropriate venue of elected officials, which puts the onus on them to weigh its merits; and another where it is agreed in advance that the recommendation will be granted legal force.

The Canadian CAs as well as the one held in the Netherlands were likely the first time that governments handed over so much power to citizens on a constitutional issue. What this sketch as well as the existing literature fail to investigate is the ideological framework the CA model represents. From an ideological perspective, what models of freedom, citizenship and representation are involved? The rest of this article is devoted to showing that republicanism offers the most convincing answer and thus demonstrates that republican theory can be identified as something unique from liberalism.

II. On Liberty

In debates concerning the constitution of liberty it has long seemed obligatory to begin, and often end, with Isaiah Berlin's essay "Two Concepts of Liberty". Berlin's distinction between "negative" and "positive" liberty is now canonical and does not need to be rehearsed at

great length. Negative liberty consists of an absence of interference. The extent of freedom is consistent with the extent to which one is free from external impediments that interfere with one's ability to act, such as the laws of the state or a meddling neighbour. "The wider the area of non-interference", Berlin explains, "the wider my freedom".² Except when deliberate harm is involved, this view of freedom requires that its proponents remain silent concerning what people should or should not do with their freedom. Indeed, it seems that freedom requires no action at all; safe in my sphere of non-interference, action has no greater claim to liberty than does inaction. Berlin and others such as Quentin Skinner and Philip Pettit have found that Locke, Bentham and J.S. Mill all support this view of freedom which amounts to upholding Hobbes' dictum in *Leviathan* that "liberty, or freedom, signifieth (properly) the absence of opposition".³

Berlin contrasts the logic of negative liberty with that of positive liberty. The former is interested in the extent to which individuals are left alone, while the latter inquires about "the source of control or interference that can determine someone to do, or be, this rather than that?"⁴ The threshold for achieving positive liberty is noticeably higher than its negative counterpart. It requires that individuals pursue self-mastery through the use of reason. Such mastery means that one's goals are self-directed and that steps are taken in order to achieve them. This explicit tying of freedom to action is what led Charles Taylor to distinguish positive liberty as an "exercise-concept" from negative liberty as an "opportunity-concept".⁵ Regarding the pursuit of self-mastery, Berlin suggests that proponents of positive liberty - he lists Rousseau, Spinoza, Kant, Hegel and Marx, and no doubt had the politics of the Soviet Union in mind as well - imagine that all individuals are defined by a conflict between their higher and lower selves. In order to be free, the higher self of reason must determine the course of a life by controlling our stupid impulses and irrational desires. The danger Berlin detects is that the logic of positive liberty allows for illiberal results. If the ontological condition of freedom is taken to be rational self-mastery, it is a short distance to a society that imposes wide-ranging conditions on those who do not co-operate or do not understand what is supposedly rational and good. In Berlin's eyes, to justify such impositions the proponents of positive liberty attempt a sinister inversion: they seize the position that the rule of authority interferes with and restricts freedom and claim the opposite, that such rule is the source of freedom's expansion.⁶ The result, Berlin claims, is that in tracing the implications of positive liberty "we have wandered indeed from our liberal beginnings".⁷

In addition to these two approaches, it is thanks to the work of Quentin Skinner and Philip Pettit that the republican idea of liberty that was eclipsed by Hobbes and then the liberals and utilitarians who came after him has been revived. The republican approach detects a shared fault in its two competitors. Both involve a relationship of dependence: to enjoy my freedom either I must depend on a greater power, such as the state, not to interfere with me, or I must depend on the state or other organizations to provide the resources and conditions necessary for freedom through self-mastery. Both instances are intolerable for republicans because they involve depending on the good graces of an external authority which at any time can revoke the conditions of freedom.⁸ As Pettit explains, for the republican real freedom amounts to "not being subject to the arbitrary power of another".⁹ Pettit thinks that this can be achieved by way of the law alone, whereas Skinner holds that such freedom also requires widespread political involvement of publically-spirited individuals. Skinner also insists on distinguishing classical republicanism from the civic humanism he sees embodied in Aristotle and today in Charles Taylor.¹⁰ The Aristotelian position is ultimately a type of positive liberty that envisions all individuals as sharing specific purposes and ends on which the possibility of liberty sits. The

alternative republican position that Skinner and Pettit promote amounts to a form of negative liberty too, in that it sees positive liberty as a violation of pluralism.

Before testing the CA model according to these understandings of freedom, it is worth investigating just how exclusive they manage to be. It is not altogether self-evident that we must follow Berlin's view that with negative and positive liberty we are confronted by "two profoundly divergent and irreconcilable attitudes to the ends of life".¹¹ What I wish to argue is that each of these distinct approaches to liberty ends up enlisting aspects of at least one of its competitors. In Berlin's case this occurs in spite of his intentions, while Taylor's work depends on his success at arranging different versions of liberty so that they operate together in his favour.

Proponents of negative liberty regularly seem to support initiatives of a positive variant. Seatbelt laws, inheritance taxes, and laws that uphold free speech within limits appear to harness positive liberty while operating against a background of negative liberty. Each of these examples involves interference but is justified at least in part on the grounds that its effects are rational and will contribute to overall social improvement. What Berlin would point out is that theorists of negative liberty may well support seatbelt laws or redistributive taxes, but only by appealing to the worthy ends of increased safety or economic fairness, say, and *not* by an appeal to liberty itself. Conflating something like safety with liberty is precisely the error that Berlin sees in doctrines of positive freedom.

Nevertheless, there is an important example in Berlin's essay that may well call to purpose the type of logic and freedom that he guards against. After conceding that unimpeded liberty cannot be universally enjoyed because it would create conditions for the pike that would doom the minnow, he also points out that even a properly defined sphere of inviolability is of little use if certain life conditions are not realized.

It is true that to offer political rights, or safeguards against intervention by the State, to men who are half-naked, illiterate, underfed and diseased is to mock their condition; they need medical help or education before they can understand, or make use of, an increase in their freedom. What is freedom to those who cannot make use of it? Without adequate conditions for the use of freedom, what is the value of freedom?¹²

The answer to the last question for proponents of positive liberty would be: none. And they might well notice that Berlin's language begins to slip toward their own. Say we replace the men in Berlin's example with people who do not find themselves facing quite such bleak prospects: people who are indeed illiterate, uneducated, and in need of medical attention, but are otherwise fed and clothed. Berlin seems to present compulsory education as a necessary requirement for such individuals to understand the freedom they cannot yet properly enjoy. Is this not the same as saying that a lack of interference is not freedom unless people can undertake self-direction, or make use of their freedom, as Taylor puts it? Berlin would respond that compulsory education counts as the necessary materialization of his preferred form of liberty, and therefore that it does not involve generating "higher selves". At the least this indicates that pure negative freedom – no interference whatsoever – is less preferable in certain circumstances than compelling people to specific undertakings. Berlin's move is to present such compulsion as something minor because its product is negative liberty. But is this actually the case? In

addition to compulsory education (say the publicly provided state variety that is enforced by truant officers) Berlin calls for medical help, proper nutrition and clothing. In liberal societies these calls translate into such things as vaccine regimes and other state agency-imposed population health management. Even school and work attire turns political when it is thought, for example, that sharp school uniforms or work attire will help to produce a different type of person – a better and higher self – than will ripped jeans and hooded sweatshirts. The reality is that attempts to provide for the conditions necessary to enjoy negative liberty do not stop in the uncomplicated way that Berlin envisions. On the contrary, the compulsion and prerequisites for negative liberty help to inaugurate a logic of state and institutional intervention that places us on the slippery slope of authoritarianism that Berlin feared, though the slope appears to have a modest incline and we are not faced immediately with the type of authoritarian horrors that Berlin has in mind. To clarify, what Berlin’s argument suggests is that compared to an illiterate and unhealthy person, an educated and healthy one will enjoy a sphere of non-interference in a qualitatively superior way; that the better the understanding of freedom and capacity to use it, the better the freedom. This is why his view that compulsory education is consistent with negative liberty is unconvincing. What Berlin calls the “adequate conditions” of liberty is what Taylor calls the capacities needed to exercise liberty. The reason why I think Taylor is more convincing is that the only “condition” of negative liberty is the objective absence of interference; anything else is an individual capacity that makes possible a superior type of liberty while breaching the tenets of the negative variant. Far from establishing an unbridgeable difference between negative and positive liberty, the most celebrated theorist of negative liberty ends up demonstrating their mutual implication.

In this regard it is worth reviewing some of the contributions made by Charles Taylor who, in contrast to Berlin and Skinner, is willing to invoke both positive and republican liberty as prerequisites for negative freedom as well as being more conducive to freedom overall (hence the significant difference with Skinner, who wants a republicanism absent of any Aristotelian-style ideas of the good). In “What’s Wrong with Negative Liberty”, Taylor writes mainly as a critic of negative freedom from the position of a positive alternative.¹³ He argues that more than requiring an absence of obstacles to possible action, freedom requires an absence of *significant* obstacles to *actual* action. Taylor contends that this move to positive freedom is unstoppable because the negative variant cannot account for our need to realize freedom through action that counts as significant. The article ends with Taylor posing but not answering the question of whether realizing such freedom requires a specific form of society. In a subsequent article, “Cross-Purposes: The Liberal-Communitarian Debate”, he seems to answer in the affirmative. Without abandoning his earlier arguments, Taylor’s position becomes an explicitly republican one. He agrees with Skinner’s position that a free state is established primarily by way of extensive participation in public life while acknowledging that “nondespotism” requires other freedoms as well, “including negative ones”.¹⁴ Thus, we find in Taylor the development of a position that combines all three versions of freedom but without violating their distinctiveness: freedom flourishes when civic participation reduces dependence on arbitrary (state) power through “collective control over the common life”¹⁵; such action must also be the result of self-direction meant to fulfil meaningful ends; and with these priorities established, a wider background of negative freedoms becomes available.

This exposition merits greater elaboration than can occur here. What it clearly suggests is that some of our most careful thinkers on liberty end up - intentionally or not - offering

something of a mixed formula for freedom. How, then, do these approaches illuminate CAs? Where do CAs fall on this overlapping spectrum? Although CAs clearly have nothing to add to a sphere of negative liberty, neither do they violate it. Invitees are as equally free to submit their names for selection as they are to decline the offer, and nothing about a CA counts as interference in any sense that someone like Berlin would recognize. But there is much more going on here. CAs explicitly involve an exercise-concept of freedom, namely that those who enter into the civic lottery have found that among their life priorities participation counts as a necessary or perhaps more fulfilling end compared to other options. While the liberal model of negative liberty is silent on such judgements, we have seen - and will again later - that both the republican and positive alternatives argue that an assessment of freedom requires such a finding, for instrumental republicans because it contributes to the ends of liberty, and further for the proponents of positive liberty because the dignity of participating in self-rule is a good in and of itself.

This point about the necessity of choosing political participation can be deepened thanks to the republican position on non-dependence/non-domination. The CAs on electoral reform were important because they eliminated the likelihood that provincial politicians would have acted according to their own interests if the decision had been in their hands. Apart from such a unique issue, however, many will argue that problems of dependence, and especially instances of arbitrary power, do not plague democracies such as those in Canada. Republicans have two responses. First, Canadian democracy offers fewer meaningful opportunities for citizens to influence policy decisions than might be assumed. Except for elections, the options available - petitions, letters, town hall meetings, opinion polls, focus groups, protesting - rarely shift the direction of policy (and sometimes elections fail in this regard, too). Thus, our present arrangements are not so different from the ones Rousseau identified in eighteenth-century England: "The people of England believes itself to be free; it is quite wrong: it is free only during the elections of Members of Parliament. Once they are elected, the people is enslaved, it is nothing".¹⁶ The second republican response is that along with the ingrained principle of party discipline, the office of the Prime Minister is an increasing source of arbitrary power in its control of Parliament, party and cabinet (the Canadian and international response to Prime Minister Harper's second suspension of Parliament in a 13-month period is but the most discussed example).¹⁷ For this problem CAs are no cure. But if they became a regular feature of Canadian democracy and were at least in part citizen-initiated, then citizens may well begin to enjoy a greater absence of dependence that the republican approach to freedom demands.

One last issue must be considered before concluding the first part of this discussion about how republicanism is best equipped to account for, and is most embodied by, citizens' assemblies. Benjamin Constant's distinction between the public and political liberty of the ancients and the private liberty of the moderns might already tell us all we need to know about CAs and freedom. If CAs deliberate about the public good, then perhaps there is nothing more here than an uninteresting application of Constant's model - albeit as a rare case of ancient liberty. A curious development takes place over the course of Constant's argument, however. At first he insists "that we can no longer enjoy the liberty of the ancients, which consisted in an active and consistent participation in collective power".¹⁸ But by the end of his famous speech he declares that "far from renouncing either of the two sorts of freedom which I have described to you, it is necessary, as I have shown, to learn to combine the two together".¹⁹ Charles Larmore has argued that the liberty of the ancients does in fact remain out of Constant's (and

our) reach. What Constant offers, Larmore suggests, is an articulation of both forms of negative liberty – liberal and republican – without distinguishing between them.²⁰ This is the relevant passage from Constant: “For each of them [English, French and American citizens] it is the right to be subjected only to the laws, and to be neither arrested, detained, put to death or maltreated in any way by the arbitrary will of one or more individuals”.²¹ Larmore is certain that he has identified in Constant’s liberalism a flawless statement of republican liberty as non-subjection to an arbitrary power. All the more surprising is that this appears to satisfy Phillip Pettit’s version of republicanism, in which there is no necessary requirement of political participation because the proper dispensation of the law can ensure no actual *or potential* domination. Does even a hair’s breadth separate republicanism from liberalism, then? Larmore shows that Pettit and Constant can be brought so close together that they more or less overlap. Further, does uncovering how different modes of freedom are frequently combined as part of a larger political philosophy mean that the best republicans can do is plot out a “liberal republicanism”? Taylor and Skinner justify civic action in different ways, but their agreement on its necessity is in stark contrast to Constant’s advice that “one must never require from them [us moderns] any sacrifices to establish political liberty”.²² This comparison establishes a clearer and potentially more durable ideological distinction. Liberalism seems more reticent and less equipped to make a link between negative liberties (non-interference and non-domination) and civic participation, although this is true more of Bentham and Berlin than of Locke and Rawls. When Mill explains the benefits of a metaphorical “school of public spirit” where private citizens turn to “principles and maxims which have for their reason of existence the common good”,²³ it suggests that republican-infused liberalism is as possible as liberal-minded republicanism, although more will be said about this – and Mill’s “school” – below.

These important nuances notwithstanding, on the score of liberty a broadly republican approach appears to have the most to say about CAs because they contribute the most to a republican position. CAs do nothing to threaten the background system of negative freedom, yet are themselves constituted by a mixture of republican liberty (with the potential for an even stronger version) and positive liberty. Creating an institution which has as its purpose the direct political participation of unelected citizens through extended periods of deliberation is not something that can be absorbed into a liberal framework in the way that Larmore does with Pettit’s position on freedom. From the perspective of political theory, the preceding analysis has the added merit of reinforcing how freedom rarely obeys the conceptual divisions that have defined our understanding of it.

III – Citizenship

This section begins by reviewing the basic liberal and republican conceptions of citizenship. As with liberty, liberal and republican positions on citizenship are not monolithic and can bleed into one another. Despite this, a reasonable portrayal of how each ideology conceives of citizenship is available, even when disagreements within liberalism and republicanism further complicate the matter.

For liberals, citizenship primarily confers status. It offers a set of rights and entitlements and demands little in return other than lawful behaviour and jury service. Voting and civic activity are hoped for but imposing such requirements (legally, if not morally) is not a liberal position. Of course, liberalism provides a right to be politically active and liberals are all the

happier for such activity. Nevertheless, the ontological priority that it gives to the individual and negative freedom in Berlin's sense means that liberalism not only allows but "valorizes the privatization of personality, commitment, and activity".²⁴ Indeed, Berlin himself describes how the core of liberalism will "demand a maximum degree of non-interference compatible with the minimum demands of social life".²⁵ A more exacting liberal position can be found in someone like John Rawls, who argues that citizens and public officials have a duty of civility to explain their rationale for supporting certain political positions, with citizens responsible for the added proviso that they must repudiate those officials who violate this duty.²⁶

Berlin's prioritization of private life epitomizes the republican concept of "corruption", which Skinner describes as "our natural tendency to ignore the claims of our community as soon as they seem to conflict with the pursuit of our own immediate advantage".²⁷ As described earlier, republicans like Skinner respond to the liberal claim that pluralism is best achieved through negative liberty as non-interference by arguing that a superior route is available through a common duty to be politically active. The result is that citizenship is recast as a practice or an activity rather than a status. Since citizen motivation is often an obstacle to widespread participation, republicans argue that institutional supports are required to provide opportunities not just for involvement, but for participatory decision making that cultivates civic-mindedness. Such provisions count as the difference between republicanism and Mill's metaphorical school of public spirit, which lacks the requisite real-life desks and chairs, so to speak. Civic-mindedness is usually the virtue that republicans use to differentiate between the private individual and the public citizen.

Some difficulties arise with this neat division in no small part because liberals and republicans operate so closely to their respective theoretical borders. John Rawls is likely the most misrepresented target of republican criticism that does not attend sufficiently to these nuances. His well-rehearsed distinction between political liberalism, which prioritizes the right over the good, and comprehensive political doctrines (liberal or otherwise) that extend through the private sphere, does not amount to what Skinner thinks is an Adam Smith-like position where enlightened self-interest benefits all.²⁸ As Rawls explains in *A Theory of Justice*: "Among individuals with disparate aims and purposes a shared conception of justice establishes the bonds of civic friendship".²⁹ The consequence is stated clearly in *Political Liberalism*, that this liberal society "is not, then, a private society" since "citizens do have final ends in common", namely "the end of supporting just institutions and of giving one another justice accordingly".³⁰ Attentive to the difficulties that republicanism could pose, Rawls makes a decisive move intended to incorporate much of the republican position into his own. He distinguishes between "classical republicanism" - the idea that without widespread citizen participation a democracy will fall into the hands of a dominant few - and "civic humanism" - where politics forms the heart of the good life and citizens realize themselves through frequent participation in it.³¹ Rawls asserts that the former is compatible and even in line with his brand of (republican-lined) liberalism. Two questions present themselves. First: to what extent is the distinction between classical/instrumental and civic/humanist republicanism sustainable? Second: does liberal citizenship brushed with republican flavours actually prevent the latter from presenting a unique position that resists absorption by liberalism?

The division between the two strands of republicanism has become hard-wired into the debate from a variety of positions. It is upheld by liberals (Patten, Rawls), by republicans who promote its instrumental variant (Maynor, Pettit, Skinner) and by republicans who uphold civic

humanism (Oldfield, Taylor).³² The issue is that most instrumental republicans see the benefit of their approach in its maintenance of liberty by way of participatory politics. They explicitly repudiate the need or the desirability of seeing politics as intrinsic to individual flourishing, which is depicted as nothing more than an attempt to dress positive liberty in republican clothing.³³ But evidence questioning the purity of the instrumental position can be raised here, however briefly. Take Skinner's reliance on the republican idea of corruption. He adds that citizens must "be persuaded to act virtuously" even if it means using the law "to force us into discharging the full range of our civic duties".³⁴ This logical progression brings positive liberty back into play. Skinner's move begins with a liberal sphere of non-interference, with persuasion as its main political tool, but quickly enlists the use of force, the description of which is nothing but a compelled-by-law (that is, we know what is good for you) exercise-concept of freedom. More importantly, Skinner's argument suggests that public virtue relies on a non-instrumental good that exists in and of itself. How? Being virtuous means having the proper orientation in life, which is *the* basic characteristic of a good citizen apart from any ancillary benefits it might bring. Civic humanists such as Taylor will add that this is just the beginning of the good associated with republicanism. Taylor's argument is that with the bond of a common good and shared fate "the sharing itself is of value".³⁵ The purity of the instrumental position can be maintained only by refusing recourse to a civic humanism that infiltrates it anyway. Taylor's position accommodates the instrumentalists concerning the foundation of liberty and citizenship in "participatory self-rule", which he identifies simultaneously as "the central good of the civic-humanist tradition" and vital to "a life of dignity".³⁶ Participatory self-rule and dignified lives are goods both politically and in and of themselves. Denying this, and especially the latter, is a sure way to efface a fundamental difference between liberalism and republicanism.

To the extent that the schism within republicanism can be overcome, it renders the adoption of the instrumentalist strand by a liberal such as Rawls more difficult. Indeed, even though Rawls is preoccupied by how a common concern for justice will unite and motivate citizens, this does not seem to interrupt Skinner's accusation that rights end up acquiring the status of "trumps" that take "priority over any calls of social duty".³⁷ A related distinction is usefully put this way: for liberals generally, citizenship is a prize of the society we live in, one that grounds individual rights as primary and does not invoke any conspicuous burden on citizens. By contrast, republicans think that we get the society we do because of the principles and practices of citizenship that are currently operative. Travelling according to the causal direction of their arguments, liberals and republicans pass each other by.

Provided that the distinctions between the type of citizenship envisioned by liberals and republicans stand up to scrutiny, the *tangible existence* of citizens' assemblies means that their ideological characteristics should matter a great deal to supporters of republicanism (more reasons will be discussed below). In the limited literature on the BC CA its work has been described as reflecting "the aggregated value preferences of the group"³⁸ as well as "discovering the common good through learning and deliberation".³⁹ The first depiction has much in common with established (liberal) governing practices. The second claim transcends the first one by suggesting that CAs facilitate a process whereby members can incorporate their individual interests with a citizen's concern for a shared public fate. In respect to citizenship there are other aspects of CAs that incline their ideological balance toward republicanism. By sidestepping the usual public opinion route of tracking what people think while ensconced in their homes, the CA approach constructs a new public space. It provides an opportunity for self-governance rather

than relying passively, and naively, on people to seek out or construct the opportunities themselves. The response to the initial invitation in BC and Ontario produced thousands of people who put forward their names for selection, giving the lie to the most pernicious aspects of the apathy hypothesis. Individuals *will* more often meet a heavier burden of citizenship if they have been invited personally to enter a public space - the republican approach - compared to when they are confronted with abstract requests for “giving back” - the too-common liberal approach (but also a disappointing trend among some republicans). Even Rawls’ clear expectations about individuals providing justice to one another appear divorced from the instrumental means needed to do so, especially when compared to a CA.

In terms of the time involved and the type of commitment members make to the public, CAs demand more of citizens but also offer more: an opportunity to make decisions that are taken to the public for ratification. This process of democratic will formation is discussed further in the final section. What it demonstrates for now is that CAs count as a specific institutional and instrumental response to the problem of maintaining negative liberty in the republican sense of non-dependence. Inseparable from this instrumentality, and therefore inseparable from civic republicanism, it is possible to claim the forging of an inherent good - a civic orientation and life of increased dignity that comes with a more robust model of citizenship occupied with building a democratic will. This does not mean, however, that citizens must abandon their private lives to sacrifice themselves to the public altar. The republican idea of the good orients and informs private concerns and can only survive when the latter do not exist in opposition to the former.

IV - Representation and Democracy

In respect to the themes of representation and democracy the literature on citizens’ assemblies is better developed. CAs have been compared favourably to the Athenian model of democracy insofar as they involve a deliberative body made up of citizens who have recommendation-making power but do not take part as representatives of any special interest.⁴⁰ What strengthens the comparison is the use of selection by lottery, a process that many judicial systems use today to help select juries of one’s peers, but which has never figured in the politics of liberal democracies. In Athens only the Assembly was elected. By contrast, the Council of 500 that set the Assembly’s agenda, as well as the people’s courts and 600 of 700 state magistrates were all selected by lottery. The thinking then, which remains especially relevant today, was that the use of lottery would break power cliques and also ensure that not just the rich, famous, or especially eloquent would fill public offices. Compared with election, lottery is the height of equality because virtually everyone (at least today, if not in Athens) has an equal chance of being selected. It is true that lottery is a *democratic* method of selection and is not therefore the exclusive property of any particular ideology. But when we consider the fact that two of its most robust uses have been in ancient Athens and the city republic of Florence (from 1328 until 1434 when the Medici’s ended the practice), lottery enjoys a republican association that liberalism cannot claim.

What complicates this assessment is that CAs have only taken place within unmistakably liberal democracies which have long claimed a monopoly on the benefits of representative government. Consider this passage from Hanna Pitkin’s classic text *The Concept of Representation*:

The wonderful theoretical advantage of representation as Liberalism sees it, then, is this: representation makes it possible for each to participate in government as the final judge of whether his particular shoe pinches; yet it allows the rulers to use their wisdom and information to further people's true interests, where direct action would be misguided by short-range, hasty decisions. And, at the same time, representation makes it to the interest of the ruler to act in the interest of the subjects - not to give in to their passing whims, but to act in their true interest. For if he gives in to their passing whims, they will not really be pleased.⁴¹

In some ways the CA model does not even live up to these liberal democratic standards of representation. The absence of a direct future relationship between CA members and the rest of the public means there is no accounting for performance in the way that occurs between elected representatives and constituents. Nevertheless, Mark Warren contends that CAs should be understood as a "citizen representative body" and assessed according to standard criteria of democratic representation: electoral authorization, egalitarian inclusiveness and accountability.⁴² On all three counts the CA scores well in Warren's analysis. Although their members are unelected, CAs have been legislated into existence by elected officials, and at least in the BC case its members earned higher levels of public trust compared with politicians.⁴³ The composition of CA membership is also far more egalitarian and inclusive than the legislatures which brought them into existence. This is due in part to the civic lottery selection method as well as to certain demographic controls that were added to it. Age and sex were the two controls used in BC and Ontario, however the near-random selection still produced a much more representative distribution based on race, income and education even though these variables were not controlled.⁴⁴

The most controversial aspect of Warren's analysis (especially when it comes to distinguishing liberalism from republicanism) concerns the forming of the public will, which he understands to be an example of institutional accountability. On Pitkin's account of liberalism, electoral representation connects the public to government as well as functioning to keep representatives honest and their attention on their subjects' true interests. By contrast, the CA's status as a citizen body that forms a democratic will for the common good is achieved by virtue of being *free from* electoral representation and special interests. To the extent that CAs are republican in nature, we are confronted with the irony that they might do better than liberalism does at achieving vital aspects of liberal democratic representation. And yet this very concern for democratic wills and common goods is potentially incompatible with notions of representation altogether. Pitkin follows the Roman's definition of the word *repraesentare* as "the literal bringing into presence of something previously absent".⁴⁵ Hence the importance of the "re" in representation: the very coherence of this concept demands that what or who is being represented must come before the act of representation. In the case of the democratic will and the common good, a CA does not represent them because it is brought into existence precisely in order to *form* them. Thus, when Warren suggests that a CA's "highest threshold for accountability" is based on whether "the representative body represent[s] a formation of the public will",⁴⁶ it is more accurate to ask whether a CA has managed to build what we consider, upon reflection, to be a public will. To suppose the opposite, that the public will or the common good already exists, is to portray CAs as an elaborate retrieval exercise. In other words, such a view begs the question by assuming the existence of precisely that which is at issue and therefore

unknown. One way to justify the need for a CA is that when an issue has proven particularly intractable, is unsuitable for elected officials, or requires uncommon expertise that comes through dedicated learning, the necessary democratic will cannot be thought to exist already. Such a will must be formed, and in this way at least CAs are radically non-representative bodies.

To take this point one step further, the non-representative aspect of CAs suggests an alternative, namely that they are formative bodies. This seems precisely in keeping with Rousseau's republican understanding of the matter. "Sovereignty cannot be represented, for the same reason that it cannot be transferred; it consists essentially in the general will, and the will cannot be represented [. . .]. The people's deputies are not its representatives, therefore, nor can they be, but are only its agents; they cannot make definitive decisions".⁴⁷ So far in their short history, CAs cannot make definitive decisions either. More importantly, however, Rousseau's argument supports the position that CAs do not *represent* the democratic will and that their members are not representatives in the way that liberalism conceives of representation.

Citizens' assemblies again appear to be primarily republican in character, in this case according to their attributes of democratic representation. This is certainly true of the CA selection process which has a strong republican ancestry. To the extent that CAs are representative bodies they excel where our liberal legislatures do not - in their deliberative capacity and egalitarian inclusiveness - while failing to meet one of liberalism's fundamental attributes - the ability for constituencies to have their interests represented and to hold their individual representative(s) to account electorally. At least as significant is the depiction of the CA as a formative and radically non-representative body. The idea that such a body can act for other people without representing them is absent from the literature on representation (liberal or otherwise) but manages to find theoretical support through republicans such as Rousseau.

Conclusion

This article's primary insight has been to find that the practices of citizens' assemblies have a stronger republican provenance when compared to liberalism. In respect to the categories of liberty, citizenship, democratic representation, CAs score higher on the republican side than on the liberal one. These findings depend on an analysis that remaps the ideological terrain in part by challenging some entrenched positions that unjustly separated or collapsed together components of the two ideologies in question. Finally, the revival of republicanism in political theory has been in need of institutional support and the CA model appears capable of providing some (though from a republican view this would only be one of the required steps, albeit an important one).

Two last points are worth making in regard to the CA model and contemporary politics. First, too many discussions about where political power (narrowly construed) ought to reside are limited finding the right balance between centralized and decentralized authority, especially in federal systems. What citizens' assemblies achieve is a 90-degree turn of this vertical alignment so that the issue becomes a horizontal one: no longer between different orders of government, but between government and citizens. James Fishkin's invention of the deliberative poll is another attempt at such an axial turn, although it succeeds to a lesser degree, I would argue.⁴⁸ What the addition of the citizens' assembly to our democratic repertoire signifies is a growing possibility of increased horizontal decentralization of power. Second, citizens' assemblies provide one reason to reassess commonplace arguments about how liberalism and

multiculturalism work to maintain social differences while republicanism closes down on them. If democracy is only worth its name if the differences between people are not effaced, citizens' assemblies offer a timely and unique institutional setting where differences do not just pass by on the road, but settle down to meet. It is worth considering whether an institution designed to help overcome certain differences is also one where they are more richly understood.

¹ R.S. Ratner, "Communicative rationality in the Citizens' Assembly and referendum process," and M.E. Warren, "Citizen representatives," in *Designing Deliberative Democracy: The British Columbia Citizens' Assembly*, (Cambridge: Cambridge University Press, 2008).

² I. Berlin, "Two Concepts of Liberty," in *The Proper Study of Mankind*, (New York: Farrar, Strauss and Giroux, 2000), p. 195.

³ T. Hobbes, *Leviathan* (Indianapolis: Hackett Publishing Company, Inc., 1994), p. 136.

⁴ Berlin, *op. cit.*, Ref. 3, p. 194.

⁵ C. Taylor, "What's Wrong with Negative Liberty," in *Philosophy and the Human Sciences* (Cambridge: Cambridge University Press, 1985), p. 213.

⁶ For example, Berlin, *op. cit.*, Ref. 3, p. 223.

⁷ Berlin, *ibid.*, p. 223.

⁸ Q. Skinner, "Freedom as the Absence of Arbitrary Power," in *Republicanism and Political Theory* (Malden, Mass.: Blackwell, 2008), p. 88.

⁹ P. Pettit, "Freedom as Anti-Power," *Ethics* 106 (1996), p. 576.

¹⁰ Q. Skinner, "The republican ideal of political liberty," in *Machiavelli and Republicanism* (Cambridge: Cambridge University Press, 1990), pp. 306-8.

¹¹ Berlin, *op. cit.*, Ref. 3, p. 237.

¹² Berlin, *ibid.*, p. 196.

¹³ Taylor, *op. cit.*, Ref. 6.

¹⁴ C. Taylor, "Cross-Purposes: The Liberal-Communitarian Debate," in *Philosophical Arguments* (Cambridge, Mass.: Harvard University Press, 1995), p. 193.

¹⁵ Taylor, *op. cit.*, Ref. 6, p. 211.

¹⁶ J-J. Rousseau, *The Social Contract* (Trans. C. Betts), (New York: Oxford University Press, 1999), p. 127.

¹⁷ The right-wing *The Economist* writes: "Stephen Harper is counting on Canadians' complacency as he rewrites his country's politics to weaken legislative scrutiny." *The Economist*, "Canada without Parliament," January 7, 2010, accessed online on October 11, 2010, http://www.economist.com/world/americas/displayStory.cfm?story_id=15211862&source

¹⁸ B. Constant, "The Liberty of the Ancients Compared with that of the Moderns," in *Political Writings* (Trans. and Ed. B. Fontana), (Cambridge: Cambridge University Press, 1988), p. 316.

¹⁹ Constant, *ibid.*, p. 327.

²⁰ C. Larmore, "A Critique of Philip Pettit's Republicanism," *Nous: Philosophical Issues* 35 (2001), pp. 236-7.

²¹ Constant, *op. cit.*, Ref. 23, p. 310.

²² Constant, *ibid.*, p. 321.

²³ J.S. Mill, "Considerations on Representative Government," in *On Liberty and Other Essays* (Oxford: Oxford University Press, 1991), p. 255.

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- ²⁴ P.H. Schuck, "Liberal Citizenship," in *Handbook of Citizenship Studies* (London: Sage, 2002), p. 137.
- ²⁵ Berlin, *op. cit.*, Ref. 3, p. 232.
- ²⁶ J. Rawls, *Political Liberalism* (New York: Columbia University Press, 2005), pp. 244-5.
- ²⁷ Skinner, *op. cit.*, Ref. 12, p. 304.
- ²⁸ Skinner, *op. cit.*, Ref. 12, p. 304.
- ²⁹ J. Rawls, *A Theory of Justice*, Revised Edition (Cambridge, Mass.: The Belknap Press of Harvard University Press, 1999), p. 5.
- ³⁰ Rawls, *op. cit.*, Ref. 31, p. 202.
- ³¹ Rawls, *ibid.*, pp. 205-6.
- ³² A. Patten, "The Republican Critique of Liberalism," *British Journal of Political Science* 26 (1996), pp. 25-44; Rawls, *op. cit.*, Ref. 31; Maynor, *op. cit.*, Ref. 33; Pettit, *op. cit.*, Ref 11; Skinner, *op. cit.*, Ref. 12; Oldfield, *op. cit.*, Ref 33; Taylor, *op. cit.*, Ref. 17.
- ³³ Skinner, *op. cit.*, Ref. 12, pp. 306-7.
- ³⁴ Skinner, *ibid.*, pp. 304-5.
- ³⁵ Taylor, *op. cit.*, Ref. 17, p. 192.
- ³⁶ Taylor, *ibid.*, p. 199.
- ³⁷ Skinner, *op. cit.*, Ref. 12, p. 307.
- ³⁸ A. Blais, R.K. Carty and P. Fournier, "Do citizens' assemblies make reasoned choices?" in *Designing Deliberative Democracy: The British Columbia Citizens' Assembly* (Cambridge: Cambridge University Press, 2008), p. 127.
- ³⁹ Warren, *op. cit.*, Ref. 2, p. 63.
- ⁴⁰ J. Ferejohn, "Conclusion: the Citizens' Assembly Model," in *Designing Deliberative Democracy* (Cambridge: Cambridge University Press, 2008), p. 196.
- ⁴¹ H.F. Pitkin, *The Concept of Representation* (Berkeley and Los Angeles: University of California Press, 1967), p. 205.
- ⁴² Warren, *op. cit.*, Ref. 2, pp. 52, 57.
- ⁴³ Warren, *ibid.*, p. 56.
- ⁴⁴ This is clearly the case with the Ontario CA. A three-way demographic comparison of CA members, Ontario Legislative Assembly members and the Ontario population has been prepared by researchers in Toronto at the organization MASS LBP.
- ⁴⁵ Pitkin, *op. cit.*, Ref. 47, pp. 3, 9.
- ⁴⁶ Warren, *op. cit.*, Ref. 2, p. 64.
- ⁴⁷ Rousseau, *op. cit.*, Ref. 19, p. 127.
- ⁴⁸ See J. Fishkin, *The Voice of the People: Public Opinion and Democracy* (New Haven: Yale University Press, 1997).