

Representation: consent, legitimacy and accountability.

Peter Tait, member CAPAD

At our current point in the evolution of human governance, a combination of factors¹ means that in nation states using a liberal democracy model, some form of representation in the decision making assembly is required. Further, for reasons of custom and usage, the selection method of these representatives is currently by election. Ignoring Burnheim's observation that this gives us an electoral oligarchy², one of the major issues in making our political system more democratic revolves around the legitimacy and accountability of our representatives.

Democracy is the model of governance where the decisions are made by those who will be affected by the outcomes of those decisions. One can assess a government against a set of democratic principles (Box) to ascertain how democratic it is. Adherence to these principles however shows that decision making is not actually a point in time, but one stage in a process. Prior to the decision is a process of informed deliberation, and following it is the implementation, which itself may need to be an adaptive process.

Democratic Principles

- **Political equality**
- **Avoid tyranny**
- **Deliberative / informed**
- **Reflective**
- **Adaptative**
- **Transparent / accountable**
- **Subsidiarity**

When representatives are interposed in this process, their role is to ostensibly 'represent' the interests of their constituents. However both the process of 'representation' and what the 'interests of their constituents' might be, are not straight forward. This is because, in order to fulfil their role and to adhere to the democratic principles, their role changes during the deliberative, decision making and implementation process.

In this paper I will discuss the decision making process, the issues affecting the role of representatives, and propose some ideas for improving how this system works to help us move us further along the evolutionary pathway of governance in the 21st century. Much of the paper is based on John Parkinson's book¹.

Legitimacy and Consent

We, the people, give our consent to be represented through the process of selecting our representatives. Received wisdom has it that the consent and legitimacy are conferred on our representatives by the act of electing them. This is only partially accurate. An election is only a point in time, and occurs only every few years. Between elections, how do we continue to consent in order for legitimacy to be maintained?

The answer lies in recognising that there is a relationship between represented and representative. If we posit that this is an ongoing relationship (that is, it continues beyond election campaigns), then we can explore how this relationship leads to ongoing consent. While we the represented continue to consent, then the representative is legitimated. It implies also that this is a two way process. It is in this relationship that mechanisms for accountability sit.

¹ Current practice, institutions and arrangements, voter / citizen expectation and interest in participation, state of technology development, scale across population, space and time. See Stoker G. Why politics matters. Making democracy work: Palgrave Macmillan; 2006, and Parkinson J. Deliberating in the real world: problems of legitimacy in deliberative democracy. 2006.

² Burnheim J. Is democracy possible?: The alternative to electoral politics: Univ of California Press; 1985

Accountability

The two way ongoing relationship gives citizens a means of holding their representatives to account for what they do in office, and for the decisions they make, between elections. Even in our current systems, constituents visit, write to and meet their members of parliament, and offer them ideas and advice on how they should be acting and deciding.

Unfortunately the power of constituents in the current system is overwhelmed by the lobbying power of vested interests. This needs to be addressed in improving representative accountability. I address this further on.

Within this ongoing relationship, the role that we expect our representative to play in representing our interests, balancing them with others' interests, changes according to where within the deliberation and decision making process the representative is. So consent, legitimation and accountability also needs to evolve during the process. Fundamental to maintaining the relationship and thus accountability, is the style and nature of the communication occurring between represented and representative.

The process of deciding

Parkinson describes four stages of the decision making process: define, discuss, decide and implement, wherein define and discuss amounts to the deliberative component. Democracy has to operate in each stage to fulfil the Democratic Principles. For the purpose of this discussion we are focusing on the deliberative stages.

The nature of deliberation is that it is informed by multiple inputs: scientific knowledge, the lived experience of those to be affected, budgetary considerations, political feasibility, implementation capacity, among many others. During this stage, representatives have to balance the interests of their constituents with the interests of other players within the reality constraints of the situation. The act of deliberation requires that as new information becomes available, one has to be able to change one's mind to and shift one's position. Thus in this stage, a representative's role is one of trustee or 'speaking for'.

During this phase, communication with those represented requires openness about issues, providing information to constituents and receiving feedback (as a dialogue), but it is also curtailed as within the negotiations balancing interests, commercial and personal confidentialities may need to be guarded. However, after the event, a truthful accounting of the reasoning behind the recommendation about a decision emerging from that deliberation has to be given.

At the decision making point, the representative holds a 'deciding for' or delegate role. At this point, the representative has to contribute to the decision, according to how their constituents have instructed at the end of the deliberative process. This implies that the communications during the deliberative process has permitted the constituency this level of access to information and there has been a mechanism for receiving feedback and direction from them.

Representativeness

While the account thus far has personalised the representative relationship, this relationship sits within a broader societal system. Currently the system is not conducive to the type of relationship described above for a deliberative process. Our representatives are chosen for election by political parties (and the occasional independent) and we choose between them based on how well we think their policies (where these are evident) or rhetoric will best serve our personal and enlightened self-interests.

In deliberative fora, the challenge is to try for a high level of representativeness. That is the representatives share descriptive features with their constituency; such features may be gender, ethnicity, class, creed, political persuasion, age, the less powerful or less advantaged, and perhaps others in certain circumstances. Such representativeness affords legitimacy. It implies several rather than a single representative, and so a degree of proportional representation in the selection process. The aim of this is to make the representatives' trustee role better (but not perfectly) informed by shared values and experience.

This introduces tensions. It is never possible to have a level of complete representativeness outside of direct democracy. So every deliberative process will be only imperfectly representative. In this situation, the way representativeness is institutionalised in the system is important for how legitimate people feel it is for them. The system has to be seen to be trying its best to be fair at each stage of the deliberation and decision making process.

As Parkinson puts it: "in the same way [as research tools], democratic deliberation should be the result of several different processes, because different processes motivate different kinds of representative to take part, sharing different kinds of knowledge, creating inclusiveness and legitimacy of the deliberative system despite the individual peculiarities of its parts (p.165)."

In other words, it is the system that confers ultimate legitimacy, and for that to occur the system needs to support an ongoing dialogic relationship between representative and represented, within which accountability occurs in real time, and consent can be repeatedly given or withheld.

Making the relationship better

Recognising a set of legitimacy principles (Box) gives us a framework to improve the represented-representative relationship.

Most importantly it figures the act of representing as a relationship. Within this relationship, it recognises that consent is required for the representative to continue their role. Accountability mechanisms (not detailed here) ensure the strength of that relationship. Accountability is based in an ongoing dialogue between representative and constituents.

None of this is to say that a representative is at the whim of their constituents, were some unhappy with a decision. That would violate the principle of avoiding tyranny. It does mean that the representative is subject to feedback, and has to be able to explain and justify to the constituents the reasoning behind a decision. It also requires citizens to understand the nature of governance and politics: it is a messy business and compromise is inevitable. In democracy the issue is not compromise, but that reasons for the compromise are understood, and the process to reach them was democratic. It also recognises that this is an ongoing process and decisions are (often) never final.

A practical example

The Federal electorate of Indi in northern Victoria, provides us an example of a new way for political representation to happen. Cathy McGowan, the member for Indi, was chosen consequent to an

Legitimacy Principles.

- Legitimacy is conferred by the consent of 'those affected'.
- Consent is partial and requires ongoing renewal.
- Legitimacy and consent sit within the relationship between represented and representative.
- This relationship is maintained by dialogue.
- Immediate and ongoing accountability is based in the dialogue within this relationship.
- The deliberation and decision making processes should align with the principles for good democracy.

extensive deliberative process. Kitchen Table Conversations were used to establish salient issues for people in the electorate. Further conversations and a model of community organising gave rise to her candidature and ultimately election. However following election, the critical factor is that the democratic process has continued. Conversations within the electorate are ongoing, both to feed back issues from parliament to the electors, and to take information from the electors back into the deliberation and decision making in parliament. 'Political literacy' within the voters of Indi is being improved by a program of internships in McGowan's electoral office and at Parliament House.

In tying representatives closely with their primary constituents in this way, the power of vested interest is diminished. Associated reforms such as limiting or prohibiting campaign donations, real-time registration of lobbyists and open parliamentarian's diaries, can enhance this. In fact this manner of localised candidate selection and election might even remove much of the impetus for campaign donations.

However this does give us a model for an ongoing, respectful, dialogic representative-represented relationship may be created and maintained even within our current political system. This is a model that can be applied to other electorates at all levels of government in Australia. Of course other questions about the role of political parties, policy and program development will arise if or when this system were adopted widely.

Conclusion

Within our current government arrangements, scale across population, space and time requires representation. Representation requires the consent of the represented, introduces the need for legitimation of the representatives, and requires mechanisms to hold representatives accountable, while at the same time permitting them the freedom to properly deliberate. The tensions between deliberation, legitimation of representatives and accountability cannot be resolved but need to be managed within the process of deliberation and decision taking.

Each of the four phases of deliberation and decision making requires different roles to be played by representatives. Thus the represented-representative relationship is a dynamic one. Ongoing dialogic communications between represented and representative need to occur so that the relationship remains robust, open and transparent.

Modelling the deliberative process within the overlapping boundaries of the process permits the best but not perfect input to a decision, and the best options for the implementation of the decision.

Recent experience in the Federal electorate of Indi provides a living example of how such relationships between represented and representative might be created to improve the robustness of democracy in government. Such developments assist the evolution of human governance toward being more inclusive and democratic.