

Getting Practical about Deliberative Democracy

Democracy requires deliberation for at least three reasons. First, discussing public issues helps citizens to form opinions—on matters ranging from HMO regulation to global warming—where they might otherwise have none. Second, deliberation offers democratic leaders better insight into public concerns than elections do. Did voters choose a representative because of her views on Social Security, her family life, or the weaknesses of her opponent? To understand the meaning of votes, leaders must listen to public discourse.

Third, public deliberation offers a way—perhaps the only acceptable way—of getting people to justify their views so that we can sort out the better from the worse. If you say, “I demand lower taxes because I don’t like paying them,” you will persuade no one; but if you argue that you *deserve* more money in your pocket for some specific reason, then you may build public support for a position. Whether your position is *true* or *sound* can then be tested by other participants in the debate. In short, deliberation encourages people to provide general justifications or reasons, not just private preferences. And democracy works best when the public debates the public good.

But talk of a “deliberative democracy” often implies a lofty, informed, serious, fair, productive, and ceaseless conversation among all citizens—in other words, a fantasy. In Rousseau’s ideal society, for instance, “every man flies to the assemblies. . . . Bands of peasants are seen regulating affairs of state under an oak, and always acting wisely.” Instead of Rousseau’s peasants, other enthusiasts have envisioned toga-clad sages deliberating in a marble amphitheater or earnest Pilgrims at a town meeting.

These clichés are certainly utopian when applied to a nation of 273 million busy people. They are also somewhat frightening, because they assume that everyone should be of one mind—if not about issues, then at least about the proper methods and styles of debate. But people have (and ought to have) various and conflicting interests and customs. Besides, there are other things to do in life than to deliberate about public affairs. What we need are practical measures to raise the quantity and quality of public deliberation in a large and diverse society like ours, where most people’s attention is focused on private matters. This essay offers five proposals.

Campaign Reform

Political campaigns afford opportunities for public debate. But much of the money that finances American elections comes from groups that do not wish to see their interests candidly discussed. These funds flow overwhelmingly to incumbents to help them stave off competition and thereby avoid confronting difficult topics. Campaigns use their war chests to buy television and radio ads that do not inform voters or encourage disaffected people to become politically engaged. The professional consultants who advise candidates look for divisive “wedge issues” on which their clients happen to agree with the majority; they then try to prevent any shift in public opinion. Consultants are adept at using rhetorical formulas that discourage reflection and discussion, that freeze public opinion in place, and that polarize and inflame voters.

A system of (at least) partial public financing would generate a more robust and unfettered debate. Some of the public money could go toward activities that promote deliberation: for example, printed voter guides and official, televised debates. James Fishkin has devised an especially interesting format, *Deliberative Polling*TM, that could become part of a public campaign-finance regime. He writes:

The idea is simple. Take a . . . random sample of the electorate and transport these people . . . to a single place. Immerse the sample in the issues, with carefully balanced briefing materials, with intensive discussions in small groups, and with the chance to question competing experts and politicians. At the end of several days of working through the issues face to face, poll the participants in detail. The resulting survey offers a representation of the considered judgments of the public.

One such gathering took place in Texas during the 1996 presidential primary, with a nationally representative sample of 460 people. The experiment lasted for an entire weekend, during which the participants labored hard to assimilate information and share viewpoints. The national press corps attended in force, and ten million people watched some of the event on PBS, which broadcast it for more than nine hours. Such events could not be covered regularly on commercial television at any comparable length. However, broadcasters could be encouraged—or even required—to televise the period when the informed citizens pose questions to the political can-

didates. Then viewers would be able to watch the interchange between politicians and people who are like themselves demographically—except that the questioners would have studied the issues and exchanged ideas. Both candidates and citizens would learn the direction of an enriched or deepened public opinion, and everyone would witness a model of deliberation that might prove infectious.

Participants in the Texas experiment agreed that the experience was worthwhile and inspiring. The same year, another exercise in deliberation proved equally satisfying. The Commission on Presidential Debates asked 600 people to meet in groups and help choose the questions that candidates would be asked on national television. According to *The New York Times*, "An unexpected lesson was that participants lauded the sheer experience of post-debate discussion as much as the debates, bonding like jurists with other panelists and compounding their appetite for politics." A political scientist who managed the focus groups, Diana Carlin, said, "We didn't intend this; it just happened."

Public Journalism

The press has a crucial role to play in cultivating deliberation. When we think and talk about public affairs, we initially acquire most of our information from newspapers and television. Letters-to-the-editor pages, radio call-in programs, and television talk shows are forums for public deliberation. At their best, the national media can prevent our local conversations

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from becoming insular or uninformed. Nothing else can connect our small-scale discussions into what Benjamin Page calls one "deliberative national public."

Journalists often see their own job as providing information to citizens. But not all facts are equally helpful in promoting democratic deliberation. To dwell on information of the wrong kind can even be damaging. For example, when journalists mostly provide facts about the tactics and fortunes of political insiders, they make citizens seem insignificant. Likewise, information about who is likely to win the next election is of no use to citizens who are trying to decide who *ought* to win. Too often, these predictions turn into self-fulfilling prophecies that reduce the importance of actual votes.

Facts about "public opinion" can be equally harmful. Surveys often ask a random sample of Americans to answer preformulated questions without first reflecting,

discussing, or acquiring background information. The aggregated results are then presented as constraints within which politicians and the public must operate. We are told, for example, that a given policy is "unrealistic," because 65 percent of the public opposes it. Public opinion thus confronts citizens as an alien force, even though it is supposed to be something that they create.

Finally, many news stories "explain" officials' behavior by analyzing the political benefits that are likely to flow from their decisions. The implication that politicians act out of naked self-interest is often plausible—but also unverifiable and largely irrelevant. Motives are always difficult to assess, and in any case the important question is not why a politician votes in a particular way, but whether this position is right. Journalists are taught to keep their values out of their writing. But to limit the explanation of politicians' actions to self-interest is itself a moral judgment. It denies the legitimacy or relevance of any principled reasons that actors give for their decisions, and therefore makes deliberation seem pointless.

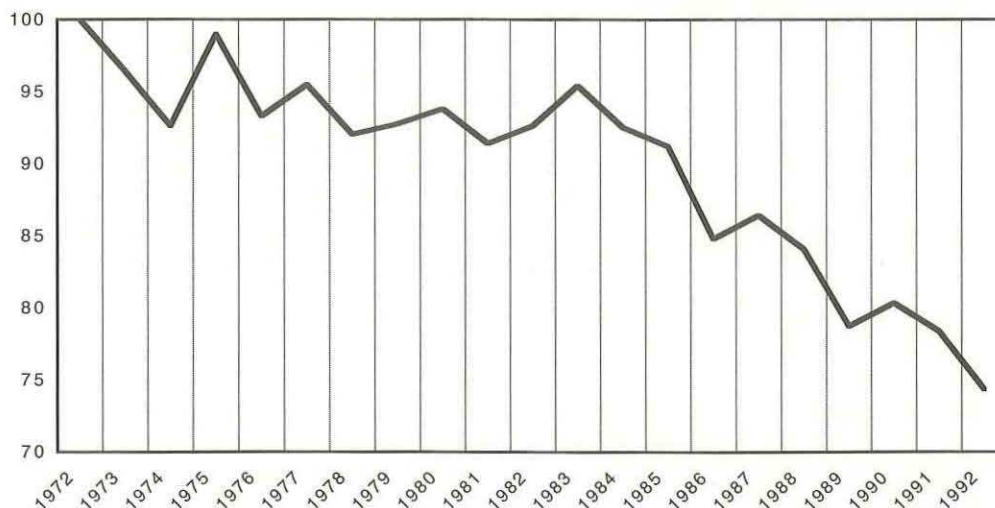
Fortunately, during the last few years, a new movement, called public or civic journalism, has begun to transform American newspapers, at least beyond the Capital Beltway. This label has been adopted by a loose coalition of reform-minded journalists with diverse ideals and projects. But a common theme unites many of their experiments: the cultivation of public deliberation.

Public journalists resist stories about the political "horse race" in favor of articles about issues. They also cover the public deliberations that occur in civil society, that is, within voluntary associations, neighborhood and civic groups, religious denominations, and universities. In covering these discussions, public journalists do not define "news" merely as moments of sharp disagreement, charges and countercharges, resignations and lawsuits. They also count routine exchanges of ideas as newsworthy.

Finally (and most controversially), public journalists instigate deliberation by convening citizens to talk about public affairs. For instance, during several recent elections, the *Charlotte* (North Carolina) *Observer* and the local ABC-television affiliate recruited people to serve on "citizens' panels" that collaborate with journalists to devise questions for candidates to answer. The politicians' responses were published in the newspaper. If a candidate refused to participate, a blank space was left by his name. Reporters from the business, health, education, and religion beats covered topics that the citizens' panel considered relevant to the election. Members of the panel met directly with candidates, and some of their deliberations were televised locally.

Such experiments cross traditional boundaries between objective reporting and activism. But North

Index of Deliberation



This chart tracks the decline of important deliberative activities since a baseline year of 1972 (when the index is arbitrarily set at 100). The activities are belonging to at least one group or attending church services, attending a local meeting, serving as an officer of an association, serving on a local committee, belonging to a reform group, attending a rally, reading the newspaper daily, writing a letter to the newspaper, making a speech, writing an article, being generally interested in politics, influencing other people's votes during campaigns, and wearing a button or displaying a sticker. The downward trend is statistically significant even if the weight of each component is treated as arbitrary. (Chart adapted from Levine, *The New Progressive Era*, p. 96.)

Carolina's public journalists have never forced candidates to take any particular position on issues. Instead, they have compelled politicians to engage in a dialogue with citizens. Thus public journalists have promoted a particular democratic *process*, and not a political *outcome*. Furthermore, it's worth remembering that conventional news stories about campaign tactics and polls are not truly neutral and detached, for they also affect public engagement. The effects of public journalism appear to be better: readers become demonstrably more active in community organizations and more interested in public affairs.

Changes in Civil Society

Major institutions in civil society that care about the health of our democracy should make internal changes so that they do more to cultivate deliberation. This is especially true of the "mailing-list" organizations that have grown since 1970, as fraternal societies have faltered. Many public-interest lobbies are organized democratically, with elected boards, state affiliates, and even referenda. However, members do not communicate horizontally, and most have so little commitment and knowledge that the professional staff dominate. To take just one example, according to John M. Holcomb, the "Center for Science in the Public Interest receives 75 percent of its revenues from over 80,000 members,

yet these contributors play no role in directing the affairs of the organization or in determining its goals."

The Harvard sociologist Robert Putnam doubts that mailing-list organizations build the interpersonal connections on which democracy depends. "For the vast majority of their members, the only act of membership consists in writing a check for dues or perhaps occasionally reading a newsletter. . . . Their ties, in short, are to common symbols, common leaders, and perhaps common ideals, but not to one another."

To be sure, mailing-list organizations may allow ordinary people to influence public policy (albeit indirectly) and to gain political information at a reasonable cost. Their effectiveness has declined, however, as groups on the Right and the Left have fought each other to a stalemate. To regain power and to strengthen their legitimacy in a democratic society, mailing-list groups should consider implementing or emphasizing a *chapter* structure, borrowing the best models from Amnesty International, the League of Women Voters, the American Civil Liberties Union, the Audubon Society, the National Rifle Association, and the Christian Coalition. To varying degrees, these groups ask local chapters to discuss issues and to initiate action. The chapters then become sites of deliberation and schools of leadership and participation.

Although it is difficult to grow rapidly and raise money with a chapter structure, this arrangement has

The New Progressive Era: Toward a Fair and Deliberative Democracy

Peter Levine

A century ago, Americans embarked on a period of civic renewal and political reform. Today, amid deep dissatisfaction with our major institutions, there are signs that a new movement may revive the spirit of the original Progressive Era. Peter Levine draws inspiration from the great Progressive leader Robert M. LaFollette, Sr., and his circle, which included John Dewey, Jane Addams, and Louis Brandeis. He discusses the shortcomings of this group as well as their successes, but he argues that their ideal of a fair and deliberative democracy is right for our time. Bringing their Progressive philosophy to bear on contemporary concerns, Levine advocates campaign finance reform, an entirely different approach to regulation, new styles of journalism and civic education, and fundamental changes in the tax system. Combining philosophical arguments, historical background, empirical data, and concrete proposals, *The New Progressive Era* offers today's most comprehensive plan for civic renewal and political reform.

"Some books you read and put aside. Others you send to friends; this is one of those books. Peter Levine brings a rich historical and philosophical perspective to an immediate and practical question: What is going to be the effect of all the effort that has gone into civic renewal in the last decade? What it will take to make democracy work as it should will be an especially pressing issue in the 2000 elections. Americans are already frustrated by a political system where money, rather than people, seems to do the voting. This book speaks to everyone from journalists to foundation executives to teachers to members of civic organizations—all citizens. Don't miss reading it."

—David Mathews, President, Kettering Foundation

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several clear advantages. First, the traditional methods of grassroots lobbying are losing clout. Politicians are no longer impressed by telephone calls from a few voters, because corporate lobbyists and talk-show hosts can generate these calls almost at will, but they might respect chapters that were active in their districts. Second, local bodies offer social benefits (such as friendship and entertainment) that encourage people to join and to stay active. For instance, many people probably belong to the Sierra Club because of its nature walks and to the National Rifle Association because of its firearms classes. Finally, there is a public-interest rationale for establishing a chapter structure. National membership associations should devolve some responsibility to local bodies in an effort to enhance deliberation and strengthen democracy. The nation's largest mailing-list organization, the American Association of Retired Persons, has already taken this lesson to heart and is trying to increase the civic responsibilities and capacities of its volunteers and chapters.

These reforms would be easier if the federal deduction for charitable contributions were replaced with a system of vouchers. Each person would receive a voucher of equal size that he or she could donate to any registered nonprofit organization. This would surely cause a major redistribution of philanthropic money from prestigious national and cultural institutions (traditionally patronized by the wealthy) toward local groups that encourage participation and serve less privileged clienteles. All things being equal, it would be a shame if Harvard University and the Metropolitan Museum of Art lost revenue as a result of a tax reform—but all things are *not* equal. Given limited amounts of state-subsidized philanthropic money, the lion's share should go to non-elite institutions. Moreover, a voucher system would encourage organizations of all types to recruit active, engaged participants, because people who volunteered for a particular group might also give it their vouchers. As Fishkin has argued, a voucher system would alter the market for civic participation by raising the value of—hence the demand for—people without special wealth or ability.

Regulatory Reform

Ever since the New Deal, Congress has frequently delegated its lawmaking power to executive or regulatory agencies and commissions. For example, Congress has told the Federal Power Commission to "determine just and reasonable rates"; the Federal Communications Commission to promote "the public interest, convenience, and necessity" in broadcasting; and the Securities and Exchange Commission to "prevent an unfair or inequitable distribution of voting power among security holders." Congress has not even attempted to define "just rates," the "public interest," or

"unfair voting power." Theodore Lowi and others have argued that legislatures should debate values, priorities, and trade-offs in public so that voters can assess their arguments as well as their decisions. Democracy is not well served by statutes that announce the good news (e.g., that the air shall be clean or the workplace risk-free), while leaving it to regulators to spell out the bad news (the costs and who must pay them).

An example shows what damage delegation can do to deliberation. In 1970, Congress enacted the Occupational Safety and Health Act to control hazardous substances in the workplace that impaired workers' health, functional capacity, or life expectancy. Senator Jacob Javits (R-NY) warned that the law "might be interpreted to require absolute health and safety in all cases, regardless of feasibility." He and his colleagues thus faced a profound philosophical question: whether safety should ever be balanced against efficiency, prosperity, employment, equity, or other economic values—and if so, how the balance should be struck. Instead of

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answering this question, they told the Secretary of Labor to "set the standard which most adequately and feasibly prevents harm to workers." The Labor Department thereby acquired the discretion to make almost any decision it chose. Congress had violated Locke's dictum that a legislature may make laws, but not legislators.

A recent textbook on administrative law flatly states, "Although there may be academic squabbles over the degree of power that bureaucracies have acquired, there is virtually no disagreement over the fact that the old dichotomy between policy making and administration is gone and that administrative agencies now perform both functions, fused into one institution." Because they are not elected and have no mandate to decide questions of value, regulatory agencies often hide the political choices they make behind a smokescreen of technical, expert discourse. Technocratic debates about costs and benefits may then eclipse public deliberation about ends and priorities.

Last May, a panel of three judges of the U.S. Court of Appeals for the District of Columbia responded to this problem in an important decision, *American Trucking v. US EPA*. Under the Clean Air Act, the Environmental Protection Agency (EPA) must set standards for air pollution that it finds to be "requisite to protect the public health" with "an adequate measure of safety." This language makes it far from obvious where to set the stan-

dards, since, as the Appeals Court noted, "the only concentration" of pollutants "that is utterly risk-free . . . is zero." EPA's method has been to ask a group of experts to devise a numerical threshold that they deem adequately safe. In the case of ozone, the EPA's experts set the threshold at .08 parts per million. In establishing this threshold, the EPA implicitly decided the number of deaths society should be prepared to tolerate. Such decisions should only be reached by elected bodies that deliberate in public. The Constitution, indeed, vests "all legislative powers" in Congress. On this basis, the Appeals Court prevented the EPA from enforcing its ozone standard.

A strict opponent of legislative delegation would demand that Congress judge how many deaths from pollution were acceptable. EPA would then decide (on the basis of scientific evidence) what level of pollution would produce the results that Congress had deemed optimal. The Agency would still have a choice to make: it would have to identify the most plausible scientific theory about the effects of pollution on health. But it would not have the discretion to decide how much health is sufficient. Since the Environmental Protection Act does give EPA such discretion, the Act appears unconstitutional.

However, the Appeals Court read "current Supreme Court cases" as permitting Congress to delegate *some* legislative authority to regulators. Therefore, instead of voiding the whole Environmental Protection Act and closing the EPA, the Court said that it would give "the agency an opportunity to extract a determinate standard" from the Act. A "determinate standard" apparently means an explicit value judgment that would transform the original statute (which endorses public safety, but only up to an unspecified point) into a clear statement of national priorities. If Congress felt that EPA's values were wrong, it could then respond with new legislation. For instance, if EPA stated explicitly that it considered x chance of y deaths to be tolerable, then its regulation would pass constitutional muster, because it would have "extracted" an explicit value judgment from the statute. To be sure, the Agency's judgment would not be the product of Congressional deliberation. But at least elected officials and the public could easily debate and change an explicit moral position taken by a regulatory agency, whereas they cannot grapple with myriad apparently technical decisions, such as the EPA's inscrutable rule that the threshold for ozone is 0.08 parts per million, rather than 0.07 or 0.09.

Even if federal courts go beyond the *American Trucking* decision and interpret the Constitution to forbid legislative delegation entirely—thereby dismantling much of the federal regulatory apparatus—state intervention in the economy would not be precluded. Conservatives often assume that unregulated markets work better than regulated ones and that a democratic

society would embrace laissez-faire if only bureaucrats were stripped of their authority. I doubt it. The public in the United States—as in every other industrialized democracy—reasonably demands state action in many fields. Thus, if Congress could not delegate its law-making authority to executive agencies, voters might ultimately pressure it to adopt simple, efficient, transparent, but *ambitious* federal initiatives such as vouchers, cash transfers, and a guaranteed minimum income. But of course it would be up to citizens to decide how much federal intervention they wanted.

Partnerships with Local Bodies

I have argued that elected legislatures, not appointed experts, should make important value decisions. But in practice Congress can only set broad policies at the national level; it lacks the time and local knowledge necessary to devise the best plan for each specific circumstance. A promising strategy is to ask local groups to design legislative solutions appropriate for their own problems. Congress and state legislatures could then enact these agreements into law.

Something similar was attempted during the War on Poverty, when the federal government established Community Action Agencies, local democratic bodies that issued rules and managed some public resources within their areas. But where board members were chosen by voters, Community Action agencies began to look much like traditional city councils, except that turnout was unusually low in their elections. The alternative was to choose members by non-traditional means, finding the kind of “authentic” community representatives who might not win formal elections. In some cases, this meant choosing established leaders (ministers, association presidents, and the like) to serve *ex officio*. But often, as writer Tom Wolfe noted, militancy was treated as evidence of authenticity. “If you were outrageous enough, if you could shake up the bureaucrats so bad that their eyes froze into iceballs and their mouths twisted into smiles of sheer physical panic . . . then they knew you were the real goods. They knew you were the right studs to give the poverty grants and community organizing jobs to. Otherwise they wouldn’t know.”

This was no way to improve accountability or to encourage widespread participation. To make matters worse, Community Action boards competed with existing elected bodies that should have been forums for democratic self-government.

Intractable disputes about representation arose because Community Action boards were expected to vote on policies. Thus their decisions might well change if one extra neighborhood representative, professional politician, minority member, welfare recipient, or expert gained a seat on the board—perhaps at the expense of someone else. Today, however, local institutions could

be reconceived as *deliberative* bodies, whose main function is to discover consensus solutions to local problems. These solutions would have no legitimacy unless every relevant group participated and endorsed the results. Thus it wouldn’t matter exactly how many participants were associated with any particular group or interest. In fact, no one would have to be excluded from a deliberative body, except perhaps for bad conduct.

In a legislative body, a requirement of consensus would be disastrous, since legislatures must make decisions even when people disagree. But this doesn’t mean that seeking consensus outside of a legislature is useless. On the contrary, voluntary deliberation can change minds, refine opinions, and occasionally generate plans that all participants will choose to bind themselves to. Such agreements can make a legislature’s work much easier.

Consider a recent example. In the arid West, economic conflicts about water use are exacerbated by differences in ideology and culture among such groups as miners,

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ranchers, urban consumers, environmentalists, hunters, and Native American nations. To make matters worse, watersheds are sensitive systems that cross state lines; water use or pollution in one place affects everywhere else. Thus each watershed is vulnerable to the behavior of all who own, use, or regulate any part of it. From the outside, battles over land use in Western watersheds often look so contentious that no resolution can be reached until the federal government acts forcefully, perhaps using armed agents to administer its unpopular regulations.

But actually all the interests involved are harmed by conflict and would benefit from a consensus, if one could be reached. With this in mind, at least 76 local groups across the West have convened completely voluntary meetings of interested parties, known as “watershed partnerships.” Anyone who wants to join is invited; anyone who disagrees with the group may opt out without fear of becoming bound by its decisions. But those who choose to participate can work out significant mutual agreements to which they may voluntarily bind themselves. Landowners and corporations can promise to curb unpopular behavior, environmental groups can waive their rights to sue, and government agencies can manage public lands and resources according to the desires of the group. For instance, according to the University of Colorado Natural Resources Law Center, a management plan for the Upper Carson River

in Nevada and California was signed by "government agencies, the Washoe Tribe, state assembly members, local community leaders, ranchers, conservation groups and homeowners associations."

A recent and much celebrated example of stakeholder negotiation, the Quincy Library Group, may be particularly instructive. According to a local journalist, this negotiation began as an informal discussion among "sport fishing groups, conservation clubs, wild river clubs, timber companies, county commissioners, land and trails trusts, Women in Timber chapters, the local Audubon Society, and even one person ... who describes herself as a 'Quincy resident and independent thinker.'" They met in the Quincy, Calif., public library because libraries forbid shouting. Ultimately, they developed a management plan for the surrounding national forest, presented it to Congress, and saw it become law.

This process could become commonplace. Once local groups had developed generally acceptable and detailed plans, Congress could order federal agencies to enforce them. Instead of asking administrators to pursue ill-defined values, laws would mandate compliance with specific agreements. Federal officials would participate in developing these plans and would articulate the national interest in local debates, but ultimately Congress would decide the law.

It would also be the responsibility of Congress and state legislatures to decide which groups and individuals must consent to a plan to make it a "consensus" document. A particularly thorny problem arose in the Quincy Library case when national groups objected to a locally generated agreement. A possible solution is to press such groups to participate in local discussions through their chapters. Dissent by a chapter would certainly refute a claim to consensus, and thus leave legislatures to do their normal job of weighing arguments and interests and making decisions. But any agreements that did win consensus (as defined by elected legislatures) should quickly become law, and stakeholders should be encouraged to seek consensus through local deliberation. As a beneficial by-product, we might see growth in civic participation, because local self-government teaches (in John Adams' words) "the habit of discussing, of deliberating, and of judging public affairs."

Conclusion

Proponents of "deliberative democracy" have argued persuasively that democracies benefit when there is broad discussion of public affairs. But the United States will never become a perpetual town meeting in which citizens devote most of their energy to debating the public good. Nor can we divide our nation (or any of the 50 states) into small, self-governing units that would function like idealized versions of the Greek polis. Instead, we need practical, institutional reforms that will raise the

quality and quantity of political talk in a society like ours. If the public became more engaged, our government would be forced to become more accountable and principled. In turn, better government would increase trust and confidence and make people more likely to participate in public life. We have certainly seen the opposite: a vicious cycle of official misconduct and public withdrawal, each reinforcing the other. The start of a modest upward spiral should be our goal.

—Peter Levine

This article is drawn from Peter Levine's new book, *The New Progressive Era: Toward a Fair and Deliberative Democracy* (Rowman & Littlefield). Sources: Jean-Jacques Rousseau, *The Social Contract*, translated by G.D.H. Cole, revised edition (London: J.M. Dent), Book III, chapter 15 (p. 266); Book IV, chapter 1 (p. 274); James Fishkin, *The Voice of the People: Public Opinion & Democracy* (Yale University Press, 1995); Francis X. Clines, "'Ask Not ...' 'Military-Industrial Complex ...' 'but Fear Itself ...'" *New York Times* (September 23, 1996); Benjamin I. Page, *Who Deliberates? Mass Media in Modern Democracy* (University of Chicago Press, 1996); Esther Thorson, Lewis A. Friedland, and Peggy Anderson, "Civic Lessons: Report on a 1996 Evaluation of Four Civic Journalism Projects Funded by the Pew Center for Civic Journalism" (Pew Charitable Trusts, 1997); Sean Aday, "Does Civic Journalism Work? An Experimental Test Comparing the Effects of Civic and Conventional Journalism on Audience Attitudes, Cognitions, and Behavioral Intention," paper delivered at the University of South Carolina (October 12, 1998); John M. Holcomb, "Introduction" to the Foundation for Public Affairs' *Public Interest Profiles* (Foundation for Public Affairs, 1988-1989); Robert D. Putnam, "Bowling Alone: America's Declining Social Capital," *Journal of Democracy*, vol. 6, no. 1 (January 1995); Lester M. Salamon, *Holding the Center: America's Nonprofit Sector at a Crossroads* (The Nathan Cummings Foundation, 1997), p. 27; James Fishkin, *The Dialogue of Justice: Toward a Self-Reflective Society* (Yale University Press, 1992); Steven J. Cann, *Administrative Law* (Sage Publications, 1995); Theodore J. Lowi, *The End Of Liberalism: The Second Republic of the United States*, 2d ed. (Norton, 1979); *Industrial Union Department, AFL-CIO v. American Petroleum Institute*, 448 U.S. 607, at 677 (citing the Legislative History), 675; John Locke, *Second Treatise on Government*, section 141; 175 F.3rd 1027; 1999 U.S. App. LEXIS 9064; Tom Wolfe, "Mau-Mauing the Flak Catchers," in *Radical Chic & Mau-Mauing the Flak Catchers* (Farrar, Straus and Giroux, 1970); Jo Clark, *Watershed Partnerships: A Strategic Guide for Local Conservation Efforts in the West* (Western Governors' Association, 1997); University of Colorado Natural Resources Law Center, *The Watershed Source Book: Watershed-Based Solutions to Natural Resource Problems* (1995); Mark Sagoff, "The View from Quincy Library: Civic Engagement in Environmental Problem Solving," in *Civil Society, Democracy, and Civic Renewal*, edited by Robert K. Fullinwider (Rowman & Littlefield, 1999), pp. 151-183; Statement of Chairman Don Young (R-AK) during the Committee on Resources mark-up of the Quincy Library Group Community Stability Act (May 21, 1997), available at http://www.qlg.org/public_html/bill/dyoung.htm; Joseph Bessette, *The Mild Voice of Reason: Deliberative Democracy and American National Government* (University of Chicago Press, 1994) (quoting John Adams).

What's Wrong with Exotic Species?

On the morning of December 19, 1997, Isabel, Yoyo, and Sydney—three young trumpeter swans following two ultralight aircraft across the Chesapeake Bay—landed near the Blackwater National Wildlife Refuge on Maryland's Eastern Shore. The three cygnets had adopted the French-made Cosmos ultralights as "mothers" to learn a 102-mile migration route to the Bay from a facility near Warrenton, Va., where the swans had hatched from eggs brought in from Canada. Defenders of Wildlife, using the "imprinting" technique made famous in the movie *Fly Away Home*, hoped to lure trumpeters to the Chesapeake region, where they had not been seen for nearly 200 years. About a year later, the environmental group, using the same technique, attempted to lead seventeen young trumpeters from western New York to the Eastern Shore. A spokesman for the group said that trumpeter swans would "help increase diversity" in the "critically important wetlands of the Chesapeake Bay."

While Defenders of Wildlife tempted trumpeters to the Chesapeake, wildlife officials in the region were trying to eradicate or at least to control over 2,000 mute swans that had proliferated there since 1960, when a few escaped from a private preserve. Because the State of Maryland lists swans as a protected species, wildlife officials use humane ways to control mutes, for example, vigorously shaking (or "addling") their eggs. "The potential for reproduction is out of control," says Doug Forsell, a biologist who works for the Chesapeake Bay office of the U.S. Fish and Wildlife Service. "The mute is a varmint species that we're going to have to spend a lot of money controlling."

It costs a lot of money to bring trumpeter swans to the Bay and to get rid of mute swans already there. What is the difference between the two breeds? Actually, they have much in common. Mute and trumpeter swans are usually monogamous and breed annually after reaching maturity. Clutch sizes vary but may average about 5 eggs. From March to May, during breeding and brooding season, both kinds of swans become fiercely territorial, chasing away any bird larger than a swallow and defending their eggs against predators. Swans are voracious vegetarians, often overgrazing marshlands. Unlike certain fish, such as striped bass, but like many waterfowl, such as Canada geese,

swans have no natural instinct to migrate. Both mute and trumpeter swans will take up year-round residence in a pleasant environment unless their parents teach them a migration route—and even then, they sometimes stay put. At least eight states are home to significant non-migratory populations of trumpeters, which in some instances have displaced mute swans from nesting places. Mutes and trumpeters occasionally interbreed and hybrids have been observed.

How do mute swans differ from trumpeters? The orange bill of the mute swan provides an easy way to tell the birds apart; a black fleshy knob extending from the base of its bill is another. Trumpeters are slightly larger—the males or cobs can weigh as much as 30 pounds and their wingspans measure up to seven feet. The mute grunts while the trumpeter trumpets. From the perspective of environmental policy, though, the crucial difference may be historical. Mute swans hail from Eurasia, where they were domesticated by royalty, while trumpeters are native to North America.

Does this historical fact, however, justify efforts to rid the Bay of the interloper and to restore the ancestral breed? Suppose that fossil or other records were suddenly to reveal that mutes, rather than trumpeters, inhabited the Chesapeake region centuries ago. Would volunteers then addle the eggs of trumpeters while ultralights helped mute swans fly home to the Chesapeake Bay?

What's Wrong with Exotic Species?

Last February President Clinton signed an "Invasive Species Executive Order" directing federal agencies to begin what Agriculture Secretary Dan Glickman called "a unified, all-out battle" against the spread of alien species in the United States. Praising the order, Interior Secretary Bruce Babbitt observed, "There are a lot of global bioinvasive hitchhikers, and now is the time to take action. The costs to habitat and the economy are racing out of control." Federal agencies require enormous budget increases to fight alien species. "New resources are needed now," Babbitt declared, "and this order opens the door to accomplish just that."

Critics often accuse federal agencies, such as the Department of Defense, of exaggerating threats in