
Where to for Australian Democracy?

The Hon. Dr. Geoff Gallop

ALP Public Forum

Mosman Art Gallery

5 December 2017

In tonight's address I will focus on the nation's political institutions and how we might improve them on behalf of the public interest. I'll seek to identify what would be a democratic reform package and then evaluate its potential to succeed in the political environment today.

The context for my talk can be easily identified - the growth in community distrust in our system and those who have been leading it and the populist critique of representative democracy as the best way to imagine effective but also accountable government. Tackling this dissent is not just an important issue in itself, it's also relevant to the future of democracy now under challenge by what Gareth Evans has labelled as non- democracies like China, illiberal democracies like Hungary, Poland and Turkey, and facade democracies like Russia. The way we have been practising politics is under challenge by powerful forces and disrespected in a negative way by the current government in Washington, traditionally the energetic prop for democratic values.

It's not a time for faint hearts and deadened souls. It's a time principled pragmatism and strategic government.

THE AUSTRALIAN MODEL OF DEMOCRACY

But back to Australia where on my last count there are 552 governments - the Commonwealth, the States and Territories and our local authorities. None of these governments operate without external constraints, most notably regular elections, but they all have degrees of executive power and the responsibility to give leadership to their communities. We expect them not only to do things, some big and some small, that add to the well-being of the community but also to do them through due process and without corruption.

In our tradition democracy is not just about "the numbers" and "whatever it takes" but also about the greater good - and that means respect for minorities as well as the majority, concern for the future as well as the present, commitment to the environment as well as the economy and the search for social justice along with the freedoms associated with the market. The challenge for political systems and those who operate them is to find the balance that promotes progress. That means room for leadership, appropriate checks and balances and the development of practical knowledge through scientific endeavour. I call it the alliance forged in The Enlightenment, leadership plus accountability plus knowledge equals progress.

Of great concern today isn't just whether there's proper room for leadership and effective institutions of accountability but whether our scientific paradigm is in good shape - and supported as a key ingredient in policy-making. Can we say this is so in what The Economist has called "post-truth politics"; where facts are seen as opinions and opinions treated as facts, where experts are pilloried when they reveal inconvenient truths and where power is the determinant of what is knowledge?

It's not my intention tonight to deal with this issue but the defence of the scientific pursuit of evidence about what works and what doesn't is most important for all who seek social progress. It's needed as a counter to fundamentalism, popular prejudices and vested interests, each of which has strong representation in the 552 governments around the nation. If you are interested in my thinking around this topic I refer you to my Australian Council for Education Leaders address "What is an educated person?" published as Monograph 55.

PROPOSALS FOR REFORM

What, then, are the proposals that have been forwarded to improve the way we practise politics, my focus here being on the national government and parliament? Each reflects a different view of what the problem is when it comes to ensuring better outcomes from the political process.

Some focus on "culture" and the professionalization of politics in the major parties, arguing that only with political party reform can there be improvement.

Some focus on the executive government and the need for strategic government not only within the system but across the boundaries created by our federal system. The Rudd Government's COAG - Reform Agenda would be an example.

Some focus on the Parliament and the need to better utilise the committee system, perhaps even by excluding Senators from a role in the executive government. Linked to this is the call for more free rather than party voting in both Houses - as we've seen with marriage equality.

Some focus on the accountability agencies that monitor the government and parliamentarians to ensure the public interest is protected and promoted. It's that accountability bit of the Enlightenment Formula mentioned earlier, but in particular those that work in between elections to hold politicians to account.

Some focus on the role money plays in politics, along with the role of lobbyists. Professor George Williams has argued that our system of political finance law is "broken, and open to exploitation and undue influence". Part of the problem is that loopholes exist because of differences between Commonwealth and State jurisdictions. Amongst the issues on the table are the size of caps on donations from individuals, unions and corporations, the levels that require disclosure, foreign donations and real-time disclosure.

ACCOUNTABILITY AND REFORM

Whilst acknowledging the importance of party and parliamentary reform my focus will be on three potential accountability reforms - a Corruption Commission, a Charter of Rights and the wider use of "mini-publics" to assist in decision making. The first is designed to tackle corruption and improper conduct, the second to lock in considerations of human rights when decisions are being made and the third to better engage the community in key decisions. Taken together they would represent a powerful reform of our national politics; indeed one capable of putting a real dent in the mistrust factor that is prevalent today.

There are strong arguments for each of these proposals and a significant degree of support which could be marshalled in the event of expected campaigns against their promotion and establishment.

There's now a good deal of evidence from the States about what works and what doesn't in respect of a Corruption Commission. This could be used to ensure a federal body is best practice - and it's not as if there is little evidence of a "Commonwealth problem" in respect of corruption! In recent years we've seen a number of exposures in a range of departments and agencies. We know it exists but to what extent we can't be sure. For example, writing in the Sydney Morning Herald in 2011 Linton Besser found "that in the past six years investigations into almost 1,000 federal bureaucrats were terminated because they resigned midway through the inquiry". Such a finding is hardly reassuring.

He points not just to a lack of power to properly investigate many of these matters but to a disturbing lack of will. This raises the question of the culture that underpins the way our nation is governed. Both the existing agencies of accountability and the public service are being increasingly pressured by their political masters to cut corners. Politicisation has moved from being an academic concept to an operating principal of government and the general public have noticed it and don't like it. Certainly, they support the establishment of an anti-corruption commission in Canberra, as polling by the Australia Institute demonstrated earlier this year.. A total of 80 per cent of respondents either strongly supported or supported the proposal and only 8 per cent were either strongly opposed or opposed.

The proposal to establish a Charter of Rights as recommended by the Brennan Committee in its 2009 Report has proved to be more controversial but again, with evidence in this case from Victoria and the ACT of its effectiveness. Brennan proposed a Human Rights Act based on the "dialogue model" which sets out a list of human rights and accords the executive, the legislature and judiciary specific roles. All Bills and legislative instruments would require a statement of compatibility with our rights, Parliament maintaining the right to choose whether or not to amend the law following this advice. As well all public officials would be obliged to act in a manner consistent with human rights other than economic, social and cultural rights.

Again public opinion is supportive, a poll by Colmar Brunton Social Research in 2009 finding that 72 per cent of respondents agreed it was essential to have human rights explicitly defined. In respect of a Charter 57 per cent supported the idea and only 14 per cent were opposed, the remainder undecided.

This takes me to the proposal to use "mini-publics" to engage the public in decision-making. This involves moving beyond elections, information provision and consultation to new and deeper forms of engagement based on the principles of empowerment, random selection and deliberation. Examples include Citizens' Juries, Consensus Conferences, Planning Cells, Deliberative Polls and Citizens' Assemblies. As Escobar and Elstub describe it:

"an assembly of citizens, demographically representative of the larger population, brought together to learn and deliberate on a topic in order to inform public opinion and decision-making".

For too long the debate about our democracy has been an either/or one; either representative democracy or a Swiss-type direct democracy. What this ignores is "the third way"- the use of new institutions such as those outlined above to support and strengthen representative democracy. That our parliaments and councils have found it difficult to satisfy us in respect of their "representativeness" and their "deliberations" doesn't lead to the conclusion that they should be overthrown but rather that they should be

supported in their endeavours by the institutions of new democracy. Nor does it mean that the use of referenda in relation to constitutional change - a case study in direct democracy

- should be replaced but rather supported by new democracy, for example when it comes to developing constitutional measures suitable for consideration by the people voting in a referendum.

New democracy is not a panacea for all of our problems but it is a methodology which should be in the tool-kit of all serious politicians today, along with all of those other things governments can do, directly and indirectly - to improve society-wide outcomes. The list is extensive - constitutional, political or public sector reform, legislation and regulation, and taxation and service delivery. We know that tackling big and complex problems requires community-wide engagement - and without it success is more often than not a bridge too far. New democracy should be there, in the mix and ready to use should the circumstances arise. Amongst those are the following:

1. It might be the case that science and technology have thrown up new risk and management challenges about which we are uncertain.
2. It might be a major issue like our electoral system or Constitution which needs relatively interest-free analysis.
3. It might be a widespread problem surrounded by powerful interests and characterised by complexity.
4. It might, on the other hand, be a local issue for which there appears no solution, the various players having given up on dialogue.
5. It might be a local government seeking community participation in preparing the budget.

All are examples where "mini-publics" can play a role in decision making, the evidence being that good results, that is to say sensible and actionable recommendations. In such cases participation moves beyond the "usual suspects" and the "vested interests" and evidence is presented and considered free of political party adversarialism. Indeed, it's often the case that people change their mind as the evidence comes forward.

Polling commissioned by the New Democracy Foundation earlier this year found that 54 per cent believe our current system to be "broken", 71 per cent agree that everyday people should play a bigger role in government and 57 per cent supported the idea of a citizens' jury (and only 12 per cent against and 31 per cent needing more convincing).

REFORM - RISK OR OPPORTUNITY

Some might say that the time for democratic reform has come and gone from Australian politics. Indeed some would argue that reforms built around more accountability will only make it harder for governments to deliver by adding more checks to what is already a grid-locked system. Both nationalists and populists want reasonably undivided power if only for different reasons; the

former to de-regulate and privatise even further and the latter to intervene and protect on behalf of public opinion. What suffers in both cases is the public interest as I defined it earlier in my talk. To achieve that public interest politics needs to be more nuanced and with an eye to both desired outcomes and due process, not one without the other.

Really the ball is in the court of the major parties. Both know that even though the minor parties and independents are growing in strength one or the other of them will form government, even if constrained to a lesser or greater extent by the way the numbers fall, particularly but not only in the Senate. Given this reality many of the leading players don't see political reform as a match winner when placed alongside - and competing with - issues related to the society, economy and environment. They see it as a risk rather than an opportunity. However, as Labor has shown with its bolder tax and revenue initiatives there is room for change. So too have we seen continuing support for social reform, for example the marriage equality vote, and environmental reform, for example with renewable energy. Grabbing the initiative and campaigning for a better democracy might just be one of those things that helps one or the other of the majors to boost their primary vote. The electorate is restless but not, I would agree, as wedded as has been claimed to the new forces many are voting for, such as the Greens and One Nation. Promoting democratic reform, a risk maybe but an opportunity certainly!