

The Jury System and Participative Democracy

Fred Emery 1976

The jury system is expected to yield a valid representation of what the community feels and thinks or wants in terms of justice, fair play and decency.

Their decisions can ruin a person's life career, inflict long periods of incarceration or even lead to the abrupt ending of a life. These matters have long been regarded as too serious to allow jury selection by voting and too serious to allow decision making in the jury by a majority vote.

If a jury fails to achieve consensus it is a 'hung jury' and it is dissolved, to be replaced by the original selection procedure. This selection procedure has at least the following essential elements:

- all adults have a duty to serve;
- they are not selected by popular vote but by turns;
- they cannot be lobbied as they are not viewed as representatives;
- they must seek consensus.

The use of this procedure for determining government service would write off elitist assumptions. Such elitist assumptions are implicit in elected representative systems; e.g. the evolution of the Westminster system. Some people assume that they are better fitted to rule by reason of birth, property, education etc. The elected regard themselves as a cut above others.

Notes on 'Jury System in politics'

1. As with the legal jury system, some people are ineligible for the lists because of age (immaturity), insanity or criminal record.

2. Once nominated by ballot there must be a 'posting of bans' (as with weddings). If challenged an open public hearing must be held. If a majority at that meeting vote for or against the nominee it is open to either nominee or challengers to demand a secret ballot by their community. This may seem expensive but it seems improbable that more than a small minority of nominations would be challenged. Thus the total cost should be very much less than holding general elections. Even the cost question is not critical. The overriding consideration is to prevent stacking of public meetings to manipulate the appointments by special interests favouring or prejudicing the chances of service of a nominee for their own ends, not community ends.

3. It is an important feature of this procedure that it weakens the role of political parties. The majority of the candidates would be beholden to no party for their election, nor for their future. The parties might for a while campaign for challenged members but that would bring them little credit.

4. As compensation for service and an aid to readjust to private careers persons would have the right to as many years of education at state expense as their years of service.

5. The levels of government might be:

- collective (urban or rural, 300-500 adult voters) or some 1,000 persons);
- region;
- state.

Table 1. Sampling frame.			
	Eligible	Sampling ratio	N

Federal/State	All who have held regional office		
Regional (200,000)	all who have held town-district office		
Town-District (10,000)	all who have held local office		
Local (500)	complete electoral roll of the locality	1: 100	5

Note: Using this sampling method for representation should ensure that women are properly represented right to the highest level; ditto for all minorities.

Eligibility for higher office should be restricted to those who have served in lower officer. If their service was not well done they could be challenged.

Two-up, one-down

Selection to Local level should mean one year as assistant at regional, then back to local service. Ditto for other levels.

The 'two-up, one-down' principle: The purpose of this is to bridge broad gaps in extent or span of concern. By participating in a meaningful way in the policy formulation at the broader level (without the responsibility of making the decisions) people can get a greater understanding of the context in which they will subserviently be contributing to decisions at the broader level.

Thus, for example, by understanding the limitations to the powers of Federal and State governments, and additional demands on them, the regional 'public servants' can be more reasonable in their requests of those bodies.

In effect it helps create a shared psychological field between bodies whose prime concerns are different. They should realize that the different and potentially conflicting ends are being pursued by people at least as honourable as themselves.

Note: the interpenetration of levels will also occur because after service at any of the broader (higher) levels a person is still likely for subsequent selection for the lower levels. These people may not be numerous but would be valuable resources for any governing body. At the narrower levels of locality and town-district, people should be so familiar with both levels that this mechanism may not be required. This familiarity is not likely, however, when a person moves to the regional level and has to deal with region-state and region-federal interfaces.

Precedents

This notion was inspired by George Collier's account of the traditional system widespread among the Indians of Mesoamerica:

“The positions (of public service) are ranked into levels, service in all but the first level presupposing earlier services at the level below. Every mature male is expected to provide ritual service for the community at some point in his life by occupying a ritual position as the lowest level. During his year of service, the man will leave his hamlet to live in the township center to perform ritual at great personal expense. The heavy cost of this ritual requires years of careful savings of the meager excess earnings of farm production above subsistence needs. Yet the spiritual and social rewards of service are such that many seek subsequent service at additional heavy cost in positions at higher levels of the hierarchy later in life. Indeed, those men who succeed in performing at all of the hierarchy's levels have proved themselves worthy of the greatest respect” (Collier, 1974, p.13).

Among the Pathans there is another variant of participative, non Westminster democracy.

“The *jirga* is probably the most interesting of all the Pathans' institutions. It can best be described as an assembly or council, and it serves the functions of both. The word can be applied to half a dozen men sitting down together to discuss what they should say to the political agent who is coming to object to their sons shooting off the porcelain insulators from the nearby telegraph line.

More properly a *jirga* is a group of members of a particular sub group of Pathans considering a matter of common interest. There is seldom any formal selection of representatives. Among the tribes virtually every adult male may attend. Among others tradition clearly indicates those who are entitled to participate. In any event there is no making of motions, and no voting. Decisions are unanimous and are arrived at by taking the 'sense of the meeting'. (Some of them would chill the blood of the peaceful Friends who coined the term.) The traditional penalty for anyone who defies the decision of a *jirga* is the burning of the culprit's house. Since the tribesmen do not lay aside their arms while deliberating, punishment can be executed promptly.

Apart from enforcing its own penalty for contempt, there is little of the judicial or police function in the *jirga's* role in the community, It does not ordinarily determine guilt or inflict punishment but seeks to achieve a settlement” (Spain J W, 1962, p.50).

Other examples could be drawn upon, and I hope to write about these in the near future. My point here is to emphasise that democracy did not begin with Westminster. Further, they were models that sought for participatory democracy.

The evolution of the Westminster model, however, has been a history of giving way to popular demand but seeking to hold participation to minimum.

Misrepresentativeness

My concern about the utility of the Westminster system of representative government is twofold: (1) it always leads to a misrepresentative elected body. More men than women, more rich than poor, more lawyers than business people, more farmers or workers etc; and (2) it inevitably acts to dampen down participation

The kind of representativeness that we could find in the 'jury system' type of government is clearly explained by a US Supreme Court judgement of 1957:

“The American tradition of trial by jury... necessarily contemplates an impartial jury drawn from a cross section of the community. This does not mean, of course, that every jury must contain representatives of all the economic, social, religious, racial, political and geographical groups of the community... it does mean that prospective jurors shall be selected by court officials without systematic intentional exclusion of any of these groups.” (Bloomstein M J, 1968, pp.54-5)

I think I have indicated my preference for a random sampling procedure from an up-to-date list of all eligible adults. However, in many circumstances this may not be the best solution. The cost of creating and maintaining such a list of citizens can be exorbitant in an underdeveloped country; it may be too much trouble to contact and gain the cooperation of a randomly selected sample even in matters of life and death in a highly developed country, with cars, telephones, etc.

This problem has been faced by the US Federal Courts. The methods of federal selection include recommendations by leading citizens of the community, known to court officials for their good character.

The 'community reference system' (Emery M, 1999, pp186-188) is one we have used for three community and one university Search Conference. On each occasion it yielded a sample of citizens that could not be faulted because of misrepresentativeness.

Size of unit	Size of 'electorate'	States	No. of sub-units included		Localities	Rate of sampling at each	No. of members per unit	Approx no. of level members in Nation	Time comm.-itted
			Regions	Towns/districts					
Federal, 16,000,000	8,000,000	7	64	1600	16,000	1 in 120,000	142	142	Full
State* 3,000,000	1,500,000		12	300	3,000	1 in 30,000	50	350	Full
Region 250,000	125,000			25	250	1 in 2,500	50	<u>3,200</u>	
Town/ district 10,000	5000			10	10	1 in 250	20	<u>32,000</u>	
Local 1,000	500				1	1 in 50	10	<u>160,000</u> <u>196,000</u>	
*median								i.e. 2.4% of 'electorate'	

	Initial rate of sampling per electorate (voters)	'2 up* 1 down'	Length of tenure	
Federal	142/350	1 in 2.5	X	4 years
State	350/3200	1 in 11 [combined state & federal gives 1 in 6]	X	4 years
Region		1 in 10	X	3 years
Town/ district	38/140	1 in 5		2 years
Locality		1 in 50		2 years

It is important to note that nobody gets to serve at the State level without 7 years of *public service* (as distinct from public administration).

Summary of Advantages of DP2 Governance Selected by Lot (Note by Merrelyn Emery, April 2010)

After 200 years of representative democracy around the world, much is known about how the system works and what its predictable effects are. Despite the many different versions of it such as presidential and parliamentary systems and many different systems of voting, the same syndrome of effects is noted in every case. This also applies in countries such as Poland where citizens fought and died to get representative democracy. Inevitably, there is the growth of apathy and alienation from the government over time.

Similarly, the dynamics of DP2 structures are now well established from over 60 years of work in organizations and 50 years experience in Search Conferences. These dynamics and their long term effects accord with observations of DP2 governance systems from around the world. Table 3 documents only those dynamics and effects that have been so established.

Table 3. Advantages of DP2 over DP1 Governance Systems

DP1 Representative Government	DP2 Participative Democratic Government
Are intrinsically not representative	Are not misrepresentative as discussed above
The act of election in which the represented hand over to the representatives the control and coordination of their affairs, creates a psychological distance between the two parties. Over time this gap widens into 'them and us'.	'Them and us' does not develop as each member of the government returns to the community as a normal citizen. Members of community and government remain as equals.
Creates career politicians and over time, political dynasties. When there is a chance that a politician will be re-elected, there are advantages in attempting to lobby or corrupt them	Cannot create career politicians so there is little point in attempting to lobby or corrupt.
Representatives do not act for the whole; they act for their constituency, their party, their financial backers or the most powerful special interests	There are no constituencies and no parties. Special interests find little point in financing or lobbying. The members act collectively in the best interest of the entity, region, state, country etc
The psychological gap between representatives and the represented generates lack of interest in politics, apathy and dissociation	As the government uses open Search type group processes, the citizens remain aware and interested in political decisions. If the political process is underpinned with participative democratic processes at the citizen level, e.g. Search Conferences or Unique Designs, energy and motivation to participate will be enhanced
The adversarial nature of the Westminster system means that much time and energy is put into fighting, the dynamics of fight/flight, rather than putting it into creative, thoughtful efforts for the best interests of the entity being governed.	There is no opposition and none is needed as the government carefully considers all possible paths and the citizenry keeps a close eye on the process. DP2 produces the dynamic called the 'creative working mode' rather than fight/flight
This adversarial nature and the point scoring also turns many people off the political process accelerating the process of alienation.	Any differences or conflicts are negotiated using the rationalization of conflict model. In the case of an unresolvable conflict critical to the health of the entity, the government would turn the process over to the people. Meeting in homes and neighbourhoods, citizens would consider the issue and report their collective decision to known community collection points where the decisions would be collated and returned to the government.

Full discussion of the Search Conference, rationalization of conflict, fight/flight and the creative working mode can be found in Emery M, 1999. Discussion of Unique Designs can be found in Emery, M. & de Guerre, 2007.

References

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