

## **David Laws**

### Comment on Public Dispute Resolution and Deliberative Democracy Workshop

A core experience in public dispute resolution (PDR) is the development/generation of legitimacy through interaction around (often controversial) public policy problems and issues. This is the experience that has demands reflection and that seems to have implications for a directly deliberative account of democracy in the current social and institutional environment. It has been repeated in diverse institutional settings that have different relationships to formal governmental processes. An in-depth account of this experience will bring out some strong characteristics that will challenge efforts to theorize.

These experiences some characteristics: 1) a strong problem orientation; 2) an ad hoc pattern of organization that recognizes and gives “standing” to formal and informal patterns of association, 3) the use of stakeholder as a device for organizing participation and representation, and 4) a set of formal commitments (consensus, ground rules for talk) and a developed practice that regularly foster deliberative moments. These characteristics all play a role in the development of legitimacy around specific proposals for action and working relationships. It should be noted that legitimacy in these contexts is generally compatible with and correlates procedurally and substantively with effective action.

The significance of this experience is raised by circumstances like those that prompted the workshop. The legitimacy of governmental processes and decisions is declining and those involved lack effective and attractive ways of enhancing legitimacy. We need to invent ways to develop legitimacy and take advantage of opportunities as they come up. PDR is attractive in this context, but still somewhat difficult to digest because it ties legitimacy to qualities of experience (as well as to outcomes) rather than to formal institutional relationships—what Josh has usefully described as a decision’s “pedigree.” This seems to me a little like the discovery in biology of the complexity that exists at the level of the cell. It should not be surprising to deliberative democrats (and probably is not), because a key relationship in the development of the theory was the tie between democracy and communicative ethics, which emphasizes the importance of speech practices. But figuring out what to make of and what to do with such experience is not easy.

This raises a set of institutional questions, many of which arose in a useful way at the workshop. These need to be considered, however, in light of a depth account of the PDR practice and other practices like those that were discussed at the meeting. A few points follow from this.

As a point of departure, we should include the more radical possibilities signaled by sociological and political accounts of political participation. A prominent, almost to the point of being cliché, example is the contemporary shift from government to governance. This is interpreted, empirically and theoretically as highlighting incidence and importance of private and civic actors in shaping effective responses to problems and

drawing on the network as the institutional device for capturing these relationships. If we accept these as common and significant features of policy domains, then we must at least be cautious in talking about the state or government in terms that assume it as a stable center. It is the composition and stability of this governance sphere that is put at issue and that demands practical and conceptual responses—it must continually be made and remade. At least some of what we discuss as ad hoc may be better thought of in terms of this ongoing remaking in settings that reflect the particulars or places, problems, or sectors. The trick is to relate these particular conversations in ways that don't gut them by taking away their texture and local authority. If we continue to talk about these practices in terms of 'supplementing,' then I think we are using that word in different ways. In practical terms, this fits with experience where we regularly find that policy makers who are looking for more than a kind of supplemental blessing of legitimacy or practical insight through the direct involvement of different actors. They are looking to make and secure the legitimacy of policy in substantial ways in the interactions that take place in these settings.

In this context, the significance of experience with PDR (and other practices) changes. The question is not just whether and how these experiences fit within a set of categories and relationships defined by existing institutions and theories, but how to make sense of and develop the settings and instances in which legitimacy is developed *deliberatively*. There is no claim that any of these instances are sufficient institutionally to provide an account of a functioning democracy generally—but that such an account must reflect the details of those experiences in which legitimacy is enhanced. This raises questions about when and how deliberative publics may develop, what the role of governmental actors is in fostering such development, how this role relates to traditional roles, and so on. The trick I think is to get better and tougher at asking these kinds of questions and simultaneously more open to the character and implications of the experience of deliberation when and where we find it. This is one of the virtues of the theory of deliberative democracy. It facilitates not only a critical, but also an appreciative analysis of existing practice and provides a way to relate such inquiry to broader questions about democracy and democratic institutions.

This kind of stance is likely to invigorate questions like representation, in just the way we experienced at the workshop. We can find many alternatives to territorial representation and think through their relationship to conventional institutions. The group as a kind of representative sample is one way. This might be amended, as in the ground zero town meeting, to include over-representation in some categories. PDR practice highlights the viability and value of other forms of representation that draw on informal structures like networks and communities of practice and the ad hoc groups that emerge around issues. These are not exclusive definitions. One of the virtues of a directly deliberative account of democracy is that these variations become interesting and important, as do questions about the relationship between episodic and continuous forums. Finally, practical experience should make it clear that representation is not just a matter of who participates, but what participation means.

Design seemed to me to emerge as one way to deal thoughtfully, openly, and practically with these questions. It provides a way to look at existing practices, both by classifying and by working inductively to make sense of action/practice as design. A discourse about design looks promising as a way to bridge theoretical reflection and practical experience without ceding to either the kind of authority that is likely to short circuit exchange, learning, development.

Such an exchange is likely to confront questions about what design is that were already raised in our discussions at the workshop. On the one hand we can usefully and meaningfully talk about different designs, ask what we did or want to do in this or that setting, and examine how these designs relate to one another. In a deliberative context, I expect that we will also confront design as a verb. Design doesn't stop when we convene some kind of group. One of the sources of legitimacy in my experience is that design emerges from the interactions that occur around the table. This is particularly true if one of the core features/commitments is to extend to all participants in a deliberation the right and capacity to comment on the conditions and assumptions on which the conversation is proceeding.

Then, as with institutional relationships, the genie is out of the bottle. Who the 'we' is that is or can act legitimately in this setting becomes a question that the participants in a deliberation must answer (as well as being open to theoretical reflections). What the conditions are that make our decisions and actions legitimate are not questions that can be answered presumptively or a priori. Such answers would undercut the conditions that foster deliberation and legitimacy in the first place. These commitments have the potential to tie legitimacy back to the participation of citizens and to enhance the role of citizen in ways that seem democratic. At the same time, it is clear how they raise problems for a broader institutional account of democracy. It's interesting that this kind of institutional pluralism doesn't seem to bother many practitioners. In state level reforms in Wisconsin, for example, these kind of directly deliberative forums play a prominent role, but the administrators in charge seem quite content with each example as a kind of one-off craft product that is responsive to the particulars of a place or a sector.

Chuck Sabel has provided some interesting guidance on how to think about the relationship between such particular designs by tying the one-off products together in an ongoing conversation. This kind of bridging is related to what I was trying to get at by invoking Seyla Benhabib's metaphor. (I lent the book to someone and so haven't been able to put my hands on the exact quote). I suppose the more measured way of saying it would be that in addition to thinking about how practices fit within a general theory of democracy, we might also start (in ways that will be practically useful and theoretically interesting) to ask how the moments we find where deliberation produces legitimacy relate to one another. A useful institutional theory is then one that can engage the depth of experience that occurs in practice and need to relate these experiences to one another in a broader account and practice of democracy.