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Citizens' Assemblies and Policy Reform in New Zealand

In 2011 New Zealand held a referendum on the future of its voting system for general elections. Following the referendum, the current voting system was retained, and the Electoral Commission reviewed the system and made recommendations for change in late 2012. In early 2013 the government's response to those recommendations is still awaited. Recognising the importance of this process, this article considers an alternative approach to electoral reform, drawing on the experiences of Canada's and Holland's use of citizens' assemblies in the electoral policy-making process. The article considers the merits and limitations of citizens' assemblies for electoral reform, particularly in the New Zealand context. It proposes the form and function of a

citizens' assembly on electoral reform in New Zealand to complement the reform process. Overseas experience demonstrates that, with some caveats, a citizens' assembly remains a possibility for electoral reform and other constitutional policy change in New Zealand in the future.

New Zealand's electoral referendum and MMP review

At the 2011 general election a referendum asked New Zealand voters two questions: first, 'should New Zealand keep the Mixed Member Proportional (MMP) system?'; and second, 'if New Zealand were to change to another voting system, which voting system would you choose?' Voters

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were offered the following options: first past the post (FPP), preferential voting (PV), single transferable vote (STV) and supplementary member (SM). In the lead-up to the referendum, the New Zealand Electoral Commission was tasked with the role of educating the public on the referendum, on MMP and on the alternative voting systems offered.

The voters' responses to the first question triggered one of two subsequent steps. If more than half of voters taking part had preferred not to keep MMP, a second, binding referendum would have been held at the general election in 2014 to decide between MMP and the most popular alternative system, FPP. In fact, 56% of all participating voters wished to keep MMP. Under the Electoral Referendum Act 2010, this result triggered an independent review of MMP by the Electoral Commission, beginning in 2012. The commission was required to consider the following aspects of MMP: the two thresholds for the allocation of list seats; the effects of the ratio of electorate seats to list seats on proportionality in certain circumstances; the rules allowing candidates to contest an electorate and be on a party list, and list members to contest by-elections; and the rules for ordering candidates on party lists. Māori representation and the number of members of Parliament were excluded from the review. The review provided multiple opportunities for the public to express views, including two chances to make written and oral submissions, as well as opportunities to attend public hearings and to participate in hearings by video/telephone for those remote from major urban centres. In November 2012 the commission made its final recommendations to government (Electoral Commission, 2012); government has yet to respond to these recommendations.

Under New Zealand's unwritten and non-entrenched constitution, Parliament enjoys supreme sovereignty; the triennial election of representatives to the House is arguably the most powerful constitutional check on the executive. It is prudent, therefore, to reflect on the strengths and limitations of the electoral reform process. How can we ensure, most

importantly, that the choice voters made on this important issue was an informed one? New Zealand's use of referenda for electoral reform is innovative (Lundberg and Miller, 2012). But can ordinary people make enlightened political decisions through referenda? We know that most citizens today are not sophisticated political creatures; in fact, they are poorly informed and barely interested in politics (Fournier et al., 2011).

A desire to engage citizens meaningfully in policy-making and reform led to innovative experiments in Canada and the Netherlands with collective, deliberative citizen decision-making for electoral reform. These

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experiences provide evidence that, under the right circumstances, citizens can be trusted to learn, deliberate and make reasoned decisions about their own government. Acknowledging the possible benefits of citizens' assemblies, this article will consider whether a citizens' assembly might have been used in New Zealand's recent reforms, and, consequently, whether such an assembly might be worth considering for similar constitutional reform in New Zealand in the future.

Citizens' assemblies for electoral reform
Between 2004 and 2007 in British Columbia and Ontario (Canada) and in the Netherlands, governments established citizens' assemblies on electoral reform to design the best electoral system for their respective communities. In the broadest sense these three citizens' assemblies tested important democratic ideals: *participatory government*, the active involvement of ordinary citizens; *deliberative democracy*, education and debate among ordinary

citizens; and *epistemic democracy*, the idea that, taken collectively, ordinary citizens can make reasonable choices. All three cases required a group of citizens to learn about electoral systems in order to recommend a preferred system. In Canada the assemblies' recommendations were put to binding public referenda; in the Dutch case a recommendation was delivered to government. Each assembly preferred a different electoral system. The Dutch assembly had 143 members, and operated from March to November 2006. Early in the process the assembly opted to retain the existing proportional representation system and identify modifications to it. The assembly

submitted these recommendations to a newly-elected government. In April 2008 that government announced that it would not implement the assembly's proposals. The Ontario assembly, which operated from 2006 to 2007, was the smallest of the three, with 103 members. Ontario, like British Columbia, was using the FPP electoral system; the assembly recommended a change to a form of MMP. This was put to a binding referendum in October 2007 (in conjunction with a general election). The proposed change failed to meet the necessary threshold of voter support (Fournier et al., 2011).

The criteria used to judge the 'success' of these assemblies are, obviously, varied and contested. All three processes delivered on schedule and within budget. But if success means implementing change, clearly these processes are found wanting. As discussed below, however, the assemblies themselves, as a process of citizen engagement and learning, have much to recommend them as policy-making tools.

The British Columbia citizens' assembly has been particularly well documented and is thus a useful case to examine in more detail to consider its usefulness in policy making. The assembly grew from British Columbian premier Gordon Campbell's commitment to tackle public apathy in electoral politics (Carty, 2004). In 2004, 160 citizens in British Columbia were 'near-randomly' selected to spend 11 months assessing the province's electoral system. The government asked these citizens, known as the British Columbia Citizens' Assembly on Electoral Reform,

The 11-month assembly process was in three phases. Throughout the year participants devoted an estimated 30 hours per month to their assembly work, for which they were paid an honorarium and expenses. For the first few months of the year they learned about electoral processes over six weekends. Experts in electoral systems spoke to the assembly, and the citizens read widely on the topic and engaged in group discussions within the assembly. A second, consultative phase included 50 public hearings and meetings across the province, attended by assembly

passed in 77 out of 79 districts, meeting the second threshold. But it gained 57.7% of the province-wide vote and therefore fell just short of the 60% overall support required. With such a close result, the provincial government agreed to hold a second referendum on the same proposal in May 2009, to coincide with the provincial election. This time STV failed decisively, receiving 39% support across the province, and a majority in no more than 9% of the districts (Fournier et al., 2011, p.8).

Lessons from citizens' assemblies
The British Columbia citizens' assembly, along with the cases in Ontario and the Netherlands, being well documented[1] reveal the benefits and limitations of a citizens' assembly as a policy-making tool. Broad principles of design can be drawn from these three cases. Assemblies must be randomly selected, and seen to represent (in terms of composition) the community from which they are drawn. Assemblies must have sufficient time to learn, to consult with the public and to deliberate. This requires extensive infrastructure, adequate resourcing, and time (Fournier et al., 2011, p.151). The assembly's mandate must be very clearly specified, and it must focus on an appropriate question. The assembly must establish principles by which to judge the options available.

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to consider whether the existing first-past-the-post system could be improved upon, and, if so, to recommend a new electoral system. This recommendation would be put to all British Columbian voters in a referendum, and the results legislated by government if the public voted for change. Described as an 'innovative gamble' (Warren and Pearce, 2008, p.xi) and a 'bold public policy initiative of historic proportions' (Elton, 2003, p.234), this citizens' assembly was the first of its kind in Canada.

Citizens for the assembly were selected through random ballot using information available on the electoral role, but the process ensured gender equity and regional distribution: one man and one woman were selected from each of the 79 ridings (electorates) in British Columbia. The selection process was 'skewed' to ensure the assembly reflected the spread of age in the British Columbian population. Two self-identifying aboriginal citizens were added through a subsequent random selection process when it was clear that none had emerged through the first process.

members. A website received written submissions and proposals. Members then came together for a weekend to share and digest what they had learned, before moving into the final, deliberative phase of the process. Over six weekends the members identified core values, and key features of an electoral system, in order to identify appropriately the option best suited to the needs of British Columbia. A 'significant movement of opinion' occurred during the deliberation phase, when preferences shifted from the mixed member proportional voting system to the single transferable vote. This has been described as a 'preference reversal that was rooted in the understandable reconsiderations fostered by the deliberative process itself' (Fournier et al., 2011, p.78).

In December 2004 the assembly issued a report recommending that the province adopt STV. In May 2005 this recommendation was put to a referendum: STV would be adopted if 60% of the province-wide vote, and a majority in 60% of the electoral districts, voted for STV. In the event the proposal

Overall, in the literature there is enthusiasm that 'democratic agents of democratic renewal can be designed' (Warren and Pearse, 2008, p.6). An assembly is considered a model of how to 'engage and empower citizens to deliberate and decide on selected public policy questions' (Institute on Governance, 2007, p.2). Despite the assembly engaging only a tiny proportion of voters, there is also optimism that, with appropriate time and resources, citizens can be motivated to learn about and make reasoned decisions on complex matters. Analysts found an 'elevated degree of involvement among participants' in all three assemblies, with extremely high levels of engagement, participation and attendance throughout the process (Fournier et al., 2011, p.149). In Ontario, the average absence over the 12 weekends was just two members (in a group of 103), which 'speaks strongly to

members' commitment to the project' (Rose, 2007, p.15). Ordinary citizens acquired an extensive knowledge and understanding of electoral systems throughout the process, achieving decision-making that appeared to be of a remarkably high quality. These findings have led assembly architects to conclude that 'citizens have the capacity to shed their apathy, overcome their ignorance, and reason conscientiously about an unfamiliar and complex political issue' (Fournier et al., 2011, pp.149-51).

Finally, it is important to note that a deliberative assembly offers a *collective agreement* (after the three phases of learning, consultation and deliberation) rather than individual preferences expressed through a referendum. As Cutler et al. (2008, p.166) argue, a referendum alone offers voters little 'opportunity or incentive to pause from ordinary pursuits to consider the question closely by themselves, much less in the company of others'. The collective preferences of assembly members showed stability, or changed in ways that could be explained. Moreover, the three assemblies chose different electoral systems as a consequence of the different features of their respective communities. Each assembly's decisions were not considered to be driven by a small number of vocal or influential members, and neither did the staff or academic experts participating in the process appear to influence the outcomes (Fournier et al., 2011, p.150).[2]

But how much trust did the wider public have in the decision-making of these assemblies? In other words, 'do voters trust the judgment of citizen representatives, even if … [the voters'] understanding of the proposal is not informed by a similar process of education and deliberation?' (Warren and Pearse, 2008, p.17). In the case of the British Columbia assembly, it was found that the citizens' assembly drew its legitimacy – in its own eyes and in the eyes of the wider public – from the near-random selection process and from the belief that they were a representative sample of the general public (Fournier et al., 2011, p.148). In British Columbia in particular, the fact that the assembly was considered to resemble the province

demographically seems to have led the 'populist voters' to trust the assembly and to support its recommendation.[3]

The Canadian and Dutch experiences also reveal the limitations of assemblies as policy-making tools. The effect of assemblies on participants beyond their specific mandate, for example, should not be overstated. 'Participation in these assemblies did not have a major impact on individuals' general outlooks towards political actors, fellow citizens and themselves. It may have created more interested and involved individuals, but it did not produce "better" citizens' (Fournier et al., 2011, p.125).

Furthermore, an assembly 'ought to be used sparingly under exceptional circumstances' (ibid., 2011, p.155). This discussion has focused on assemblies for electoral reform, but, more broadly, any electoral or constitutional question is a possible case for an assembly, particularly questions that should not be left to self-interested elected officials (Ferejohn, 2008, p.213). 'It makes no sense for government … to decide the rules of the game [of government]' (Vander Ploeg, 2003, p.221). As Jonathan Rose, chair of the Ontario assembly, explains:

Assemblies are ideal when politicians have a conflict of interest, when there is no obviously right answer or when it is important to hold a public conversation on an issue. Because they are independent of government and have a transparent process, they are imbued with authority and legitimacy – the hallmarks of their process. Since they have no agenda, their recommendations are viewed

as sound ones by stakeholders, politicians and the public. (Rose, 2008)

A citizens' assembly for New Zealand?
In 2007, when the Electoral Finance Bill was proposed, the Green Party noted that it was not appropriate for self-interested members of Parliament to consider this matter, and suggested an amendment to create a citizens' assembly (New Zealand Parliament, 2007). The proposal was rejected by the House after a brief and dismissive debate. National MP Wayne

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Mapp questioned the value of a citizens' assembly, saying: '[e]veryone in this Chamber is a citizen. Every person here has been elected. It is an assembly. This is the place where we debate the legislation.' Green MP Metiria Turei spoke in defence of the idea and objected to Mapp's dismissive attitude, saying: 'I take note of Mr Mapp's very poor analysis of the importance of having the public engaged in such a process.' She also criticised the government's quick rejection of a process to engage the public in campaign finance reform. National MP Tim Groser questioned the capacity of an assembly to grapple with the complex issues surrounding campaign finance. He said:

This is a bill of such complexity that the Minister herself has admitted she does not understand it. It is a bill of such complexity that Helena Catt, the chief executive of the Electoral Commission, says she does not understand it. But at least these two persons drawn from each of the electorate lists – at random, … – will be able to clarify it. … This

amendment would be an absolute disaster, and we implore … the Labour Party not to go there.

The experiences of citizens' assemblies in Canada and the Netherlands demonstrate that, at the very least, these MPs may have been too quick to dismiss the capacity of ordinary citizens to learn about and make informed decisions concerning complex policy issues such as voting systems and, presumably, electoral finance law. Imagine for a moment that New Zealand MPs had greater confidence

MMP review. The process would follow the established three phases of learning, public consultation and deliberation. The assembly could be asked to decide, first, whether New Zealand ought to keep MMP. If it decided that it should, as the referendum did, the assembly could subsequently review specific features of MMP (as the Electoral Commission has done), and make recommendations to Parliament. If the assembly decided, however, to propose a change to another system, it could review the alternatives and recommend the best alternative

as in the Dutch case, is for an assembly to make its recommendations directly to Parliament. This ushers in a second problem the assembly sought to avoid, of self-interested politicians making the final decision and ignoring an assembly's recommendations (as was the Dutch experience).

Conclusion

Citizens' assemblies have proven to be useful policy tools overseas in electoral reform. They show that citizens have the capacity to overcome political apathy, and learn and make reasoned choices about complex policy issues. It is worth reflecting on the benefits to New Zealand of using a citizens' assembly for important constitutional policy reform, such as the recent electoral reform process, or other constitutional issues arising in the future. Assemblies have their limitations, and challenges remain in integrating assembly recommendations in a decision-making process. But New Zealand's small population base and geographical space, combined with 'heightened levels of intimacy, community, access and accountability' in politics (Lundberg and Miller, 2012, p.4), make it ideally suited for citizens' assemblies to promote, at the heart of the policy process, an informed, robustly-debated policy choice by New Zealand citizens.

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in New Zealand voters, and had agreed to legislate to create a citizens' assembly for New Zealand's recent electoral reform process. How might this assembly be constituted, and what might its mandate and terms of reference be?

As in British Columbia, New Zealand's electoral roll could be used to randomly select and invite voters to participate in the assembly process. Those who indicated a willingness to be involved would proceed to a selection process which could ensure, through near-random selection, participants from each electorate who represent the New Zealand population in relation to age, gender, and ethnicity in relation to Māori voters. If two citizens from each electorate (including the seven Māori electorates) were selected, this would produce a 140-person assembly. Presumably most meetings would be in Auckland, due to the population spread. But the population size and geography of New Zealand makes the logistics of an assembly practical and possible.

The assembly itself could be given a very tightly focused objective and terms of reference such as those identified by the recent referendum and the subsequent

voting system. This decision might then be put to a referendum for all voters.

The limitations of citizens' assemblies ought not to be forgotten, however, and two questions arise from this theoretical assembly for New Zealand. The first is the problem of integrating a citizens' assembly with a public referendum. This was done with both Canadian assemblies, and in both cases the assemblies' preferences (for change) were defeated at the referendum. As one commentator notes, 'how can it make sense to … place the … wisdom [resulting from an assembly] at the disposition of a feckless and ignorant majority' (French, 2012, p.67) via referendum? Put another way, why place so much emphasis on the learning and education of citizens and the value of their reasoned opinion and then place the final decision with a process which clearly does not meet those principles? Given New Zealand's history of referenda in electoral reform, it is almost impossible to imagine the New Zealand public accepting a decision made without a public referendum, regardless of how legitimate they consider the findings of an assembly. The other possibility,

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