

THE LIMITS OF DEMOCRACY

Democracy is often automatically associated with individual freedom but this can blind us to its flaws, argues **Matt O'Donnell**

Over much of the last two decades Australia's Senate has frustrated the legislative program of successive federal governments, which has led to calls for the Senate to be reformed. Most of the reform lobby would like the upper house to become less obstructionist and more pliant to the whims of the government of the day.

Leading figures in both the Liberal and Labor parties resent the powers of the Senate. Paul Keating famously called the Senate 'unrepresentative swill'.¹ Tony Abbott has complained that 'the minority has assumed a permanent and absolute veto over the majority' and has called for a referendum to limit the Senate's powers.² Both parties recently worked together to introduce election voting reforms in an attempt to make it more difficult for minority parties to win seats in the Senate.³

Reducing the powers of the Senate to block legislation would be a mistake because its very existence is a recognition of the limits of Australia's representative democracy. Under this system citizens elect officials to represent their interests in the Parliament, the governing body that determines the appropriate use of state power. Australia's constitution was specifically designed to have a number of checks and balances to limit the ability of Parliament to perniciously wield this state power against ill-favoured groups and individuals. Most particularly, these checks and balances are there to limit the 'tyranny of the majority', protecting minorities and individuals from predation by the majority.

Democracy, like most modern political systems, is ultimately about defining who has access to the state's monopoly on physical force and how that monopoly can be used to reach collective goals.

The use of, or threat to use, aggressive violence is an anathema to individual freedom. In a truly free society, violence may be employed only defensively against the aggressive violence of another.

Democracy therefore is not—as is commonly assumed—automatically associated with individual freedom. In fact, by its very nature it is a check on individual freedom. Modern democratic states regularly use aggressive coercion against their citizens to achieve collective ends. For example, the Australian government applies coercive income, company and consumption taxes on its citizens so that it can provide a set of government services which the democratic process has decided are useful to achieve largely opaque objectives. Yet just because people in a democracy have the right to vote on who coerces them doesn't make such coercion benign.

Given its strong connection to coercion and the use of force, it is puzzling that the value of the democratic political system is barely questioned in the modern world. It is just assumed that democracy is the best and only legitimate form of government, as Francis Fukuyama argued in his 1989 'end of history' thesis. But democracy has significant flaws and those flaws matter. To illustrate the need for our political system to have significant checks on state power, I intend to focus on two of the many flaws in Australia's democratic system—the legitimacy of the government of the day and the fallibility of the electorate.



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Legitimacy

One of the longest running debates in political philosophy has revolved around whether or not any form of government is ever truly legitimate. In simple terms how can it be argued that all of the governed have actually agreed to the set of rules that they are being governed by? Have all Australian citizens signed a formal 'social contract' to follow the rules of our constitution?

The short answer is that all forms of state coercion are largely illegitimate because citizens have little to no power to secede from Australia and leaving Australia to live in another country is impractical for most people due to high relocation costs and immigration restrictions. The practical inability to secede from a modern Western democracy means that no citizen really has true private property rights, meaning the will of those who hold state power supercedes the desires of individual citizens.

This first order legitimacy issue has taxed the minds of many scholars. The debates around the creation of the US constitution highlight the difficulty of creating a legitimate democratic social contract. For example, Thomas Jefferson proposed that the US Constitution should expire every 19 years to ensure that each generation of US citizens had the opportunity to vote and provide some legitimacy for the rules that governed them. Contemporary James Madison countered that:

- The costs and benefits of immediate government action would affect future generations and the actions of future generations could adversely impact the interests of the current generation. For example, the government may borrow money to build a new road but the next generation could change the constitution and default on that loan. This risk would mean that banks would be reticent to lend money to the government as the threat of default was increased. The public would also be reticent to support any government programs with long-term consequences such as the aged pension, compulsory superannuation or education spending because each new generation could change the rules and hurt the interests of citizens who had contributed

taxes and savings to benefit from these schemes in the future.

- New generations are not discrete entities. People born between each 19 year constitutional election, or who were too young to vote at the previous election, haven't had the opportunity to formally agree to the current constitution.
- Getting an agreement on a constitution is extremely difficult. Introducing a new constitution with each generation could cause significant and constant social upheaval for little practical improvement in the political process.
- Even if you did re-vote every 19 years, in the absence of the ability to secede, the will of the majority binds the minority to a constitution it rejected, thereby not really solving the illegitimacy dilemma.

The problems with getting approval for a guiding constitution are just the thin edge of the wedge when considering the legitimacy of modern Australian representative democracy. An issue that affects the practical operation of Australian government is whether the majority party in Parliament has a popular mandate to introduce their legislative program.

A broad view of a ruling party's mandate suggests that just getting elected with a majority provides a government with the popular and moral right to implement its policy preferences as it sees fit. A narrow view would constrain an elected government to whatever was in its election platform and may even attribute a separate mandate to the Senate to monitor whether the government of the day actually lives up to its election promises. How broad a mandate a government should have largely rests on opinions about the importance of the following imperfections in the democratic system:

- Citizens vote for individuals to represent them in Parliament, they do not vote on individual pieces of legislation. Therefore many individual laws do not have the support of the majority of voters.
- Parliamentarians do not always act in the best interests of their constituents and often lie

about their voting intentions to prospective voters. How legitimate is any legislation passed because members of parliament changed their voting intention after being elected?

- Australia's major parties rarely get a majority of first preference votes and even once all preferences are included, the winning party generally only has the consent of a small majority of voters. Is it legitimate for a party which won say 40% of the primary vote to be able to impose their legislative program on a majority of citizens who initially opposed that program?
- Australian citizens only get to vote for a representative once every three years so how legitimate is government action in the intervening period between elections? This is a particularly significant problem when the ruling party's policy program has become more unpopular over time and/or the elements of that program have materially changed since the last election.

Fallibility

Another flaw with our democratic system is the idealisation of the 'will of the people'. Once you scrape the surface it is difficult to believe that a majority of the population actually understand exactly what they are voting for at each election—and even more difficult to believe that the average citizen understands the consequences of any individual piece of legislation.

Most voters seem to exhibit what might be described as rational ignorance when it comes to politics. They understand that each of their votes is largely immaterial to the outcome of elections so don't really spend much time understanding the intricacies of each party's platform.

This rational ignorance would not be a significant problem if, in aggregate, voters were shown to choose parties and policies that worked in their best interests. Unfortunately, findings in economist Bryan Caplan's 2007 book *The Myth of the Rational Voter* indicate that voter ignorance results in support for policies which are harmful to the voter and largely cannot achieve the policy's stated goals anyway.

Caplan argues that people make more and larger mistakes when the stakes of a decision are small. Since the benefit each person receives from voting is so small, they are predisposed to make mistakes in the government policies they support.

Professor Caplan uses US survey data to demonstrate that voters are not only uninformed on policy matters but also that they actually warmly embrace economic policies that the majority of professional economists regard as demonstrably false. Minimum wage laws, trade tariffs, buy Australia campaigns and high company taxes are all examples of policies that most economists would consider harmful to the economy as a whole but are popular with voters.

According to Caplan's research, voters seem to have a number of significant biases which result in them consistently supporting poor government policies. These biases include:

Make-work bias: voters malign economic activity that saves labour. Voters generally fear unemployment so react strongly against economic activity that might reduce jobs in one sector of the economy, even though the improvements in economic growth would more than offset the cost of those jobs losses.

Anti-foreign bias: voters underestimate the economic benefits of interaction with foreigners and therefore are generally anti-free trade and immigration.

Pessimistic bias: voters overestimate the severity of current problems and underestimate the amount of economic and political progress that has been made and will be made in the future.

Anti-market bias: voters distrust market mechanisms and are much more willing to embrace state power even though the evidence of the efficacy of markets over central planning is overwhelmingly compelling.

Australian voters seem to exhibit some of the same biases as their US cousins with large swathes of the population supporting trade protection, electric car subsidies, uneconomic 'nation building' infrastructure projects, minimum wage laws, bank levies, sugar taxes and other restrictive, ineffective regulations.

Democracy must be limited

Just surveying the issues of government legitimacy and voter fallibility highlights that representative democracy is a flawed political system. But to quote Winston Churchill in 1947:

Many forms of government have been tried and will be tried in this world of sin and woe. No-one pretends that democracy is perfect or all-wise. Indeed, it has been said that democracy is the worst form of government except for all the others that have been tried from time to time.

In the West, democracy has generally been a mechanism for peaceful change and this achievement should not be undersold. While many of the outcomes from the democratic process may be unsatisfying, there is little to be gained from throwing away a time-tested but flawed process in search of an unattainable perfect system.

There are also many cogent, defensible arguments for the use of state action to benefit society as a whole. For example, most classical liberals would support state action to provide collective defence, a police force, and a legal system based on private property. Many would also accept democracy should be a system based on common agreement on issues that must be agreed upon, but that in most other matters collective rule is inherently inferior to self-rule.

Therefore, a strictly limited democratic political system seems to best balance the desire for coercive action to achieve popular collective goals while also allowing individuals to act largely in their best interests. That is why both the Australian and US constitutions contain elements designed to create checks and balances not only against a potentially autocratic executive but also against unrestrained tyrannical majority rule. Australia's Senate by itself looks undemocratic, because it was meant to be undemocratic.

The current problems faced by the major parties in getting legislation through the Federal Senate is simply a manifestation of the tensions between keeping the majority in check, protecting individual rights, upholding State rights and a realisation of the fact that a more diverse and multicultural

Australian population has led to an electorate with a greater plurality of values and interests.

Senate obstructionism has successfully stopped certain taxation, regulation and government expenditure proposals, thus placing a check on the inevitable rise in the use of state power. But it has also meant other tax and expenditure cuts have failed to be enacted. Moreover, via negotiations to win the votes of the Senate's minority parties, a litany of special pork barrel deals have driven up government expenditures. On balance, however, it seems hard to prove that reducing Senate obstructionism would necessarily be beneficial to the average citizen.

In an era of ever-growing government intervention, classical liberals and libertarians should be calling for more checks on the power of the state rather than unwinding existing ones. Any changes to Australia's constitution need to be justified by more than the frustrations of the current ruling party over their inability to pass their legislative agenda. Ruling elites always have an incentive to reduce the checks on state power so are unlikely to have the best interests of the average citizen at heart when calling for change. As James Madison proclaimed:

If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself.

Endnotes

- 1 For a discussion of this see Geoffrey Brennan, 'The "Unrepresentative Swill" "Feel Their Oats": The Rise of Senate Activism in Australia', *Policy* (Summer 1998-99), 3-9.
- 2 Paul Kelly, 'Tony Abbott Calls for Senate Referendum, Warns "We Are Turning Into Italy"', *The Australian* (28 January 2017).
- 3 See Rosie Lewis, 'Minor Parties to Hang Around in Senate', *The Australian* (30 January 2018); see also Damon Muller, 'Senate Voting Reform and the 2016 Senate Election', *Parliamentary Library Briefing Book—45th Parliament* (August 2016), https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BriefingBook45p/SenateVotingReform.