

Theoretical considerations underpinning political and constitutional reform

Bridget Harris, January 16th 2013

Introduction

In this paper, I wish to challenge some normative assumptions we have about our political system. We need to question these things in order to re-think a more responsive, more engaged system that actually feels relevant to people.

Key terms: legitimacy, trust, impact, regulation, equality, value, interests, power, relevancy, representation, people.

The problem: turnout is rock bottom; trust in politicians has evaporated; extremist parties are gaining ground with populist, simplistic messages. Public finances are in a seemingly endless spiral of crisis, cuts and compromises, small scale corruption by elites (politicians, media, bankers, policy) accepted with resignation by a disaffected public.

The system feels 'out of touch' not just with voters, but with modern life.

The argument: we assume that unless we have elections, something cannot be 'democratic' or 'legitimate'. This hampers our ability to re-think how we can socially organise ourselves. There are actually many ways localism, participation, random selection, and better articulated separation of powers, could transform civic involvement and responsibility for collective action in society, leading to better decision making, and better outcomes.

1. Legitimacy and equality

A starting point for this discussion, must be whether all human beings are considered equal, whether this is self evident, and what does this mean in practice.

If you do basically accept this notion, I think it implies that everyone has an equal say (or vote) in decisions that are made on their behalf or affect them. Or put a different way, everybody has a right to defend and advocate for their own views (notwithstanding other people taking a view/action if those views are harmful or mentally unbalanced).

So in practical terms, if everyone can fit into a room together, then everyone ought to have an equal share in the decision making about any proposed group action, where the individuals depend on each other for resources.

I believe that human beings, as far as we can define it, are equal in terms of their personal value, and potential value to others. We should all be able to participate and have a say, and we ought, as Aristotle said, to 'rule and be ruled in turn'. But equally, you need to have some mechanism to mediate between individuals where they disagree – and a way to look at problems of 'tyranny of the majority'.

We also have the problem of humans who are either not considered sane, or are children, or in some other way dependent and not considered 'fit' to make a decision for themselves. It might be considered straightforward about which groups we should apply a 'parental' role to make decisions for them. But then there is the qualitative problem of who has access to information, manipulation of circumstances, the effect of group psychology (ie potential for mob rule) as well as the well known problems of clinical definition.

In terms of political and social organisations, much flows from the position you take.

If you reduce it to 'decisions we can take for ourselves that affect only ourselves' protecting the rights that flow from that are fairly clear (if you are a utilitarian liberal!). If it extends to 'decisions we can take on behalf of others in their (best?) interests' the question of legitimate action on behalf of others arises, i.e. whether a person has given their express permission, has implied it in a secondary action, or whether group action has decided unilaterally to make decisions on others' behalf.

So, in theory we are all equal. In effect, some of us are more equal than others.

2. Representation and individual versus collective interests

So what happens when you can't fit everybody in a room? Super structures of political organisation have evolved where we have found a way to select representatives to act on our behalf – some elected, some appointed. All the questions above need to be considered when looking at the efficacy of any representative's role, and ways to ensure they are acting in the interests of both individuals who are involved in selecting them (reasonably strong links) and the collective interests of the group who have decided these bigger questions (weaker links).

John Stuart Mill said it is only when individuals have an opportunity to speak for themselves on a regular basis, that their own interests will ever be represented.

But if certain groups are permanently excluded or have NO chance of being a part of the system involving decisions that affect them, then it follows it is unlikely their interests will be ever fairly represented.

If you take this argument to its logical conclusion, you get to Rousseau, who said 'the moment people give themselves representatives, they are no longer free'. So although it is a philosophical point whether it is possible to represent somebody else in a way that truly defends their interests as they would do so themselves, I think there are some interesting practical points about social and political organisation - the efficacy of representation, and adapting to the fact that technology suddenly makes the 'everybody in a room' model much more possible.

It also raises legitimate questions about the difference between the equal opportunity of people participating, and the quality of their actual views / decisions.

3. Leadership, participation, decision making and power

The potential for conflict raised above – between fairness and quality – forms the basis of many different theories and models of leadership and pluralism. It comes down to how

effective is our decision making process? How are collective interests mediated? What is distinctive about leadership as opposed to participation?

I would argue that people are only ever capable of making fairly limited decisions, based on a usually narrow understanding of the choices. I think they also vary in quality (or outcome) depending on their own background and experience and inclinations. Following this argument is, if you do not have an opportunity to represent your own interests, it is unlikely others will do so effectively for you. It also implies that access to information and control over knowledge, is critical, in testing the efficacy of decision-making capacity of people.

I would add to that, you are more likely to make a better decision if you are also directly affected by the consequences of that decision. Or put a different way, if you are not likely to be personally affected by a decision, you are less likely to care or understand much how it will feel to others.

I would take the difference in quality of State-provided healthcare and education service in Britain as a very simple illustration of this problem. Put brutally, most people involved in taking decisions about education (in Whitehall and parliament) send their kids to private schools and live in nice areas. But if they were run down by a bus tomorrow, it would be a state ambulance that would be summoned to help them.

This may be simplistic, but I think this explains the difference in the reliability and quality of the education, versus the health service. Moreover, it's a difference that is well understood by a significant part (ie wealthy and influential) population, who can happily 'opt out' of a sub optimal state school. But they'll be the same people expecting a first class state healthcare system.

So I think the challenge of a political system is to find a way of articulating the needs and interests of people based on a criteria which fits our shared values and normative assumptions about a society based on everyone of equal value. The key issues are protection and promotion of fundamental human rights, sharing resources appropriately and regulating against the accumulation of wealth and assets based on exploiting a monopoly (even personal monopolies such as inheritance).

And in organising as such, we need to be realistic about the personal and social instincts of humans themselves, how to appeal to their best instincts, and encourage their most generous motivations.

My conclusion is therefore, the more sharing of power, the more the decision making of others is tested, the more knowledge and information about choices is distributed, and the more chances every individual has to participate in those decisions, the more likely we'll get decisions which serve the wider interests of people.

I think any system where decisions are taken by only a small number of people on behalf of others, should try and be linked as closely and locally as possible to who is affected by that decision. This because, in my view, that there are huge inefficiencies and flaws in representatives taking decisions on behalf of others, so the further away from the issues they are, the more likelihood those problems are amplified.

4. The Westminster model

Power is said to corrupt. Theorists and political leaders over centuries have argued for the need to have a firm check on the people who are given power to make decisions over other people. The American Constitution interpreted this as a need to 'separate powers' – a strict division between those who propose the laws, those who make them, those who interpret the laws, and those who hold the lawmakers to account. Federal structure in America also ensures that local states are constitutionally sovereign in a bottom up, not top down, way.

The British Constitution (in my observation of it at least) could make no such claim. The power of the Executive in Parliament is almost exclusive. We have an explicitly top-down, command and control model of governance. We do not share power. Even political parties are kept at arm's length from Whitehall and Westminster. Whips are the ones who privately enforce a party line on votes, but Parliament itself treats every MP as an independent self-starter.

Therefore we are in effect, putting our trust in individuals themselves, rather than who or what they notionally 'represent' either by virtue of an electoral mandate (which is implicitly breakable) or through a geographical constituency. Indeed the Burkean view explicitly rules out the latter. Even today, modern politicians will still say they think their role is to act 'in the best interests of the British people', which could easily outrank the interests of either their manifestos or their constituencies. Tuition fees being a painful case in point for the Liberal Democrats.

And in any case, traditional arguments in Britain is that a strong leadership model is a 'good thing', and produces 'results'. It is a model of representation based on two assumptions. Firstly, that the people have mandated representatives via acceptance of their manifesto promises and election time, to go ahead and get on with the job of making all the decisions. Secondly, it seems that parts of the British Constitution is founded on the principle that some people are in a better, more informed position to rule – not least demonstrated by the hereditary and appointed House of Lords.

The people's role and participation is about choosing their leaders and then letting them get on with it. The British political system does not expect any further interest from people until the next election time. Even in local government, Local Authorities are largely statutory bodies which exist to manage and enforce the decisions made by the centre.

I think the British Westminster system struggles with this constitutional heritage, because it 'feels' like MPs ought to look like the people they represent, know what they want, and represent the local interests that concerns their constituencies. It also leads to questions like the West Lothian question, where it looks like Scotland benefits from an 'unfair' over-representation and influence in Westminster.

I have always thought (regardless of whether this is a good or bad thing) there is no contradiction, because MPs in Parliament have always been constitutionally mandated to represent the whole of the United Kingdom. Unless we have an explicitly different system which breaks up a sovereign, uni-parliament into federal parts, in my view there is no actual constitutional problem. There clearly remains a cultural and social one to do with 'English identity'. I doubt this will be solved with some constitutional tinkering to change the practical arrangements of Westminster.

5. Conclusions for a new constitutional settlement for the UK

As I said above, my starting point is I think there is an intrinsic weakness in the effectiveness of representatives making decisions in the normative interests of the people who have subcontracted the job to them.

The most effective model (in my view) to get representatives with fewer vested interests or a conflict in their decision making is random selection. The process of selection of candidates by political parties produces highly subjective representatives.

But I would suggest this is partly where we get confused - picking leaders and picking people to make decisions on behalf of others are two different things. I think there is still a role for elected leaders who provide a vision for the country.

But better also would be to involve as many citizens directly as possible, participating in different ways and at different levels, in decision making about their communities. This can easily be done through technology.

So the way I interpret separation of powers is at a very fundamental level:

- every person is equal and should have an equal say
- decisions that are mediated and made collectively (and decided through representatives selected randomly) should then be held to account and tested by articulate leaders and vice versa.
- the more local and distributed the decision-making the more chance you will reduce the weaknesses associated with centralised representation.

We can get some of the way there within our existing constitution. I think we have the flexibility to evolve better standards and practice which will change the constitutional settlement over time.

This could include:

- Empowerment of local politicians/ taxation and spending to local authorities
- More random selection of citizens into representative groups to make decisions
- Embracing open technologies to crowdsource policy at every level of administration
- Open data/information more than ever before in public services, iterative and collaborative decision making
- Allowing citizens direct access to databases and services they are affected by.

What eventually becomes a formal law that needs to be regulated and enforced, as opposed to what has been legitimised by common practice, behaviours and expectation becomes a fascinating point.

Take bribery for example. It is well known that, despite tough anti corruption laws, India has a prolific problem of bribery and systemic corruption of local public officials.

A website has been set up by civic entrepreneurs <http://ipaidabribe.com/> which allows those who are faced with officials demanding a bribe to expose the practice. This has a knock on effect on not only on reducing official's likelihood of demanding a bribe another time, it also removes the secrecy and power individuals, with access to information, normally have over members of the 'public'.

Basically openness, participation and transparency become better regulators of behaviour than legal constraints.

I think we can do this within our political system too. Systems are in place, ultimately, to police and organise resources and behaviour. It's a network of people trying to sort stuff out on behalf of everybody. But maintaining the system has become an end in itself, (alongside international relations).

I think in this country we need to explore all these options, and test our political and constitutional structures against these principles, and wherever we have a option to increase people's participation, or reduce, we should opt for the former.

I think the failure of the House of Lords reform bill was a sorry example of how the vested interests of the establishment proved itself to be incapable of its own incremental reform, and therefore much more radical options should now be considered as a way forward.