

Designing Referendums for Peacemaking: The Case of Bougainville*

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INTRODUCTION: THE PROSPECTS AND RISKS OF PEACEMAKING REFERENDUMS

In 1975 the Bougainville Interim Provisional Government announced its intention to secede from Papua New Guinea (‘PNG’). Tensions escalated and took a dramatic turn in 1987-88 with the launch of an armed uprising by a group calling itself the Bougainville Revolutionary Army. The PNG government deployed its armed forces to quell the unrest and Bougainville erupted into a civil war that has been called the largest conflict in the region since the Second World War.² The war was finally brought to a close in 1998, followed by the signing of the Bougainville Peace Agreement (BPA) in 2001.

The BPA in turn led to the creation of the Autonomous Region of Bougainville (‘ARB’). Under Part XIV of the PNG Constitution (amended as a result of the BPA), the ‘two governments’ of PNG and the ARB must together negotiate the details around the

¹ We are grateful to Satish Chand, Anna Dziedzic, Bal Kama and Anthony Regan for discussion of and insights on this article.

² Volker Boege, ‘Peacebuilding and State Formation’, *Peace Review* 21 2009: 30.

conduct of a referendum to resolve the region's future political status. Negotiations are well underway, with an agreement having been reached on many procedural matters and 15 June 2019 set as the current target referendum date.

Globally, the use of referendums in conflict societies has increased significantly in recent decades. They are normally held in the hope that ordinary people will give their consent to a new constitutional settlement and so pave the way for peace.³ Referendums have featured in efforts to settle conflicts in Colombia, Cyprus, the Democratic Republic of the Congo, East Timor, Eritrea, Iraq, Kenya, Montenegro, Northern Ireland, Somalia, South Sudan, Spain, Zanzibar and elsewhere. Referendums potentially help a conflict society to progress towards a peaceful resolution of its conflict even in the face of entrenched opposition by disgruntled elites (including governmental, social, media, business, religious, ethnic and tribal leaders who may judge that they have much to lose by handing power of decision over to ordinary people). And, because they can enjoy broad social perceptions of democratic legitimacy, referendums may also help to ensure against subsequent breach of any settlement reached.

These idealised assumptions help to explain the referendum's global appeal as a tool of conflict settlement. Yet, in practice referendums have not always been beneficial. Some have even delayed settlement (as in Iraq since 2007 and in Colombia more recently). A host of risks arise. Most conflict-settlement referendums are still designed to be no more than rudimentary democratic exercises. While in theory they are meant to serve as a principled mechanism of democracy, 'history suggests that short- and long-term political calculations have been the main motivations for holding them'.⁴ Consequently, in past cases, little institutional effort has gone toward improving the popular discourse leading up to the final vote. Standard referendum campaigns often merely amplify the voices of contending and entrenched political parties and elites. In a conflict society, where social polarisation is pronounced,

³ Fernando Mendez and Micha Germann, 'Contested Sovereignty: Mapping Referendums on Sovereignty over Time and Space', *British Journal of Political Science* 48(1) 2018: 156-158; see also Matt Qvortrup, 'The History of Ethno-National Referendums 1791-2011', *Nationalism and Ethnic Conflict* 18(1) 2012: 129-150.

⁴ Qvortrup, 'History of Ethno-National Referendums', 129; Matt Qvortrup, 'Introduction: Referendums, Democracy and Nationalism', *Nationalism and Ethnic Politics* 18(1): 6.

referendums thus risk aggravating, rather than ameliorating, tensions.⁵ This risk should raise alarms as Bougainville proceeds toward its referendum.⁶ As the Bougainville Referendum Communications Committee itself notes, ‘violent conflict has occurred after independence referendums – for example in East Timor and South Sudan’.⁷ Even if violence does not occur, the spirit in which a referendum is conducted can have an important bearing on the spirit in which it is implemented.

Our purpose in writing this article, however, is not to argue against the utility of the referendum, but to rescue the mechanism from its habitually poor design in conflict settings.⁸ Research in deliberative democracy has yielded intriguing insights relevant to violent communal conflict. In broad terms, the objective of deliberative democracy here is to increase the likelihood that decisions will be based on a free and open exchange of reasons rather than on mere numerical superiority or the threat of force. Deliberative theorists take different views on what counts as an adequate reason.⁹ On one influential approach, the reasons that people give should be couched in terms of public values, that is, values that any reasonable person might reasonably be expected to endorse (e.g., freedom, equality, fairness, inclusion, respect etc.).¹⁰ This ‘public reason’ approach is not without its detractors. In particular, ‘difference democrats’ have criticised it for excluding private values (e.g., values associated with

⁵ Roger MacGinty, ‘Constitutional Referendums and Ethnonational Conflict: The Case of Northern Ireland’, *Nationalism and Ethnic Politics* 9(1) 2003: 3.

⁶ For instance, the referendum results could be ‘dishonoured’ by PNG, which would ‘heighten a sense of betrayal’: John Braithwaite, Hilary Charlesworth, Peter Reddy and Leah Dunn, *Reconciliation and Architectures of Commitment: Sequencing Peace in Bougainville*, Canberra, ANU Press, 2010: 2.

⁷ Bougainville Referendum Communications Committee, *Joint Key Messages*, No 2 Fact Sheet – June 2016, 3.

⁸ The Committee evidently shares this objective, being committed to learn from the ‘experience of other countries, and [to] do everything possible to minimise the chance of serious problems occurring’. Bougainville Referendum Communications Committee, *Joint Key Messages*: 3.

⁹ Dennis Thompson, ‘Deliberative Democratic Theory and Empirical Political Science’, *Annual Review of Political Science* 11 2008: 497-520.

¹⁰ Proponents of this ‘public reason’ approach include Joshua Cohen, ‘Deliberation and Democratic Legitimacy’, in Alan Hamlin and Philip Pettit (eds.), *The Good Polity*, Oxford, Blackwell, 1989: 17-34; Amy Gutmann and Dennis Thompson, *Democracy and Disagreement: Why Moral Conflict Cannot be Avoided and What Should be Done about It*, Cambridge, Belknap Press, 1996; John Rawls, *Political Liberalism*, New York, Columbia University Press, 1996; John Rawls, ‘The Idea of Public Reason Revisited’, *University of Chicago Law Review* 94 1997: 765-807.

a specific religion, ideology or worldview) from the political domain.¹¹ Yet, as far as conflict societies are concerned, there is at least one good reason why the approach should nevertheless be preferred. Reasons cast in terms of private values are likely to exacerbate conflict rather than reduce it. By contrast, reasons cast in terms of public values proceed from common ground. The public reason approach reminds people of what they share rather than of what divides them. Crucially, it can therefore facilitate the achievement of an ‘overlapping consensus’ in areas of law and public policy where people can reach agreement, differing worldviews notwithstanding.¹²

Given its concern for channelling disagreement into reasoned forms of persuasion, it is clear why deliberative democratic theory has forcefully entered the field of conflict research. By reworking institutions of decision-making we might incrementally improve the quality of deliberation, which in turn might improve prospects for the successful settlement of conflicts. ‘Deliberative referendums’ are referendums designed specifically to improve the quality of public deliberation in the lead-up to popular voting.¹³ A recent work by one of the present authors explores the rationales and key design features of conflict-society deliberative referendums.¹⁴ In the ideal case, such referendums may help warring parties to reach the common ground (as described above) required for an enduring settlement—one that therefore is based on more than opportunism.

Whether this optimistic view can be realised remains uncertain. In particular, the pathologies of standard referendums (ie, referendums in which deliberation is not expressly pursued and instituted as part of the overall process) are well-recognised, and in our view these must be explicitly addressed if any referendum is to be useful – and especially if a referendum is to avoid derailing efforts at subsequent settlement. The specific question we explore in this article is therefore what can be done to

¹¹ For example, Iris Young, *Inclusion and Democracy*, Oxford, Oxford University Press, 2000; Jane Mansbridge, ‘Everyday Talk in the Deliberative System’, in Stephen Macedo (ed.), *Deliberative Politics*, Oxford, Oxford University Press, 1999; Lynn Sanders, ‘Against Deliberation’, *Political Theory* 25(3) 1997: 347-376.

¹² John Rawls, *A Theory of Justice*, Cambridge, Harvard University Press, 1971: 340; Rawls, *Political Liberalism*: 134-149.

¹³ See, for example, Ron Levy, ‘“Deliberative Voting”: Realising Constitutional Referendum Democracy’, *Public Law* 2013: 555; Stephen Tierney, ‘Using Electoral Law to Construct a Deliberative Referendum: Moving Beyond the Democratic Paradox’, *Election Law Journal* 12(4) 2013: 508.

¹⁴ Ron Levy, ‘“Shotgun Referendums”: Popular Deliberation and Constitutional Settlement in Conflict Societies’, *Melbourne University Law Review* (forthcoming 41[3] 2018).

improve deliberation in the course of the Bougainville referendum. Even a marginal improvement in its deliberative quality may help to reconstruct the referendum from a potential destabilising factor (deepening rather than ameliorating divisions) to an effective peacebuilding tool (encouraging the search for common ground, final settlement, etc.). We explore here how a deliberative referendum might help to impel the Bougainville peace process toward successful resolution. We also consider the referendum's hazards.

In Part II we introduce the background to the Bougainville conflict, including specifics that make resolving this conflict particularly urgent. Here we also cover points of contention among the parties that may need to be addressed in any peace initiative. In Part III we outline the key impediments to deliberation in conflict societies generally, and in Bougainville more particularly. Then we turn to the role that a deliberative referendum could play in a process of conflict settlement by addressing such deliberative deficiencies: in Parts IV to VII, we describe the deliberative referendum model's objectives and design features, and also suggest how the model could be deployed in the Bougainville case. If designed carefully, a deliberative referendum could potentially improve the upcoming referendum's prospects of achieving a sustainable peace settlement.

THE BOUGAINVILLE REFERENDUM: BACKGROUND

Brief History

The Autonomous Region of Bougainville, situated in the Melanesian Pacific, is a small archipelago dominated by the largest island of Bougainville – though its provincial capital of Buka is situated on the smaller Buka Island.¹⁵ Today the ARB is formally a part of PNG. From 1920, Australia was granted post-war international mandates to administer PNG, drawn to include Bougainville, and did so until PNG became independent in 1975. Bougainville was assigned the status of a province within the newly independent PNG.

¹⁵ Joanne Wallis, *Constitution Making During State Building*, Cambridge, Cambridge University Press, 2014; Braithwaite et al, *Reconciliation and Architectures of Commitment*: 9.

Coinciding with PNG's independence, a secessionist movement arose on Bougainville. The history of this movement is interwoven with the history of mining on the island. Mining began on Bougainville in 1972, when Australian company Rio Tinto subsidiary Bougainville Copper Limited began extracting copper and gold at the Panguna Mine. Mining provoked a great deal of local unrest.¹⁶

In 1975 the Bougainville Interim Provisional Government announced that it was seceding from PNG. This claimed secession did not garner international support or recognition and so the relationship to PNG underwent no major change.¹⁷ Tensions escalated with the noted launch of the Bougainville Revolutionary Army ('BRA') uprising and the intervention of the PNG armed forces.¹⁸ The BRA's stated aim was to halt mining at Panguna. There is widespread agreement that the commencement of mining at Panguna, in 1972, disrupted the social foundations of the island almost as deeply as had colonisation.¹⁹

In 1994 the PNG government lifted its blockade after a peace conference, though civil unrest persisted on Bougainville until a ceasefire agreement was reached in 1997. Media attention returned to the region with the 1997 'Sandline affair', when it emerged that the PNG government was negotiating with a British private military company to supply mercenaries to assist in restoring PNG's authority on Bougainville.²⁰ Following pressure from Australia and other neighbouring countries, PNG abandoned the plan and the incumbent Prime Minister was ousted.

¹⁶ Anthony Regan, 'Identities among Bougainvilleans', in Anthony Regan and Helga Griffin (eds.), *Bougainville Before the Conflict*, Canberra: Pandanus Books, 2005: 440; Eliza Ginnivan, 'Mining, Law and War: Bougainville's Legislative Gamble,' *Asia Pacific* 41: 60.

¹⁷ 'Separatists in PNG,' *The Canberra Times*, 24 March 1975: 2; 'Bougainville to Secede "on Sept 1"', *The Canberra Times*, 4 August 1975: 1; 'Secession in PNG', *The Canberra Times*, 5 August 1975: 2; International Peace Academy, *The Political Economy of Armed Conflict: Beyond Greed and Grievance*, Boulder, Lynne Rienner Publishers, 2003: 142.

¹⁸ Braithwaite et al, *Reconciliation and Architectures of Commitment*: 23; Regan, 'Identities among Bougainvilleans': 484.

¹⁹ While Bougainville's referendum is not due to take place until next year, Mendez and Germann's recent analysis suggests that it nevertheless ought to be viewed as belonging to a *cluster* of referendums that reached its peak during the decolonisation period that immediately followed the Second World War. See Mendez and Germann, 'Contested Sovereignty': 150-156.

²⁰ Mary Louise O'Callaghan, 'PNG Hires Mercenaries to Blast Rebels', *The Weekend Australian*, 22 February 1997: 1, 8.

Steps Towards Peace

Also in 1997, and partly in response to the Sandline affair, New Zealand hosted a series of peace negotiations. The outcome of these talks was PNG's agreement to an autonomous status for what would henceforth be called the ARB. The process culminated in the 2001 signing of the Bougainville Peace Agreement. The Agreement rests on 'three pillars': autonomous government, weapons disposal, and a commitment to a referendum on 'Bougainville's future political status' to be held no later than mid-2020.²¹ The generous time window allowed for the conduct of the referendum reflects the considered need for peacebuilding and weapons disposal ahead of the event, to maximise the chances of a peaceful transition.²²

In line with the Agreement, a new *Constitution of the Autonomous Region of Bougainville* was drafted between 2002 and 2004 by a representative Commission and adopted by the representative Bougainville Constituent Assembly in November 2004.²³ Key elements of the Agreement were also incorporated into the PNG Constitution.²⁴ The people of Bougainville elected the first President of the ARB in 2005, pursuant to their new Constitution.²⁵

²¹ *Bougainville Peace Agreement*, Government of the Independent State of Papua New Guinea–Bougainville Representatives, signed 30 August 2001.

²² Braithwaite et al, *Reconciliation and Architectures of Commitment*: 57-63; Anthony Regan, *Light Interventions: Lessons from Bougainville*, Washington, United States Institute of Peace Press, 2010: 93. See also *Constitution of the Autonomous Region of Bougainville 2004*, s 15. As we know from other cases, there are dangers here as well. For example, article 140 of the 2005 Iraqi Constitution mandates a referendum on the administrative status of 'disputed territories' such as Kirkuk. The referendum was meant to be held in 2007 after the situation on the ground was 'normalised' and a census had been held. But Iraqi Shia politicians have, for reasons of their own, dragged their feet on normalization and census so that the referendum cannot be held. For an extended discussion, see Liam Anderson and Gareth Stansfield, *Crisis in Kirkuk: The Ethnopolitics of Conflict and Compromise*, Philadelphia, University of Pennsylvania Press, 2009.

²³ *Constitution of the Autonomous Region of Bougainville 2004* <http://www.abg.gov.pg/uploads/documents/BOUGAINVILLE_CONSTITUTION_2004.pdf>.

²⁴ *Constitution of the Independent State of Papua New Guinea*, PART XIV <<http://www.parliament.gov.pg/images/misc/PNG-CONSTITUTION.pdf>>.

²⁵ *Constitution of the Independent State of Papua New Guinea*, Part 25, ss 227-240.

Legal Provisions Governing the Referendum

Part XIV of the PNG Constitution enshrines key terms of the BPA. Negotiations on the conduct of the referendum have involved the two governments of PNG and Bougainville, and the Joint Supervisory Body ('JSB'), a constitutionally mandated forum comprising representatives of both governments.²⁶ Negotiations are well underway, with agreement on many procedural matters having taken place, including a 'Work-plan' to guide progress towards the referendum. The JSB has set 15 June 2019 as a 'target' referendum date towards which all parties are working. The final date has not yet been settled, though, and unforeseen circumstances may require that an alternate date be chosen.²⁷

The Bougainville Constitution, while a lengthy and comprehensive blueprint for government, addresses the planned referendum only in providing for the possibility of a decision to abandon it. Such a decision would need to be taken within a specified time, endorsed by a supermajority within Bougainville's legislature and then made the subject of 'widespread consultation with the people'.²⁸

The provisions in the PNG Constitution dealing specifically with the conduct of the referendum, found in Division 7 of Part XIV, are quite general and leave much to future negotiation. The largely symbolic nature of this part of the Constitution is evident in, among others, s 341, which provides simply that '[t]he National Government and the Bougainville Government shall co-operate to ensure that the referendum is free and fair'. One of the few direct constraints imposed within Division 7 is a stipulation that one option presented at the referendum must be full independence for Bougainville.²⁹ There is no stated limit to the number of options that may be presented (more on which later), but merely a requirement that the options be agreed between the two governments and be framed clearly so as to 'avoid a disputed or unclear result'.³⁰

²⁶ Constitution of the Independent State of Papua New Guinea, s 332.

²⁷ Bougainville Referendum Communications Committee, *Joint Key Messages*.

²⁸ Constitution of the Autonomous Region of Bougainville 2004, s 194.

²⁹ Constitution of the Independent State of Papua New Guinea, s 339(c).

³⁰ Constitution of the Independent State of Papua New Guinea, s 399(a)-(b).

Division 7 provides very limited guidance as to what should happen in the aftermath of the referendum. It says simply that the two governments 'shall consult over the results of the Referendum', and that the National Parliament shall 'take' these results and inform the Bougainville Executive of its deliberations about 'any decision made in the National Parliament regarding the Referendum'.³¹ A little less vague is the provision for the resolution of disputes arising between the two governments at any stage, with mandated mediation and/or arbitration in the first instance and only limited recourse to judicial review.³² During the Bougainville Peace Agreement negotiations, Bougainville advocated for the referendum to be binding. However, the referendum (strictly speaking a 'plebiscite') is not formally binding on PNG.³³ Despite this, the international community might strongly object if PNG disregarded the results, similar to East Timor's 1999 independence referendum.³⁴

Section 340 of the PNG Constitution anticipates that an 'Organic Law' – a PNG statute with a quasi-constitutional status – will make detailed provision for the referendum in relation to such things as polling places, the composition of electoral rolls, security and offences, and scrutiny and international observers.³⁵ As this section of the Constitution dates from 2002, it in fact amounts to a post hoc recognition of the already existing *Organic Law on Peace-Building in Bougainville – Autonomous Bougainville Government and Bougainville Referendum 2002* ('the Organic Law').

The Organic Law is concerned with many different aspects of the administration of Bougainville, with the conduct of the Referendum being the focus of Part 4. It provides an additional layer of detail in relation to several key issues. For instance, it forbids the formalising of a referendum date until the two governments have agreed on 'detailed criteria' by which non-resident Bougainvillean eligible voters will be

³¹ Constitution of the Independent State of Papua New Guinea, s 342(1)-(2).

³² Constitution of the Independent State of Papua New Guinea, ss 343, 333-336.

³³ Regan, *Light Interventions*: 89-90. In this respect, much may depend on how the vote is organised and, more especially, on the popular legitimacy that the process and outcome garners. If the referendum were to be explicitly organised along deliberative lines, it might take on a binding character just for that very reason. Ordinarily, referendums tend to be highly partisan and also highly flawed (more on which later), especially in terms of their deliberative quality, which in turn makes it possible for governments to reject their results when it does not serve their interests. A deliberative referendum, by contrast, reflects citizens' reasoned views and should, for that reason, be harder to ignore.

³⁴ Braithwaite et al, *Reconciliation and Architectures of Commitment*: 57.

³⁵ Constitution of the Independent State of Papua New Guinea, s 340.

identified, the in-principle entitlement of such a category of voters having proven central to securing the Peace Agreement.³⁶ Part 4 also presents options for administering the referendum. From among a menu of options – including sole carriage by the PNG Electoral Commission, and sole carriage by the Bougainville Electoral authority – the JSB has, in consultation with those existing agencies, chosen the course of establishing a new independent agency with a mandate to ‘carry out its duties in an impartial manner’.³⁷

Considerations in Shaping the Referendum Process

There are a number of obvious, and doubtless many less obvious, socio-political challenges facing the planners of the Bougainville referendum. Commentators who have undertaken grass-roots research into the prospects for enduring peace in Bougainville seem to be in broad agreement about many of the key challenges. These challenges, which are in many ways intertwined, include: overcoming fear and mistrust of government authority as the legacy of colonial exploitation; the experience of mining and prospects for its return; ethnic divisions and resentment of immigrants; and the potential for elite interests to distort the debate around independence.

Elite resistance to peacemaking is, as elsewhere, a distinct possibility in PNG and Bougainville. PNG’s Prime Minister, Peter O’Neill, has opted to defer key meetings with ARB leaders in 2017 and again in 2018, slowing progress towards the referendum.³⁸ His government has also been slow to release promised funds to support the operations of the JSB, as well as more general funding committed to the ARB under the terms of the BPA.³⁹ Without those funds, the ARB is hamstrung in its ability to meet the BRA preconditions for a referendum of weapons disposal and restoration of stable law and order.

³⁶ Bougainville Peace Agreement, Government of the Independent State of Papua New Guinea–Bougainville Representatives, signed 30 August 2001, cl 315; Organic Law on Peace-Building in Bougainville – Autonomous Bougainville Government and Bougainville Referendum 2002, s 55(1).

³⁷ Organic Law on Peace-Building in Bougainville – Autonomous Bougainville Government and Bougainville Referendum 2002, ss 56-60.

³⁸ John Momis, ‘ABC on Joint Supervisory Body Deferrals’, Press Release by ARB President Chief Dr John Momis, 23 November 2017.

³⁹ Momis, ‘ABC on Joint Supervisory Body Deferrals’.

The Prime Minister's rhetoric in public statements concerning the Bougainville referendum is far from accepting and encouraging. While attempting to put down secessionist rumblings in other provinces, Prime Minister Peter O'Neill has repeatedly emphasised that the ultimate decision on Bougainville's independence rests with the PNG Parliament and should not be considered a direct function of any referendum result.⁴⁰ He has also made clear that, in exercising that ultimate power to decide, PNG will hold Bougainville strictly to its end of the bargain as framed in the BPA (ie, weapons disposal and good governance). O'Neill has also said that 'we worry about the unity of our country. We can't have every resource-rich province secede from Papua New Guinea.'⁴¹ Similarly non-committal statements have been made in other settings, provoking anger that the national government is discussing Bougainville's future openly with third parties while lacking commitment to engaging with Bougainville directly.⁴²

In addition, historical experience has given Bougainvilleans many reasons to distrust outsiders and doubt their proposals and initiatives. The 'blackbirding' of Bougainvilleans – the recruitment of indentured plantation labour by force or through trickery – affected many generations during the 19th Century. While Germany established the first colonial government outpost in 1905, Bougainville soon after came under Australian control. The island's experience of the Second World War was horrific and served to deepen local resentment towards the colonial overlords who had drawn the island into their conflict. That resentment is compounded by the grouping (dating back to German colonisation) of Bougainville with PNG for administrative purposes, rather than the locally preferred Solomon Islands.⁴³

⁴⁰ See, for example, *The National*, 'Parliament to make final decision in the result of B'ville referendum', *The National*, 5 March 2018 <<https://www.thenational.com.pg/parliament-make-final-decision-result-bville-referendum>>; 'Bougainville independence referendum 'may not be possible' with key conditions not met: PNG PM', ABC news online, <<http://www.abc.net.au/news/2017-09-27/png-pm-casts-doubt-over-bougainville-independence-referendum/8990692>>.

⁴¹ Addressing the PNG leaders' summit in March 2018, O'Neill said that 'before a referendum [on Bougainville's future] is held, weapons disposal must take place. Nobody has proven to me that it has been done. Secondly, is the rule of law well established? Again, there are some parts [of the ARB] where the rule of law is non-existent. We all know that.' *The National*, 'Parliament to make final decision'.

⁴² 'Leaders condemn O'Neill comments', *PNG Post Courier*, 21 March 2018 <<https://postcourier.com.pg/leaders-condemn-oneill-comments/>. Accessed 27 March 2018.

⁴³ Regan, *Light Interventions*: 418-421; Braithwaite et al, *Reconciliation and Architectures of Commitment*: 9.

Mining saw an influx of workers from mainland PNG and beyond, new money distributed in ways that undermined social structures, internal displacement and migration, and new problems including alcoholism and prostitution.⁴⁴ These tensions and strains were primary drivers of the descent into armed conflict, with the most notorious armed faction – Francis Ona’s BRA – nominating the mine’s closure as its overriding demand.⁴⁵ Even though no large scale mining has been permitted since Panguna’s forced closure in 1989,⁴⁶ there remains a great deal of sensitivity around the subject and attitudes towards mining are likely to be critical determinants of voting patterns at referendum. Some commentators, along with many among Bougainville’s elite, believe that independence for Bougainville is unlikely to be financially sustainable without a return to large-scale mining on the island.⁴⁷

Another factor that will inevitably bear upon the design and conduct of a Bougainville referendum is the manner in which peacebuilding efforts have unfolded to date. The detailed study by Braithwaite et al. refers to this factor as the ‘architecture’ of peacebuilding and observes that, in Bougainville, a predominately ‘bottom up’ process has ensued, of village-by-village brokering of truces and informing and educating.⁴⁸ Especially influential in this process have been faith-based organisations – a long-standing and central pillar of Bougainvillian society and source of ongoing coordinated efforts to scaffold peace-building at the local level.⁴⁹ Braithwaite et al, however, bemoan the relative absence of complimentary ‘top down’ peacebuilding efforts, in the form of regional multilateral dialogue about the conflict, its causes and contributors.⁵⁰ They contend, further, that the PNG Government has done little to articulate the possible benefits for Bougainvilleans of remaining within PNG and that

⁴⁴ Boege, ‘Peacebuilding and State Formation’: 30.

⁴⁵ Timothy G Hammond, ‘Resolving Hybrid Conflicts: the Bougainville Story’, *Foreign Policy Journal*, 4 2012.

⁴⁶ Eliza Ginnivan, ‘Asia Pacific Mining, Law and War: Bougainville’s Legislative Gamble’, *Alternative Law Journal* 41 2016: 60-62.

⁴⁷ Ginnivan, ‘Asia Pacific Mining, Law and War’; Braithwaite et al, *Reconciliation and Architectures of Commitment*: 128-9; Don Vernon, ‘The Panguna Mine’ in Anthony Regan and Helga Griffin (eds.), *Bougainville before the Conflict*, Canberra, Pandanus Books, 2005: 270-1; Hammond, ‘Resolving Hybrid Conflicts’: 8.

⁴⁸ Braithwaite et al, *Reconciliation and Architectures of Commitment*: 133.

⁴⁹ See, for example, ‘Churches meet for peace-building workshop’, *PNG Post Courier*, 8 March 2018 <<https://postcourier.com.pg/churches-meet-peace-building-workshop/>> accessed 25 March 2018; Braithwaite et al, above n 2, 69-71; Joanna Wallis, *Constitution-making during State Building* (CUP, 2014), 259-60.

⁵⁰ Above n 3, bid 133, 139.

other regional governments have not applied any pressure for it to undertake this advocacy.⁵¹

While those factors provide important background to inform the design of the referendum process, another source of valuable inputs may, we contend, be the existing literature on referendum design that has been produced by political scientists and lawyers.

Impediments to Deliberation in Bougainville

At least five characteristics of conflict societies can diminish the quality of popular and elite deliberation (and the interactions between the two). These characteristics, all of which manifest in Bougainville, might intensify during a referendum process.

Social Division and Polarisation

Anthropological studies of Bougainvillean society show that there is a shared sense of identity – a ‘pan-Bougainville identity’ – among ethnic descendants of the original peoples of Bougainville.⁵² This shared identity has arisen in spite of some enduring cultural and linguistic distinctions from sub-region to sub-region.⁵³ And it has also been reinforced by a shared sense of having been collectively wronged by colonialism and by forced political integration into PNG. However, the danger remains that divisions within this identity bloc will surface and crystallise as the possibility of independence nears. This danger will be heightened if public debate is allowed to fracture along sub-group lines. Under such conditions, ‘[d]ebate leads only to the group position becoming more extreme, as individuals only get their prejudices confirmed and strengthened as they talk with like-minded others’.⁵⁴ As positions become more extreme, a society becomes more polarised, which in turn erodes the society’s sense of shared destiny. It also makes it harder for those on the losing side of a referendum to accept the decision as legitimate.

⁵¹ Ibid 128.

⁵² Regan, *Light Interventions*: 418.

⁵³ Regan, *Light Interventions*: 423-424.

⁵⁴ John Dryzek, ‘Deliberative Democracy in Divided Societies: Alternatives to Agonism and Analgesia’ *Political Theory* 33(2) 2005: 223, 231.

Group Targeting

There is potential for resentment of ‘others’ to surface amid the Bougainville referendum. Most especially, non-ethnic Bougainvilleans who have chosen to settle there – notably the locally derided ‘redskins’ who migrated from the Highlands of PNG to take work at or connected with the mine⁵⁵ – might be particularly vulnerable to identity-based exclusion, discrimination or even violence.⁵⁶ In conflict societies, popular discourse is often characterised more by coercion of opposing groups through violence or threats of violence, than by reasoned argument and deliberation. The referendum planning process needs to be attentive to multiple possible fracture lines, working consciously towards mutual understanding and respect so as to minimise the risk of downstream discord.

Violence and Reaction

The recent history of violence provides much of the context for the upcoming referendum in Bougainville. However, violence inspires visceral responses that may cut short good faith attempts to engage in deliberation.⁵⁷ In particular, violent responses to past wrongs, perpetrated by citizens who might at other times be open to deliberating, is common in conflict societies.⁵⁸

While, as noted above, weapons disposal is ideally set to occur ahead of the Bougainville referendum, it is uncertain whether this process can be completed in

⁵⁵ Migrants from the mainland of PNG typically have lighter skin than ethnic Bougainvilleans. This visibility leaves them vulnerable where, as in much of Bougainville, they have been collectively typecast as violent and anti-social. See, for example, Jill Nash, ‘The Red and the Black: Bougainvillean Perceptions of other Papua New Guineans’, *Pacific Studies* 13 1990: 1; John Braithwaite, ‘Rape, Shame and Pride’, *Journal of Scandinavian Studies in Criminology and Crime Prevention* 7 2006: 2, 6.

⁵⁶ Braithwaite et al, *Reconciliation and Architectures of Commitment: 27-8*, estimate that ‘hundreds’ of people from PNG who had married Bougainvilleans stayed in Bougainville. Yet, through marriage, these people are deemed to be Bougainvilleans under cl 7(1)(b) of the Bougainville Constitution. Most non-Bougainvilleans left Bougainville due to the conflict; however, it is unclear how many returned.

⁵⁷ See, for example, Rajat Ganguly, ‘Sri Lanka’s Ethnic Conflict: At a Crossroad between Peace and War’, *Third World Quarterly* 25 2004: 903.

⁵⁸ See, for example, Brian Blankenship, ‘When do States Take the Bait? State Capacity and the Provocation Logic of Terrorism’, *Journal of Conflict Resolution* 43(1) 2016: 1.

time; indeed, progress on this has been halting.⁵⁹ By the Bougainville government's estimate, weapons disposal should be complete by the end of 2018.⁶⁰ But a number of armed gangs still operating in south and central Bougainville, such as the Me'ekamui Defence Force, have previously refused to participate in the BPA and weapons disposal and continue to rebuff the ARB government's efforts to engage them.⁶¹ They could hold up to 2,500 weapons.⁶² Compounding this risk factor are the large numbers of young men with limited or no formal education and few economic opportunities, carrying the burdens of displacement and social dislocation, who may be easily exploited by these minor warlords and other willing spoilers in the lead up to, or aftermath of, a referendum.⁶³

Low Information and Misinformation

Conflict societies are often characterised by information deficits. Conflict may coincide with low general rates of education. Information vacuums can in turn be relatively easily filled with elite propaganda and oversimplification.⁶⁴ There is potential for elites in Bougainville and PNG to distort the debate around independence to suit their own ends. In the extreme, disinformation can involve the control of media outlets in order to silence critics and valorise 'desirable' voices.⁶⁵

⁵⁹ Anthony Regan, 'Bougainville: Conflict Deferred?', in Edward Aspinall, Robin Jeffrey and Anthony Regan (eds.), *Diminishing Conflicts in Asia and the Pacific: Why Some Subside and Others Don't*, Abingdon, Routledge, 2013: 130.

⁶⁰ James Tanis, 'Bougainville: Planning for a Peaceful Referendum and a Stable Post-Referendum Situation'. Speech delivered at the ANU, Canberra, 31 October 2017.

⁶¹ Tanis, 'Bougainville: Planning for a Peaceful Referendum'; Braithwaite et al, *Reconciliation and Architectures of Commitment*: 63; Oren Ipp and Iain Cooper, *Bougainville Stability Desk Study*, Washington, US Agency for International Development, 10 October 2013: 14.

⁶² Regan, *Light Interventions*: 96.

⁶³ Jo Woodbury, 'The Bougainville Independence Referendum: Assessing the Risks and Challenges Before, During and After the Referendum', Indo-Pacific Strategic Papers series, Canberra, Strategic & Defence Studies Centre, January 2015: 17.

⁶⁴ Mohammed Bakari and Alexander Makulilo, 'Beyond Polarity in Zanzibar? The 'Silent' Referendum and the Government of National Unity', *Journal of Contemporary African Studies* 30 2012: 195, 205.

⁶⁵ Carolyn Hamilton, 'Uncertain Citizenship and Public Deliberation in Post-Apartheid South Africa', *Social Dynamics* 35 2009: 355, 359–362.

Many schools closed down during the Bougainville crisis.⁶⁶ It is estimated that up to 50 per-cent of Bougainvilleans in urban areas have not attended formal schools.⁶⁷ The literacy rate in Bougainville is relatively robust at 79.72 per-cent.⁶⁸ But gaps in literacy and formal education in Bougainville are factors likely to impact on the process of a referendum vote and hence on its legitimacy. The Bougainville Audience Study 2017 notes the frequency of ‘expressions like “mipela stap long tudak” (“we are in the dark”) and “mipela olsem aipas man” (“we are like blind people”)’.⁶⁹ 74 per-cent of respondents indicated they were ‘unsure’ about the referendum processes in particular.⁷⁰ There are evident communication barriers in Bougainville with issues regarding access to media platforms in some regions and concerns that the government is not effectively communicating information.

The published material produced to inform Bougainvilleans about the referendum and the issues it addresses acknowledges the problem of misinformation and misunderstandings. Some of the specific confusions that this material sets out to expose and correct include beliefs that: Bougainville must prove itself to be economically self-sufficient before the referendum can occur; achieving good governance and the elimination of weapons are preconditions to a referendum; the BRA and implementing provisions in the PNG Constitution will lapse as at June 2020; and a vote for independence will trigger an immediate legal entitlement to Bougainville independence which the PNG Government is bound to grant.⁷¹ The uncovering and rectification of these and other potentially damaging misconceptions will be an important element in ensuring the integrity of the referendum process and maximising the chances for peaceful transition or continuity (either way, settlement) in its aftermath.

⁶⁶ Bacre Waly N’diaye, Report on the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, UN Doc E/CN.4/1996/4/Add.2 (27 February 1996) para 56.

⁶⁷ Brigadier Justin Ellwood, ‘Understanding the Neighbourhood: Bougainville’s Referendum for Independence’, Report, Canberra, Australian Defence College, 2014: 17; Satish Chand, ‘Building Peace in Bougainville: Measuring Recovery Post-Conflict’, Working Paper, Canberra, ANU Research Publications, 2013: 3.

⁶⁸ Wallis, *Constitution Making During State Building*: 281.

⁶⁹ Verna Thomas, Catherine Levy, Cynthia Vetunawa and Patrick Rawstorne, ‘Bougainville Audience Study’, Report, Goroka, University of Goroka, 2017: 32.

⁷⁰ Thomas et al, ‘Bougainville Audience Study’: 32.

⁷¹ Bougainville Referendum Communications Committee, *Joint Key Messages*.

Lurking behind many of these erroneous beliefs may be vested interests with the potential to distort or even derail progress towards a referendum. Members of the political classes who control the official dissemination of information and other procedural aspects of the process might be expected to have their own preferences and interests in terms of the spectrum of possible referendum outcomes. Some could stand to gain personally, in power and/or wealth, from either independence or ongoing membership of the PNG polity. Some may anticipate personal or familial gain, aside from wider societal gain, from the return of mining to Bougainville, the prospects for which may be tied to the referendum outcome.⁷² Design of the process ought ideally be alive to these probable elite interests and their distorting potential.

Uneven Deliberative Commitments

A related worry is that the members of a conflict society will struggle to view each other as reasonable people engaging in reasonable disagreements.⁷³ The crucial point is not that the members of such societies are likely to lack the capacity to deliberate; rather, it is that it is difficult to create conditions or institutions in which they feel safe to do so.⁷⁴

Of course, some people – for example, so-called ‘spoilers’⁷⁵ – may simply refuse to deliberate, no matter how propitious the institution. They may do so because they calculate that it will serve their interests or, more dramatically, because they are fanatics and hence impervious to the reasons others put to them, no matter how rationally compelling. In Bougainville, as elsewhere, a core of individuals will view deliberation as neither plausible nor desirable. The institutional design problem,

⁷² Braithwaite et al, *Reconciliation and Architectures of Commitment*: 128.

⁷³ Rawls, *Political Liberalism*: 54-58.

⁷⁴ Cf. John Dryzek, *Deliberative Democracy and Beyond: Liberals, Critics, Contestations*, Oxford, Oxford University Press, 2000: 219. Relatedly, one might be tempted to assume that some people are better at deliberating than others, for example, because they have more years in formal education. See, for example, Hamilton, ‘Uncertain Citizenship and Public Deliberation’: 359. However, this assumption is not clearly supported by the empirical evidence; see, for example, Ian O’Flynn and Gaurav Sood, ‘What Would Dahl Say? An Appraisal of the Democratic Credentials of Deliberative Polls and Other Mini-Publics’, in Kimmo Grönlund, André Bächtiger and Maija Setälä (eds.), *Deliberative Mini-Publics: Practices, Promises, Pitfalls*, ECPR Press, 2014: 46-47.

⁷⁵ On ‘spoiler’ problems in peace processes, see Stephen John Stedman, ‘Spoiler Problems in Peace Processes’, *International Security* 22(2) 1997: 5-53.

therefore, becomes how to accommodate people who hold markedly different ideas about the sources of legitimacy in collective decision-making.

Referendums and Deliberation

Finally, referendums raise distinct challenges for deliberation. The impediments canvassed thus far show the uncertain prospects of relying on public deliberation to settle conflict. Indeed, one might conclude that the prospects for deliberation are even lower in the case of referendums. For example, one might assume that the traditional ‘yes’ or ‘no’ structure of the ballot must be particularly inimical since it precludes the sort of flexibility or mutual responsiveness on which deliberation necessarily depends. If the choice is ‘either/or’, then it is, on the face of it, hard to see where people might go from there or what incentive they might have to approach the issue with an open mind.

Conflict scholars tend to conclude that popular participation – particularly in a referendum – only aggravates problems of deliberation; many therefore prefer elite leadership.⁷⁶ However, and importantly, social psychologists have shown that division and polarisation are especially acute in decision-making among elites. Highly educated citizens are well equipped to choose and bend information to match pre-existing assumptions that align with polarised positions.⁷⁷ These ‘motivated reasoners’ are driven to fit new knowledge into existing polarised categories.⁷⁸ This is an important point because it suggests that, by some key criteria, deliberation might be better conducted by non-elites. Motivated reasoning by elites frustrates deliberative pursuits of overlapping consensus. This modest degree of consensus (i.e., consensus about some, but not all, matters) was one of the deliberative qualities noted in our introduction to this paper. In general, such consensus is only feasible if deliberators remain somewhat flexible in their positions – for example, in their negotiating positions and understandings of what is in their own best interests.

⁷⁶ See, for example, Arend Lijphart, *The Politics of Accommodation: Pluralism and Democracy in the Netherlands* (2nd edition), Berkeley, University of California Press, 1975: 111; Brendan O’Leary, ‘Debating Consociational Politics: Normative and Explanatory Arguments’ in Sidney John Roderick Noel (ed.), *From Power Sharing to Democracy: Post-Conflict Institutions in Ethnically Divided Societies*, Kingston, McGill-Queen’s Press, 2005) 10.

⁷⁷ Dan M Kahan, ‘Ideology, Motivated Reasoning, and Cognitive Reflection’, *Judgment and Decision Making* 8 2013: 407, 417-18.

⁷⁸ Kahan, ‘Ideology’: 408.

High-quality deliberation may, then, be more plausible among non-elite individuals in key respects. However, a caveat is that this may be so only when deliberation is robustly supported by institutional design. While it is often the case that such individuals lack relevant knowledge or deliberative habits, these deficiencies might be partly answered by institutional methods.⁷⁹ As noted, the deliberative referendums literature outlines institutional means for improving on the relatively crude voting models of most referendums. Some deliberative referendum features have even been trialled to some degree, though mostly in non-conflict societies.

Our focus in the next several parts is on whether, in a conflict setting too, a deliberative referendum can mitigate the deliberative problems that we have canvassed. In those parts we examine more specific design options for the deliberative referendum. We canvass four key features and their rationales, in each case relating our general comments to the imminent Bougainville referendum. Some features are intended to improve deliberation during the referendum campaign as a way of making successful settlement more likely. Additionally, some features confer greater legitimacy on the settlement process and thus potentially ensure against subsequent breach, after a settlement is reached.⁸⁰ Supporting deliberation in a process of constitutional change may thus have the effect of increasing both the prospects and the sustainability of settlement.

PRELIMINARY GENERALISED VALUE VOTING

A conflict-society deliberative referendum should be constructed as a *public-values voting* exercise. That is, most of the questions voted upon in the referendum, and official information disseminated in the referendum campaign, should (to the degree possible) be cast in the language of values that are broadly shared. Hence voters should be asked to express their opinions about an array of public values arising in the conflict, which are set out clearly and pithily on the ballot. Specific detail should

⁷⁹ Janette Hartz-Karp and Michael K Briand, 'Institutionalising Deliberative Democracy: Theoretical and Practical Challenges', *Australasian Parliamentary Review* 24 2009: 167.

⁸⁰ Legitimacy is broadly seen as a key determinant of the subsequent durability of peacemaking agreements: see, for example, Edward Aspinall, Robin Jeffrey and Anthony Regan (eds.), *Diminishing Conflicts in Asia and the Pacific: Why Some Subside and Others Don't*, Abingdon, Routledge, 2013: 265.

not be the main subject of referendum deliberation, though what detail there is should be sufficient to stimulate meaningful deliberation – and, more especially, deliberation from common ground.

In principle, framing deliberation in public-value terms can improve opportunities for engaging in public reason and achieving overlapping consensus which, in turn, can be essential for conflict settlement. As we noted earlier, public reason requires that participants couch their reasons in terms of public values, that is, values that all reasonable people can reasonably be expected to endorse. In practice, that will entail couching their claims in the (public) language of equality, freedom, inclusion, respect and so forth rather than in the (private) language of particular religious, ideological or moral codes (which those who do not share those codes are unlikely to accept as reasons for a *collective* choice). It thus requires opponents to give reasons for the claims that are both accessible and acceptable to each other.⁸¹

To give an example, the 1998 Belfast Agreement⁸² is sometimes cast as a strategic bargain. In this mould, Brendan O’Leary claims that Irish nationalists ‘endorsed it because it promises them political, legal, and economic equality now, plus institutions in which they have a strong stake, with the possibility of Irish unification later’⁸³, while British unionists endorsed it because ‘only by being generous now could they reconcile nationalists to the Union, and protect themselves against possibly seismic shifts in the balance of demographic power’.⁸⁴ Yet, what analyses of this sort overlook is that the document that ordinary people were asked to ratify or legitimise was expressly framed in terms of public values. In particular, the ‘Declaration of Support’ with which the Agreement begins is couched in the language of (*inter alia*) ‘reconciliation’, ‘tolerance’, ‘mutual trust’, ‘human rights’, ‘partnership’, ‘equality’, ‘mutual respect’ and ‘exclusively democratic and peaceful means’.⁸⁵ Of course, one might snort that values of this sort are simply far too general or underspecified to seriously guide deliberation. But principles of equality and mutual respect did, in fact, shape the concrete details of what was finally agreed. For example, the principle of

⁸¹ Rawls, *Political Liberalism*: 132-172.

⁸² *Belfast Agreement*, Britain-Northern Ireland-Government of Ireland, signed 10 April 1998, No. 50 (2000) Cm 4705 (entered into force 2 December 1999).

⁸³ Brendan O’Leary, ‘The Nature of the Agreement’, *Fordham International Law Journal* 22(4) 1998: 1655.

⁸⁴ O’Leary, ‘The Nature of the Agreement’: 1656.

⁸⁵ ‘*Belfast Agreement*, Preamble paras 1-6.

‘parity of esteem’ is reflected in its dual premiership, communal designation, proportionality rules and mutual vetoes.⁸⁶

Public-values deliberation, therefore, can represent a step away from the parties’ partisan positions. It can also avoid the need for difficult social learning about technical details. In the Colombian case, for instance, the draft agreement buried broad principles inside 297 pages of provisions and implementation details. A public discourse at this level of detail is unrealistic. Moreover, a settlement campaign focused too much on institutional specifics can mire the referendum in debate over a potentially infinite range of contingent claims and counter-claims.

Accordingly, the deliberative referendum ballot should ask voters not about their own interests, but about what general values, applying to all sides, should drive a final settlement. This condition is intended to help voters transcend their own narrow perspectives, and to engage instead in broader forms of reasoning conducive to overlapping consensus. The ballot should thus present voters with options such as whether ‘all communities should enjoy security against violence’ or ‘all communities should enjoy equitable political representation’. Generalised propositions of this sort apply to everyone. Voting ‘against’ another community would thus require voting against one’s own community. Voting machines or online voting should prevent write-in answers and partial responses. Each value proposition should be individually endorsed or rejected by a majority vote.

A final proviso is that the referendum ballot should *begin* with public-value based questions such as: ‘rank the following values in order of your preference’. The options should be determined by an inclusive, representative mini-public (see below). Only after value questions have been posed should the voter then be presented with a menu of general institutional options such as ‘full independence’ or ‘state autonomy within a federation’. Together these features can encourage purposive deliberation among voters by asking them to consider and weigh the competing objectives behind reform proposals before they cast votes on specific proposals.

⁸⁶ Ian O’Flynn, ‘Pulling Together: Shared Intentions, Deliberative Democracy and Deeply Divided Societies’, *British Journal of Political Science* 47(1) 2017: 187, 198. See also Thomas Hennessey, *The Northern Ireland Peace Process*, Dublin, Gill & Macmillan, 2001: 7-9. On the role of justice in negotiation, see Ira William Zartman, *Negotiation and Conflict Management: Essay on Theory and Practice*, London, Routledge, 2008.

The ballot questions ideally should present an array of options, both for preliminary questions about values and for later questions regarding Bougainville's final political/institutional status. By contrast, binary yes/no questions are often 'divisive and inaccurate' and should be avoided if possible, as they might not reflect the diversity of options that voters favour.⁸⁷ The simplest multi-option approach is to ask voters to choose just one of several preferences presented on the ballot. This is compatible with the current plan for ballot counting in Bougainville: ballots are to be organised into piles based on the options they endorse, and the prevalence of each option will then be counted.⁸⁸

However, an amended – and slightly more complex – 'preferential' system would be ideal for a multi-option referendum. A preferential ballot asks voters to rank, from highest to lowest, their preferences among several options; thus voters could select more than one option in order of their preferences. This model would be useful for the final set of questions regarding political/institutional options, as under a preferential 'instant runoff' system, lowest-ranked preferences are progressively eliminated until a single option achieves a majority.⁸⁹ This can give greater perceived legitimacy to the single winning option. It improves on standard systems where it is possible that no single option will gain majority support. However, a preferential system would require amendments to existing law, and presupposes numeracy among voters.

The deliberative referendum might play two other crucial roles. First, in cases where a preferential ballot structure is utilised, political elites may have reason to broaden their appeal (which, again, would require the use of public reason). Knowing that lower-order preference may make a difference to the eventual outcome, they have an incentive to moderate their approach.⁹⁰ Secondly, the deliberative referendum

⁸⁷ Peter Emerson, *Defining Democracy: Voting Procedures in Decision-making, Elections and Governance*, Berlin, Springer, 2011: 49.

⁸⁸ Organic Law on Peace-Building in Bougainville-Autonomous Bougainville Government and Bougainville Referendum 2002, Sch.1.103.

⁸⁹ Graeme Orr, 'Preferenda: the Constitutionality of Multiple Option Referenda', *Constitutional Law and Policy Review* 3(4) 2001: 68. There is there is no similar benefit from identifying, earlier in the ballot, a single value as dominant; in reality multiple values will likely drive voters' choices.

⁹⁰ Donald Horowitz, *Ethnic Groups in Conflict*, Berkeley, University of California Press, 2001; Donald Horowitz, 'Electoral Systems: A Primer for Decision Makers', *Journal of Democracy* 14(4) 2003: 118-119. Of particular

could give impetus to elites (especially leaders of parties in conflict) to negotiate and conclude a final agreement. Such elites can use the results of specific value-preference questions to constrain and give direction to their negotiations. That is, answers to preliminary generalised value questions could subsequently guide leaders charged with implementing referendum outcomes by providing them with a clear understanding of voters' value preferences. It would also make it harder for them simply to pursue their own partisan or sectional interests.

Generalised Value Options in the Bougainville Referendum:

The following is an indicative set of values that might be put to voters in Bougainville. To be democratically robust, the task of defining the actual set put to voters should fall to a mini-public. These proposals are thus merely illustrative. They include that 'all peoples and individuals should enjoy':

- 'Security against violence'
- 'A fair share of natural resources'
- 'A right to economic support and development' and
- 'A right to support and protection of distinctive cultures'

Mini-Publics

A deliberative referendum should be preceded by a mini-public randomly chosen from the voting population. A mini-public's small membership (e.g., 20-200) permits more sustained and extensive deliberation than is possible amongst an entire public. Mini-publics learn at length from diverse experts before tackling a contentious problem and proposing the content to be placed on the referendum ballot (such as the value and institutional options outlined above). Amongst their own members, mini-publics prompt better-informed deliberation, mutual recognition and learning, preference change and even value change. These conclusions have often been empirically confirmed – even in conflict societies such as Colombia, Israel/Palestine

and Northern Ireland.⁹¹ For instance, O’Flynn and Caluwaerts explain that a focused deliberative setting can ‘foster more positive inter-group attitudes’ among participants, including ‘mutual respect and the acknowledgement of the validity of others’ claims, indicating that ordinary citizens’ views on divisive issues may be less intractably conflicting than expected’.⁹²

One reason why citizens in conflict societies can deliberate effectively in mini-publics may be that these institutions generally exclude partisan political elites.⁹³ Mini-publics sideline elites who may favour the status quo of conflict. As noted, elites of various kinds are relatively able, through specious logic and factual cherry-picking, to deploy arguments that reconfirm what they already believe. Moreover, conflict settlements threaten the power arrangements of elite political and military leaders. Often elite figures’ careers, ideologies and identities are tied to the struggle with the ‘other side’. At the same time, elite leaders are often insulated from the violent consequences of conflict. Non-elite citizens may lack their leaders’ intensity of in-group feeling, and be better able to reconsider their own positions, and more eager to see an end to the struggle and its attendant disruptions. Mini-publics also tend to be more widely trusted than other forms of representation. There is evidence that mini-publics can inform both the substance and the style of public deliberation in the broader referendum campaign,⁹⁴ though such evidence is still lacking in conflict societies.

⁹¹ Margarita Orozco and Juan Ugarriza, ‘The Citizens, the Politicians and the Courts: A Preliminary Assessment of Deliberative Capacity in Colombia’, in Juan Ugarriza and Didier Caluwaerts (eds.) *Democratic Deliberation in Deeply Divided Societies: From Conflict to Common Ground*, London, Palgrave, 2014: 73–88; A. Norman, ‘The Use of the Group and Group Work Techniques in Resolving Interethnic Conflict’, *Social Work with Groups* 14(3/4) 1992: 175; M Lydia Khuri, ‘Facilitating Arab-Jewish Intergroup Dialogue in the College Setting’, *Race, Ethnicity and Education* 7(3) 2004: 229, 244; Robert Luskin, Ian O’Flynn, James Fishkin and David Russell, ‘Deliberating across Deep Divides’ *Political Studies* 62(1) 2014: 116.

⁹² Ian O’Flynn and Didier Caluwaerts, ‘Deliberation in Deeply Divided Societies’, in André Bächtiger, John Dryzek, Jane Mansbridge and Mark Warren (eds), *Oxford Handbook of Deliberative Democracy* Oxford, Oxford University Press, forthcoming 2018.

⁹³ O’Flynn and Caluwaerts, ‘Deliberation in Deeply Divided Societies’.

⁹⁴ Fred Cutler, Richard Johnston, R. Kenneth Carty, André Blais and Patrick Fournier, ‘Deliberation, Information and Trust: The British Columbia Citizens’ Assembly as Agenda-Setter’, in Mark E. Warren and Hilary Pearse (eds.), *Designing Deliberative Democracy: The British Columbia Citizens’ Assembly*, Cambridge, Cambridge University Press, 2008: 168–170.

A Mini-Public in the Bougainville Referendum Campaign

A mini-public's 'bottom-up' approach has the potential to catalyse deliberation and enable the Bougainville community to take 'ownership of the process'.⁹⁵ For instance, one Bougainville Audience Study respondent said 'all ideas must start from inside the community and go upwards'.⁹⁶ The Study also noted feelings of 'powerlessness' and vulnerability in the communities, with respondents expressing 'little faith in the government's approach'.⁹⁷ This may further reinforce the need for a mini-public in Bougainville.

A Bougainville mini-public should have members randomly selected yet stratified demographically in at least the following ways:

- Equal numbers from each tribal, ethnic or linguistic group – including non-ethnic-Bougainvilleans,
- Equal numbers of male and female members,
- Equal numbers from various age groups,
- A majority drawn from populations with low (including lowest-quintile) socioeconomic status,
- Some former combatants (but not so many as to constitute a dominant bloc), and
- No members holding 'elite' positions or status (ie, those holding elected, hereditary, spiritual or other recognised authority to make decisions on behalf of substantial numbers of people).

A mini-public does not deliberately select participants who have diverse points of view, but incidentally tends to include many points of view due to its demographic diversity (usually via some form of random sampling). Equal rather than proportionate representation of tribal, ethnic, age and linguistic groups particularly aims to ensure that mini-public deliberations do not merely reflect dominant opinions in the broader society, but instead air and consider both dominant and minority

⁹⁵ Thomas et al, 'Bougainville Audience Study': 39; see also Braithwaite et al, *Reconciliation and Architectures of Commitment*: 119.

⁹⁶ Thomas et al, 'Bougainville Audience Study': 40.

⁹⁷ Thomas et al, 'Bougainville Audience Study': 39.

points of view. An ideal mini-public or other deliberative democratic process places these views on equal footing in order to consider them on the basis of merit, rather than in proportion to their support among the population. Hence, the stipulation that most members should be drawn from low socioeconomic status populations reflects the need to counter the political dominance of high-socioeconomic status individuals by ensuring that they have a sufficient ‘critical mass’ to get their points across.⁹⁸ Young people, too, are excluded from many traditional decision-making processes.

A similar concern drives the stipulation for equal numbers of men and women, especially since this feature encounters complex and changing gender dynamics in Bougainville. There is a concern that women may not feel comfortable expressing their opinions in a mini-public. The Bougainville Audience Study 2017 suggests that women feel more comfortable raising their concerns in women’s groups or through their church network.⁹⁹ Men now dominate the political debate and in some instances traditional matrilineal structures have been ‘disregarded’.¹⁰⁰ For example, in the 2005 Bougainville election three women and thirty-eight men were elected; these three seats were specifically reserved for women.¹⁰¹ Regan indicates that while women were involved with peace-making process in Bougainville, their role was considered complete ‘once the violence had ended’.¹⁰² Despite this, Regan suggests women in Bougainville are challenging male-dominated politics.¹⁰³

The ban on elites participating within the mini-public is a particularly important proviso, which reflects one of the essential rationales for mini-publics previously discussed. (However, elite experts, such as economists or medics, and discussion group facilitators are necessary; these should be chosen for their ability and

⁹⁸ It is commonly assumed that people from disadvantaged backgrounds are less capable of deliberating (for example, that they are likely to speak less) than those who are not. Yet, while the evidence does not support this assumption, ‘[r]andom assignment to small groups generally produces a fair amount of ‘variation in variation’ – some groups are more internally diverse than others. So, while certain minorities are well represented in some small groups, they are not well represented in others. Consequently, in some cases they may lack the ‘critical mass’ and hence the confidence to voice their own concerns’: O’Flynn and Sood, ‘What Would Dahl Say?’: 47.

⁹⁹ O’Flynn and Sood, ‘What Would Dahl Say?’: 48.

¹⁰⁰ O’Flynn and Sood, ‘What Would Dahl Say?’: 48. See also Regan, *Light Interventions*: 11.

¹⁰¹ Braithwaite et al, *Reconciliation and Architectures of Commitment*: 120.

¹⁰² Regan, *Light Interventions*: 41.

¹⁰³ Despite this, Regan suggests women in Bougainville are challenging male-dominated politics. Regan, *Light Interventions*: 41.

neutrality.) Eliminating elite roles and limiting high-socioeconomic status members (though, again, only insofar as this is necessary to ensure that all points of view receive a fair hearing) also may widen perceptions among non-members of the mini-public's legitimacy. It also might exclude elite motivated-reasoners who, as already noted, frequently oppose open and flexible deliberative processes.

A potential critique is that Bougainvilleans are significantly influenced by powerful men (and, at least historically, women), such that a wholly non-elite process could be culturally unsuitable. However, an entirely non-elite peacemaking process is in any event not possible or necessary. Elites must be reintroduced at the final stages, after the mini-public's conclusion, to conduct detailed negotiations. Moreover, note that many leaders may welcome the advice and assistance, as well as the popular legitimacy, deriving from a significantly non-elite process such as a mini-public.¹⁰⁴ In practice, as with all mini-publics, formal or tacit approval by elites for running the process will be crucial in Bougainville if the body is to run smoothly and achieve influence. Relevant elites might include parliamentarians, local chiefs, veteran leaders of the armed conflict (some particularly respected as 'liberators') and the Council of Elders (traditional leadership groups that assist the government).¹⁰⁵

Preliminary Instruction

Beyond mini-publics, additional deliberative referendum design features might also influence the quality of deliberation in the referendum campaign. Referendum campaigns involve inevitably wider and more chaotic deliberation than that of mini-publics alone. Yet, in comparison with many other forms of popular debate,

¹⁰⁴ We are grateful to Bal Kama for this insight.

¹⁰⁵ Ellwood, 'Understanding the Neighbourhood': 7. Note as well that, as mentioned above, a Constituent Assembly—in some ways comparable to a mini-public—ran in 2004. By many accounts the Assembly was an effective body. However, there remains a need for a mini-public. This is firstly because distinctive decisions (for example, ballot design) are required of the prospective mini-public. Secondly, and more fundamentally, relying on mini-publics to bring greater deliberation and legitimacy to a referendum generally requires that the mini-public run just prior to the referendum. Most citizens will otherwise be unaware of institutional processes that ran years earlier. For instance, following the celebrated mini-public on electoral reform held in British Columbia 2004, the body helped to improve deliberation and persuade voters in a referendum held that year. However, another referendum five years later enjoyed a less deliberatively robust discourse and a far more negative substantive outcome. A key factor was that the province did not convene a new mini-public prior to the 2009 referendum: Graham Smith, *Democratic Innovations: Designing Institutions for Citizen Participation*, Cambridge, Cambridge University Press, 2009: 72-73.

referendum campaigns are time-constrained and substantively limited to just a handful of topics. This may help to make them more amenable to the targeted provision of information to enhance deliberation and protect against the machinations of vested interests. *Preliminary instruction* can involve voting (either online or at voting stations) that requires the voter first to engage with an interactive informational tutorial.¹⁰⁶ To promote balance and neutrality, the noted mini-public would design the tutorial materials.

Preliminary Instruction in the Bougainville Referendum:

Illiteracy and the marked pluralism of language and dialect groups in Bougainville pose challenges for standard models of preliminary instruction. Information cannot be in purely textual form, but must also be aural and visual. The mini-public should be tasked with producing clear information, covering a range of arguments about the pros and cons of independence in Bougainville, and doing so in both Tok Pisin and a variety of languages.¹⁰⁷ Expert facilitation could aid the mini-public in presenting such information in a compelling audio-visual format. This recorded tutorial could last approximately fifteen minutes – neither too brief nor too lengthy, in recognition that not all voters have time or inclination to engage in a more involved process.

The technological challenges raised by these requirements are significant. Bougainville lacks highly developed technological infrastructure. As in a number of developing regions globally, mobile phone coverage in Bougainville is generally more extensive than road coverage. Mobile phones have thus become key platforms for communication (including by social media) and even economic transactions. (Considerable popular trust in the technology's security is required for the latter.) Phones can similarly be relied upon as platforms for preliminary instruction. This could involve text messaging, which at current count is available to 3 in 4 Bougainvilleans.¹⁰⁸ However, text messaging is a limited and inflexible format. Radio

¹⁰⁶ Levy, “Deliberative Voting”.

¹⁰⁷ On the face of it, one might object that the members of the mini-public will also struggle to communicate with one another. However, evidence from mini-publics suggests that the quality of deliberation may actually be higher in linguistically mixed groups than in linguistically homogeneous groups: Didier Caluwaerts and Kris Deschouwer, ‘Building Bridges Across Political Divides: Experiments on Deliberative Democracy in Deeply Divided Belgium’, *European Political Science Review* 6(3) 2014: 427-450.

¹⁰⁸ Thomas et al, ‘Bougainville Audience Study’: 11.

broadcasting is an alternative. Yet, though widely trusted, radio is not spread across all regions.¹⁰⁹

Most useful would be a web-based *interactive* video. This would be difficult to support, given the internet's relatively low local availability – currently 27 per-cent, as most phones are 2G with no internet access – and high costs.¹¹⁰ These statistics raise clear 'digital divide' concerns: that internet communication will benefit only the relatively wealthy. However, and importantly, access fees could be selectively waived on given days or for particular websites – a modest cost that foreign governments might wish to bear. And a more onerous foreign contribution (albeit one useful for the long term) could be to install mobile phone towers and signal amplifying 'repeaters'. Australia has historically made similar infrastructure contributions.¹¹¹ Ultimately, lower-tech approaches also are likely to be necessary. Churches and schools in Bougainville could disseminate information, either in the form of interactive videos viewable on-site, or in more traditional forms (e.g., pamphlets, and speeches given by mini-public participants).

Popular Legitimacy

The deliberative referendum design features outlined above use institutional design to improve the deliberative capacities of ordinary people for the duration of the referendum campaign and vote. There is no expectation in the short term that a deliberative referendum will eliminate all of the causes of conflict. However, it may lend any resulting agreement legitimacy and assist the agreement to endure. Hence the referendum can both stabilise an agreement and help to avoid backsliding later on.¹¹²

¹⁰⁹ Thomas et al, 'Bougainville Audience Study': 20.

¹¹⁰ Thomas et al, 'Bougainville Audience Study': 11.

¹¹¹ In 1999, AusAID contributed to the upgrade of facilities for Radio Bougainville: Commonwealth of Australia, Bougainville: The Peace Process and Beyond: Joint Standing Committee on Foreign Affairs, Defence and Trade, Parliamentary Paper No 193, 1999, Appendix L.

¹¹² John M Carey, 'Does It Matter How a Constitution is Created?', in Zoltan Barany and Robert G Moser (eds.), *Is Democracy Exportable?*, Cambridge, Cambridge University Press, 2009: 172.

According to Tierney, ‘the referendum can take on moral force’ – more than a declaration by an elected legislature ever could.¹¹³ Referendums can establish the ceremony and solemnity befitting an enduring constitutional settlement. They may signal that norms emerging from the process should be viewed as foundational and enduring. Just as importantly, as noted above, citizens who find themselves on the losing side of a deliberative referendum vote may be more likely to accept the outcomes as legitimate insofar as they see it as emerging from a process that is impartial, fair and democratic.¹¹⁴ More specifically, public-values voting should enable them to see why the outcome amounts to more than an exercise in naked power, even as they continue to disagree with it. Social backlash or outright reversal are less likely under such conditions.¹¹⁵

A deliberative referendum therefore potentially helps to answer the problem noted above of uneven commitments to deliberation. As an institution with robust democratic (majority rule) and deliberative (free and open exchange of reasons) features,¹¹⁶ its legitimacy could be agreed to by a wide cross-section of people, including both those who value majoritarian process and those who value deliberation. A decision-making model such as this, which robustly adopts both democratic and deliberative features, can perhaps attract the broadest perceptions of legitimacy – and in turn underpin a more enduring settlement.

A related issue is the thresholds that should be set for a referendum proposal to be considered to be passed. A simple 50 per-cent plus one vote standard has the downside that in a close result (e.g., Brexit’s 51.9 per-cent ‘yes’, and the bare majority 50.6 per-cent ‘no’ in Quebec’s 1995 secession referendum) the winning option may

¹¹³ Stephen Tierney, ‘Sovereignty and Crimea: How Referendum Democracy Complicates Constituent Power in Multinational Societies’, *German Law Journal* 16 2015: 523, 529, 536.

¹¹⁴ Philip Pettit, ‘Republican Theory and Political Trust’, in Valerie Braithwaite and Margaret Levi (eds.), *Trust and Governance* (Russell Sage Foundation, 1998) 296-99; Adam Przeworski, *Democracy and the Market: Political and Economic Reforms in Eastern Europe and Latin America*, Cambridge, Cambridge University Press, 1991: 23–24.

¹¹⁵ This is, admittedly, an empirical claim. Yet while it has not, to the best of our knowledge been systemically tested, it pervades the literature on deliberative democracy. See, for example, Bernard Manin, ‘On Legitimacy and Political Deliberation’, *Political Theory* 15(3) 1987: 338-368.

¹¹⁶ The two are not wholly distinct: ‘deliberation reinforces democracy, and democracy in turn reinforces deliberation’; for example, better informed voters can express more sincere preferences in a referendum, based on a more genuine knowledge of the subject: Ron Levy and Graeme Orr, *The Law of Deliberative Democracy*, London, Routledge, 2016: 26-27, 50.

be in doubt. For instance, at these close margins any voting irregularities, and the vagaries of turn-out (e.g., fewer than half of eligible voters participating), can encourage the view that the vote was illegitimate. Perhaps it was not accurately indicative of popular will or, if indicative, reflected only fleeting popular preference, which is not itself sufficient to legitimate a long-term constitutional reform. Some referendum designers respond to this problem with supermajority requirements (e.g., 55 or 60 per-cent to pass). A related approach would be to require, as a prerequisite for constitutional change, that at least 50 per-cent of all *eligible* voters vote 'yes'; in practice, in terms of actual votes cast, this would almost always amount to a supermajority requirement.

Supermajority methods raise their own problems for democratic legitimacy, as a clear majority of voters might be denied their preferred option by a supermajority set arbitrarily high. (The British Columbian electoral reform of 2004 provides an example; the vote achieved 57.7 per-cent support, but fell short of the high 60 per-cent threshold.) A more palatable approach is one we call a 'timed double-majority'. This approach requires a second referendum vote to be held within one year of the first vote, if and only if the first vote falls short of a clear majority (e.g., the result is between 50.0 plus one vote, and 52.9 per-cent).¹¹⁷ In addition, there should be a 'voter quorum' set at 50 per-cent turn out among eligible voters.¹¹⁸ This guarantees that wide-reaching constitutional change cannot take place if fewer than a majority of eligible voters participate in the referendum. On the other hand, it does not simply privilege the status quo.

Democratic Design in Bougainville

In addition to the deliberative institutions and supports canvassed thus far, the referendum should ensure best practices in democratic design. This should firstly include the timed double majority and 50 per-cent voter quorum requirements just

¹¹⁷ Other options include the approach in Canada, where federal legislation requires a clear majority on a clear question in any future secession referendum: *An Act to give effect to the requirement for clarity as set out in the opinion of the Supreme Court of Canada in the Quebec Secession Reference* (aka Clarity Act) S.C. 2000, c. 26. However, this option would raise serious risks in conflict areas, given (ironically) the vagueness as to what counts as 'clear', and about who should be empowered to decide the matter.

¹¹⁸ Zoltán Tibor Pállinger, Bruno Kaufmann, Wilfried Marxer and Theo Schiller (eds.), *Direct Democracy in Europe: Developments and Prospects*, Berlin, Springer, 2007.

outlined. In addition, the referendum should have standard democratic guarantees set out in law, such as:

- universal adult franchise,
- anonymous balloting,
- fair access to public airwaves and other modes of publicity and discussion, and
- legal safeguards against partisan criminal prosecution.

Such provisions can reduce the capacity of self-interested political elites and partisan factions to capture a referendum for their own purposes, particularly by ‘playing the ethnic card’.¹¹⁹ It is partly for this reason that public-values referendum deliberation might be characterised as having a circuit-breaking function. As we noted in Part II, the colonial experience in Bougainville left a legacy of distrust in governmental elites – including foreign elites. While international agents (e.g., NGOs, UN bodies and neutral foreign governments¹²⁰) might be more impartial, popular legitimacy considerations and distrust of elites of various descriptions help to explain the modern popularity of referendums in conflict societies. Elites cannot be sidelined; nor, as we noted earlier, should they be. But, if properly conducted, referendums can change the incentive structure of elites in ways that are settlement supporting.¹²¹ Deliberative democracy, particularly its public reason variety, can guide the way.

Popular perceptions of the legitimacy of a decision-making process are not dependent only on the majoritarian democratic *bona fides* of the process. Robust deliberation also importantly contributes to these perceptions. Evidence suggests that public trust in referendums depends partly on deliberative supports to mitigate

¹¹⁹ In the ethnic conflict literature, this phenomenon is usually discussed under the heading of ‘outbidding’. See, for example, Cathy Gormley-Heenan and Roger MacGinty, ‘Ethnic Outbidding and Party Modernization: Understanding the Democratic Unionist Party’s Electoral Success in the Post-Agreement Environment’, *Ethnopolitics* 7(1) 2008: 43–61; Gavin Moore, Neophytos Loizides, Nukhet Sandal and Alexandros Lordos, ‘Winning Peace Frames: Intra-Ethnic Outbidding in Northern Ireland and Cyprus’, *West European Politics* 37(1) 2014: 159–181.

¹²⁰ Note that the Melanesian Spearhead Group, a regional intergovernmental organization, would likely not qualify as ‘neutral’ for this purpose given that PNG is one of the five member states and PNG Prime Minister Peter O’Neill recently assumed the role of Chair.

¹²¹ See Jon Elster, ‘Deliberation and Constitution Making’, in Jon Elster (ed.), *Deliberative Democracy* (Cambridge University Press, 1988) 100–105.

ordinary citizens' deliberative weaknesses.¹²² That is, as noted in part II, non-elites tasked with deciding complex problems may encounter informational and other difficulties. A process that is not merely democratic, but *deliberative* democratic, is especially likely to attract public trust (a useful marker for perceptions of legitimacy). A deliberative referendum therefore potentially helps to answer the problem noted above of uneven commitments to deliberation. As an institution with robust democratic and deliberative features,¹²³ its legitimacy could be agreed to by a wide cross-section of people, including those who value majoritarian process and those who value deliberation. A decision-making model such as this, which robustly adopts both democratic and deliberative features, can perhaps attract the broadest perception of legitimacy – and in turn a more enduring settlement.

A final consideration is when to hold the referendum. As noted, the deliberative referendum we propose should run prior to elite-led negotiations on a final settlement. This means, formally, the vote must be a non-binding plebiscite, since leeway must be given to elites to finalise settlement details. This is consistent with the planned approach for the Bougainville referendum, which is intended to be non-binding. Section 342 of the PNG constitution provides that the referendum's results will be subject to consultations later on between the two governments. While the referendum campaign is running, and until voting results are revealed, elites should nevertheless be largely sidelined.¹²⁴

When settlement negotiations run in advance of a referendum and are presented to voters for endorsement post-hoc, the result can be disappointing. As in Colombia, the pre-negotiated settlement may not attract widespread popular support; voters may hesitate to defer to elite experts about a complex settlement.¹²⁵ Non-elites may not

¹²² Ron Levy, 'Breaking the Constitutional Deadlock: Lessons from Deliberative Experiments in Constitutional Change', *Melbourne University Law Review* 34 2010: 805, 834-837.

¹²³ The two are not wholly distinct: 'deliberation reinforces democracy, and democracy in turn reinforces deliberation'; for example, better informed voters can express more sincere preferences in a referendum, based on a more genuine knowledge of the subject: Ron Levy and Graeme Orr, *The Law of Deliberative Democracy*, London, Routledge, 2016: 26-27, 50.

¹²⁴ Stephen Tierney, *Constitutional Referendums: The Theory and Practice of Republican Deliberation* Oxford: Oxford University Press, 2012: 249-252. See similarly, in a non-conflict setting, John Parkinson, 'Ideas of Constitutions and Deliberative Democracy and How They Interact' in Ron Levy, Hoi Kong, Graeme Orr and Jeff King (eds.), *The Cambridge Handbook of Deliberative Constitutionalism*, Cambridge, Cambridge University Press, 2018.

¹²⁵ Levy, 'Breaking the Constitutional Deadlock': 807; Tierney, *Constitutional Referendums*: 247.

understand nor defer to the complex compromises negotiated by elites. By contrast, running a prior referendum in which non-elite opinions take precedence can allow the vote to influence the more detailed negotiations held later on. Negotiating elites will be able (indeed, if the process is properly conducted, may be morally obliged) to draw upon the results of the public value-voting portion of the ballot to guide their interactions (or, at the very least, to explain in public-value terms why they did not do so). Broader engagement, especially at an early stage, may help to increase popular, long-term support for settlement.¹²⁶ Of course the risk is that voters will view the legitimacy of the process as undermined if elites retain the final word on settlement details. However, running an initial referendum may allow it to proceed without becoming bogged down in technical details, and may also help to impel elites to reach a settlement: there are political downsides to rejecting the express, considered preferences of constituents.

CONCLUSION

The conflict-society deliberative referendum should be understood as minimalist in its aims: it does not require wholesale changes to individual value commitments. The referendum is a discrete moment in time focused on a specific set of matters. The challenge of popular deliberation in a referendum is in this sense relatively modest. There need be no requirement, in the first instance, to mend deep social differences. Neither is there a need for individuals to move closer to each other in identity or to be more willing to deliberate as a general rule. The aim should be instead for a focused airing, generalisation and liberalisation of commonly held public values. Deliberative referendums are not intended to be 'schools for democracy', but of course there is nothing to preclude such an outcome either.

Approached in this way, the referendum in Bougainville may avoid merely aggravating conflict, as in past cases, and may be more likely to mitigate it. A deliberative referendum aims first to scaffold a tenuous agreement – a circumscribed opportunity to deliberate from common ground – and thereafter to concretise the settlement by way of a legitimising deliberative referendum – a circumscribed opportunity to cast an informed vote. Of course, the standard caveat applies: nothing

¹²⁶ Tierney, *Constitutional Referendums*: 251-252.

can guarantee successful settlement in practice. Yet current approaches to conflict society referendums have often been often markedly ineffective—even counterproductive—in part due to their habitual neglect of deliberative design.
