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The Elusiveness of Preferences

How adequately do the two models of democracy, representative and deliberative, recognize citizens' preferences?

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Abstract

This thesis considers the way in which political decisions are made in New Zealand and how well the core democratic principles of equality and liberty are acknowledged. I begin by acknowledging the definition of deliberative democracy by Amy Gutmann and Dennis Thompson and consider the three ways of doing politics set out by Jon Elster. I give special attention to Jürgen Habermas's belief that political decision-making is a public matter and therefore dependent on the speech acts involved, as expressed in his theory of communicative action. This is a demanding theory but one which supports the deliberative ideal that all those affected by a decision are entitled to participate in arriving at the solution. One of the criticisms of deliberative democracy is that there is no procedure to legitimize the decision. Joshua Cohen disagrees. I look at his 'intuitive' belief that the process of arriving at the solution gives that solution legitimacy and he outlines the institutions that would assist in this process.

The two case studies are examples of the two models of democracy in action: representative, the by-election, and deliberative, the proposed reorganisation of local government. As a region, Northland has challenges that have not been addressed; this suggests that our present political arrangements do not acknowledge citizens' preferences adequately. In seeking a solution for a plural society, I look at the work of Jane Mansbridge, Anne Phillips, Will Kymlicka and Iris Marion Young, in particular, and also suggestions from local bloggers.

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Introduction

The impetus for this thesis was my interest in deliberative democratic theory and the proposal for the reorganisation of local government in Northland, New Zealand. This was gazetted by the Local Government Commission (LGC) in November, 2013. My interest was engaged early in 2014 because as I read the proposal for a unitary authority for Northland, it seemed to me to miss an opportunity to bring more democracy to the community. My interest in deliberative democracy is grounded in its belief that those who are to be affected by a decision are entitled to contribute to that decision in a meaningful way. It is not enough, in my view, to elect a constituent representative once every three years and then, between elections, leave all decision-making to that representative and his fellow Members of Parliament (MP) or, in the case of local body elections, to the ward's representative and fellow councillors. Citizens and representatives need to engage effectively one with another in the on-going process of finding the best solution for the current contentious issue. Such decision-making involves the democratic principles of equality and respect through the exchange of reasons. Deliberative democracy is therefore, in my view, important in matters of governance.

This thesis considers the two models of democracy, representative and deliberative, with particular reference to how adequately they acknowledge the preferences of citizens. Chapter 1 is in two sections. The first, 'An Historical Overview,' sketches the development of the theories that support both models of democracy, indicating how participatory and parliamentary democracy developed, respectively, into deliberative and representative democracy. This is followed by 'The Search for a More Inclusive Way' which opens with a definition of deliberative democracy. Then, to illustrate the variety of democratic theory, I consider three theorists who have been influential in promoting deliberative democracy. First, I consider Jon Elster's essay "The Market and the Forum" which sets out three different strands of political behaviour. To conclude this chapter I outline the work of two foundational theorists: Jürgen Habermas and Joshua Cohen. Jürgen Habermas explains the reason for the flowering of deliberative democracy and its emphasis on communication; Joshua Cohen outlines a model for deliberative legitimacy. Chapter 2, also in two sections, reviews the attributes of the two models of democracy: representative and deliberative, in that order; I indicate the strengths and weaknesses each brings to solving moral disagreements. To conclude the chapter, I review three challenges: autonomy, legitimation, and access to information which are critical to both systems of governance. Chapter 3 examines representative and deliberative democratic

theory in action as demonstrated in the two case studies: the Northland By-election in March 2014 and the *Draft Proposal for Re-organisation of Local Government in Northland*.¹ Both present opportunities that affect the governance of Northland, Aotearoa New Zealand. As a postscript, I consider the Hundertwasser Art Centre Process: a local government initiative by Whangarei District Council. Chapter 4 reflects on what can be learnt from the two case studies and I explain how my own position has shifted towards seeking ways in which deliberative democracy can aid representative democracy to more appropriately acknowledge and prioritise citizens' preferences so that as a nation Aotearoa New Zealand enables all its citizens to live flourishing lives. Chapter 5 explores the relationship between political theory and practice and what the future may hold as new technologies encourage civic engagement in new directions.

¹ Draft Proposal for Reorganisation of Local Government in Northland (Wellington: Local Government Commission, 2013).

Chapter 1: An Historical Overview.

This chapter begins with an overview of the historical background that underpins democracy as we know it today, that is, liberal representative democratic government as exhibited by the Westminster system.² In this introductory section I will indicate how the core principles of democracy, liberty and equality, bequeathed to us by the Greeks, have been taken up in two quite different ways.³ For some theorists, particularly deliberative democrats, the participatory democracy of the Greeks is a template of the equality and liberty we moderns aspire to in our political decision-making.⁴ For others, these same core principles, although admirable, are regarded as utopian and unsuited to large, complex polities and therefore, although fundamental, become less central to the procedural practices of decision-making bodies.⁵

² The Westminster system is that followed by the Parliament of the United Kingdom. It is a centralised system with representatives serving the constituencies of the United Kingdom.

³ 'Equality' and 'liberty' can be interpreted in many different ways and according to context. See Helena Catt, *Democracy in Practice* (London: Routledge, 1999). In this thesis I use the first of each definition in *Merriam-Webster*, 1966.

⁴ See Amy Gutmann, and Dennis Thompson, *Democracy and Disagreement* (Cambridge, Massachusetts: Belknap Press, Harvard University Press, 1996).

⁵ See: Joseph A. Schumpeter, *Capitalism, Socialism and Democracy*, 3rd ed., (New York: Harper Perennial, 2008). Also: Antony Downs, *An Economic Theory of Democracy* (New York: Harper and Row, 1957).

This is followed by 'The Search for a More Inclusive way.' I begin with the definition and then consider Jon Elster's essay "The Market and the Forum"⁶ in which he considers three views of politics: social choice which regards the political process as instrumental rather than an end in itself and that the decisive political act is private rather than public. The other two views arise when one denies, first, the private character of political behaviour and then, secondly, denies as well the instrumental nature of politics, as does Jürgen Habermas who sees the decisive political act as engaging in public debate. According to theorists of participatory democracy, such as J. S. Mill and Carole Pateman, the goal of politics is the transformation and education of the participants. Politics is an end in itself. To conclude chapter 1, I indicate the scope of deliberative democratic theory with particular reference to the influential work of Jürgen Habermas and Joshua Cohen.

1.1: In the Beginning

Deliberative democracy came into prominence in the 1970s, in the wake of John Rawls' seminal study, *A Theory of Justice*.⁷ This reflected a growing concern that the political system was not delivering justice to everyone; that the central

⁶ Jon Elster, "The Market and the Forum," in *Deliberative Democracy: Essays on Reason and Politics*, eds. James Bohman, and William Rehg (Cambridge, Massachusetts: MIT Press, 1997): ch.1.

⁷ John Rawls, *Theory of Justice* (Oxford: Oxford University Press, 1971).

concepts of democracy, equality and individual liberty, can be interpreted in a variety of ways which justified the type of democracy supported.⁸ Since then deliberative democratic theory has flourished in the sense that it has become more accepted and also in the reality that a variety of theories, styles and applications have evolved. As John Parkinson and Jane Mansbridge claim:

*The last several decades have seen growing agreement among political theorists that the legitimacy of a democracy depends in part on the quality of deliberation that informs citizens and their representatives.*⁹

In other words, democracy is not just about the making of decisions through the aggregation of preferences. Although that procedure dominates our political arrangements, democracy incorporates more subtle and comprehensive attributes than just the numerical equality that Aristotle referred to in his definition of democracy:

One principle of liberty is for all to rule and be ruled in turn, indeed democratic justice is the application of numerical not proportional

⁸ Helena Catt, *Democracy in Practice* (London: Routledge, 1999).

⁹ John Parkinson, and Jane Mansbridge, eds. *Deliberative Systems* (Cambridge: Cambridge University Press, 2012): Introduction.

*equality: whence it follows that the majority must be supreme and that whatever the majority approve must be the end and the just.*¹⁰

Aristotle was describing Athens' system of rule by which citizens gave consent after a free debate, before an audience, in the Assembly/Agora of a small participatory democracy.¹¹ The aim of the group of citizens at the Agora was primarily to maintain the stability of their city in an unstable world dominated by Persia. Here they debated and decided the major issues of public policy and civic survival. All those who chose to attend, rich or poor, were entitled to participate, to promote or defend a point of view.¹² This 'positioning' took place in public. The decision-making process determined the 'direction' of the polis as a city-state. The day-to-day life of an Athenian was governed by a plethora of laws set down by Solon, the law-giver, to ensure no single person or group usurped power.¹³ The system enabled any citizen who wished to put his name forward for various civic

¹⁰ Aristotle, *Politics*, trans. Ernest Barker, revised R. F. Stalley, ed., (Oxford: Oxford University Press, 1995).

¹¹ All women, slaves, foreigners and demos were excluded from the decision-making process. The Athenian citizen was any male whose parents were Athenian born; thus poor and wealthy alike were equally entitled to speak in the Agora and be selected for jury duties and so on. However, in the Agora some citizens, rhetors, will be trained in rhetoric/public speaking. See Melissa Lane, *Greek and Roman Political Ideas*, (London: Pelican, 2014): 117ff.

¹² The speakers were self-selected but likely to represent a particular view or faction.

¹³ Solon (c.638-558 BCE) lived in turbulent times. He developed ways of choosing officials, such as by lot, and legislated the time a citizen could hold office so as to ensure no faction dictated the life of the city. As Aristotle said, one principle of liberty is for all to rule and be ruled in turn. Solon's legacy to Athens was the democratic principle of equality.

duties to do so – all short term, mostly selected by lot and all vetted.¹⁴ The system was available for all to use and all to administer. In this way the citizen had sovereign power. Only generals were elected, thus Athenians recognised that certain tasks require particular expertise. Otherwise, Athens accepted that people, although with varying competences, will do in general make appropriate decisions. Ancient Greece valued participation, and expertise.

In our complex representative democracies we are, each, one step removed from the decision-making forum, parliament, and somewhat removed from most other constituents and therefore, unlike the Athenians who were engaged in many civic functions, less aware of the variety of interests, and needs, in our plural polities. Theorists such as Jane Mansbridge, John Parkinson, Anne Phillips and Will Kymlicka have noted that the majority seldom takes into consideration the preferences of minorities, such as ethnic communities. Such has been the case for Maori in Aotearoa New Zealand.¹⁵ Such issues were not an issue in Athens in

¹⁴ Ibid.

¹⁵ See Iris M. Young, *Justice and the Politics of Difference* (Princeton: Princeton University Press, 1990); Jane Mansbridge, “In defence of descriptive representation” *Institute of Policy Research*, (1996); Anne Phillips, *The Politics of Presence* (Oxford: Clarendon Press, 1995); Will Kymlicka, “Justice and Minority Rights” in *Contemporary Political Philosophy*, eds. Robert E. Goodin, and Philip Pettit (Malden, Oxford: Blackwell Publishing, 1996); and Karen Bird, *The Political Representation of Women and Ethnic Minorities in Established Democracies: a Framework for Comparative Research* (Working Paper presented for the Academy of Migration Studies in Denmark, 2003). For an opposing view see Chandran Kukathas, “Are there any Cultural Rights?” *Political Theory* 20, no.1 (1992).
And for New Zealand see Maria Bargh, *Maori and Parliament: Diverse Strategies and Compromises* (Wellington, New Zealand: Huia Publishers, 2000).

400BCE. In their disputes with other city states, the Athenians put down opposition with ruthless efficiency.

Over time, according to Sir Moses I. Finley, additional groups of citizens were included in the affairs of the polis which led to a greater awareness of the 'bigger picture' thus the decisions made were more likely to benefit the polis as a whole rather than a faction.¹⁶ In modern representative democracies, inclusive as they now are of all adult persons, it is not possible to have the same 'hands-on' experience of political decision-making. Democracy, normatively speaking, is about 'processes of judgement and preference formation and transformation that take place within informed, respectful, and competent dialogue.'¹⁷ It may well be, as some would argue, that such a description is utopian, unlikely to be realised.¹⁸ It does, however, have a power that suggests that life could be better for more of us if we aimed for such a democratic process.¹⁹

¹⁶ Sir Moses I. Finley, *The Ancient Greeks* (Cambridge: Cambridge University Press, 1991). And Finley, *Politics in the Ancient World* (Cambridge: Cambridge University Press, 1991). Finley cites the limited form of citizenship extended to those who manned the galleys and fought the wars.

¹⁷ John Dryzek, *Foundations and Frontiers of Deliberative Governance* (Oxford: Oxford University Press, 2010): 3.

¹⁸ Schumpeter is one; another is Robert Nozick, *Anarchy, State and Utopia* (Oxford: Blackwell, 1974).

¹⁹ Erik Olin Wright, ed., *Associations and Democracy* (London: Verso, 1995): preface.

It may seem inexplicable that a system of government designed pragmatically over two millennia ago for a small city-state, and itself lasting less than two hundred years, would influence the way we appraise our very different political system in the 21st century; yet it does. The complex system that espoused equality and liberty enabled the Athenians, collectively and individually, to live how they chose, both collectively and individually.²⁰ We, too, expect to live without an overlord, or tyrant; nor do we want to live in a jurisdiction which does not respect our wishes. The basic idea of democracy is simple: to be equal one with another and be able, freely, to choose how we live our lives; with political decisions made for the people by the people. However, as Gerry Stoker notes 'democracy is a demanding way of doing the politics of compromise and reconciliation because it rests on the fundamental idea that all adult citizens have a right to have a say in matters that affect them.'²¹ For the Athenian citizens this was less problematic as they were able to debate each issue in the Agora; much of the time it was possible to reach a consensus of what was thought best for the polis and, as a last resort, a show of hands would be taken.²² And for personal satisfaction, available to all citizens,

²⁰ The Greek word '*politeia*' refers to both the political arrangements and the way of life of Athens. The concept of *eudemonia* was an ideal way of life to be striven for. Life in Athens and its political arrangements were more mundane. The ideal lives on - and so does real life.

²¹ Gerry Stoker, *Why Politics Matters: Making Democracy Work* (Houndsmills, UK: Palgrave Macmillan, 2006): 8.

²² In *Politics* (book 7), Aristotle describes 'the good life' *eudaimonia*, that is, human flourishing in the good life of ethical and intellectual virtues: courage, generosity, justice and others, and wisdom. The Athenian political community shared this purpose (based on an older tradition) so that citizen and polis flourished. It was, clearly, more achievable by a leisured upper class who owned slaves.

there were the law courts where both sides of the issue were presented and the jurors, without discussion, gave their decision by ballot.

In the Agora, the citizen was free to choose to join the debate and free to express his opinion, understanding that once the decision was made it became the way forward. This gave the Athenians solidarity, one with another, that enabled them to live the lives of their choice.²³ This is what the Swiss-French political activist and philosopher, Benjamin Constant, called 'the liberty of the ancients.'²⁴ Today, of necessity, much political decision-making is entrusted to representatives so we have lost the solidarity that bound the citizens of Athens, individually and collectively, to their polis. We, too, want to be free to live our lives as we choose, but we do not want to be constrained by a collectivity – 'the liberty of the moderns.'²⁵

²³ The threat of Persia was always present. Other Greek city states were constantly defending their territory either at home from rival factions or abroad. In Athens, troublesome prominent citizens could be 'ostracised,' that is, exiled for 10 years (without loss of property) after a vote taken at a special mid-winter meeting. The practice seems to have been used between 488-417BCE. Only 15 cases are recorded according to Josiah Ober, "What the ancient Greeks can tell us about Democracy" *Annual Review of Political Science* 11, (2008).

²⁴ Benjamin Constant, "The Liberty of Ancients Compared to that of Moderns" (lecture given at Athenee Royal, Paris, 1816). <http://www.earlymoderntexts.com/pdfs/constant.pdf>

²⁵ Ibid.

1.1.2: Much Later

Benjamin Constant's comment refers to the political upheavals in England and later France. The civil unrest of the 17th and 18th centuries which led to the establishment of liberal representative government were not fought with the intention of broadening the franchise and including all adults in the governance of the state, thus establishing a democracy. In fact the term was used pejoratively. In Britain it was to constrain the powers of a sovereign whose activities had little to do with the good of the people but much to do with self-aggrandisement. Only in 17th century America, in the small coastal colonies of English Puritans was there any semblance of democracy.²⁶ The civil unrest of 17th century England terminated in the Glorious Revolution (1688) which established a constitutional monarchy putting the reins of government in the hands of the citizens, that is, males who owned property. This was a comparatively homogeneous group who elected a representative to take their concerns to parliament.²⁷ There is a significant difference. In Athens, the decision-makers, that is all male citizens, could meet in person. In Britain that was not possible. The parliamentary system was democratic

²⁶ The non-conformist Pilgrim Fathers in the 1620s and the Puritans in the 1630s settled on the eastern sea-board of North America to escape religious persecution in Britain. They held regular open forums or 'town meetings' and some New England towns still do. The Frenchman, Alexis de Tocqueville, visited America in the 1830s, comparing American and French democracy in *Democracy in America* (1835). He observed the New England town meetings but was not entirely convinced. He too worried about the tyranny of the masses.

²⁷ The common factors which bound this constituency were property and a commitment to limited taxation.

in that all who were citizens were entitled to vote, but to vote for a representative, not on an issue. This is significant and will be discussed in detail later. The objective of the exercise was also different. The Athenians, whether motivated by self-interest or not, were entrusted with the well-being of the polis – a collective endeavour.²⁸ In Britain, the system of civil government was intended to protect a sectional interest, enabling them to be free and equal under the law; the individualism of the citizen was established and protected.²⁹

Yet, inexplicable as it may seem, the idea of each person being equal with all other persons, politically, and free to make his or her own choices has survived – but not without interruptions or alteration. Under neo-liberalism³⁰ this idea has been transferred to the market, while political decision-making is increasingly distanced from the average voter. Thus there has been a shift in the locus of power. In Athens, it was the citizens who were sovereign. Now we live in constitutional

²⁸ See: Aristotle, *Nicomachean Ethics*, trans. David Ross, ed. Lesley Brown (Oxford: Oxford University Press, (2009): Introduction: 7-8.

See also: Aristotle, the “Good Life,” and Athenian Democracy: The Promise of Happiness through Virtue Made Possible by the State.

http://www.centerforfutureconsciousness.com/pdf_files/2008_Essays/Aristotle

²⁹ John Locke, *Second Treatise of Government*, ed., C. B. Macpherson (Indianapolis: Hackett Publishing Company, 1980). In this ‘essay’, Locke outlines his theory of property. Property gives rise to inequality, hence the need for civil and conditional government; ‘reason becomes not a moral law but an ability to calculate what course of action is required to safeguard unequal property’ (editor in Introduction: 19-21).

³⁰ Neo-liberalism was an economic philosophy that emerged in the 1930s as a compromise between classical liberalism and socialist planning. By the 1980s it supported deregulation, free trade and an enhancement of the private sector of the economy.

representative democracies with all adults eligible to vote for their constituency's representative to parliament. It is not the people per se that is sovereign but the impersonal state. This shift has brought with it a sense that the state has a reciprocal obligation to be responsive to the people's wishes.³¹

Of course not everyone in Athens was enamoured of democracy. Plato certainly was not, believing that it would lead to the tyranny of the masses and that to be a well-governed polis the ruler needed to be one of the Guardians, a philosopher-king, who sought to acquire knowledge and virtue.³² In modern times this view has been revisited by Joseph Schumpeter.³³ In his *Capitalism, Socialism and Democracy* (1942) Schumpeter argues, like Plato, that the ordinary citizen does not have the expertise required to make good decisions, particularly for a complex modern capitalist society. He believed that the institution of representation did not provide the state with the necessary range of experience and abilities to govern well and consequently recommended the provision of an elite bureaucracy.³⁴ (A less extreme view is argued by Anthony Downs.³⁵) This view was

³¹ John Dunn, ed., *Democracy: the Unfinished Journey* (Oxford: Oxford University Press, 1992): Conclusion.

³² Plato, in Bk 3 of *The Republic*, outlines three classes of citizens. At the top are the Guardians of which there are two classes: rulers and auxiliaries/soldiers. At the bottom is the productive class of farmers, craftsmen and tradesmen. Not considered were slaves, foreigners and women.

³³ Joseph A. Schumpeter, *Capitalism, Socialism and Democracy*, 3rd edn, (New York: Harper Perennial, 2008): chapters 20-22, specifically, 251.

³⁴ Schumpeter admired the concept of the British Civil Service. Schumpeter (2008): ch. 23.

not without its contemporary critics, Carole Pateman for one.³⁶ Pateman contended that by denying the Aristotelian view that people are naturally political, and the long-standing idea that participation can foster more widespread civic virtues,³⁷ revisionists, such as Schumpeter, had turned democratic theory on its head. Their so-called democracy was in fact its opposite - elite rule.³⁸ In *Participation and Democratic Theory*, Pateman argues that participation in associations and organisations other than government develops the faculties required for participating in government; that the variety of life experiences adds depth to the decisions taken.³⁹ For Pateman, the goal was democracy, seen as an end in itself.⁴⁰ This belief in democracy as a process underpins the concept of deliberative democracy which came to prominence in the latter part of the 20th century.⁴¹

³⁵ Antony Downs, *An Economic Theory of Democracy* (New York: Harper, 1957). Downs, like Schumpeter, understood the political process as one of a power struggle between competing interests; citizens are simply passive consumers who exercised democratic power by voting.

³⁶ Carole Pateman, *Participation and Democracy Theory* (Cambridge: Cambridge University Press, 1970): 9.

³⁷ Theorists who espoused this view are Machiavelli, Rousseau and John Stuart Mill.

³⁸ See also Bernard Manin, *The Principles of Representative Government* (Cambridge: Cambridge University Press, 1997): 236-8.

³⁹ Solon understood this and for two centuries the Athenians benefited from this diversity.

⁴⁰ See also Jane Mansbridge, "Does Participation make Better Citizens," in *Political Economy of the Good Society*, eds. Carmen Sirianni, and Lew Friedland (Civil Practices Network, 1995).

⁴¹ John Stuart Mill was an early advocate of the educative value of citizens having the vote - both for citizen and polis – even though he acknowledged the possible 'tyranny of the masses.'

Democracy 'flourished' for approximately 200 years in ancient Athens, but it was not regarded as an ideal system of governance, even there. Since then, except for pockets of democratic organisation in early Christian communities, medieval towns as in Italy, and in the mediaeval guild system, for 2000 years the idea of democracy was ignored. The European and American political arrangements of the 17th and 18th centuries were constituted in such a way that they enabled capitalism to flourish – not democracy.⁴²

But through all these vicissitudes and the development of the nation-state, the 'ideal' of democracy, where all citizens are equal, was ignored but not forgotten. It was an ideal which in the late 20th century became an aspirational goal, a goal which ordinary citizens used as a yardstick for the democratic rule they had. As disquiet grew concerning the procedural, aggregative nature of liberal representative democracies, theorists of a philosophical bent sought normative explanations of issues such as equality, liberty, justice, legitimate rule, and pluralism.⁴³ The concept of deliberative democracy is the contemporary flowering

⁴² John Dunn, ed. 1992: Conclusion.

⁴³ The list is a long one beginning with John Rawls, *A Theory of Justice* (Cambridge, Mass.: Harvard University Press, 1971). This seminal work introduced a renewed interest in the normative analysis of the state with contributions from such theorists as Joshua Cohen, Antony Downs, John Dryzek, Jon Elster, James Fishkin, Amy Gutmann, Jane Mansbridge, Adam Przeworski, Susan Stokes, Dennis Thompson, Albert Weale, Iris Marian Young and more. Of particular importance has been the debate between 'participatory' and (so-called) 'elitist' theorists.

of the ancient ideal of participatory democracy where every citizen enjoys equality and liberty. Deliberative democracy embraces the hope that all interests and preferences will be listened to fairly, that outcomes will be just. This thesis examines political behaviour in New Zealand noting how adequately our system of governance listens to and responds to the preferences of the citizens.

1.2: The Search for a More Inclusive Way

There are many definitions of deliberative democracy. The following definitions encapsulate deliberative democracy, I believe. The first is by Amy Gutmann and Dennis Thompson. They define deliberative democracy as

*a form of government in which free and equal citizens and their representatives justify decisions in a process in which they give one another reasons that are mutually acceptable and generally accessible, with the aim of reaching decisions that are binding on all in the present but open to challenge in the future.*⁴⁴

The second by Elaine Santos says that

⁴⁴ Amy Gutmann, and Dennis Thompson, *Why Deliberative Democracy?* (Princeton: Princeton University Press, 2004): 7.

[d]eliberative democracy is a field of political enquiry that is concerned with improving collective decision-making. It emphasizes the right, opportunity, and capacity of anyone who is subject to a collective decision to participate (or have their representatives participate) in consequential deliberation about that decision.⁴⁵

These definitions identify the fundamental prerequisites of this sort of decision-making: it is open to those who wish to participate, it is thoughtful and reasoned, and it is conducted respectfully, in public, for a purpose.⁴⁶ Deliberative democracy does, however, have as many variants as there are theorists; nonetheless although their perspectives and concerns differ the distinctive features of deliberative democracy stay the same and there is general agreement that the political process involves more than the self-interested competition governed by bargaining and aggregative mechanisms that is the basis of the rational choice model of political behaviour. However, that in no way suggests that all deliberative democrats hold essentially the same understanding of the capabilities of democracy. Utilitarianism, for instance, is generally held to be the belief that the morally right action is the action that produces the most happiness/benefit to the greatest

⁴⁵ In the blog, Elaine Santos uses ‘consequential’ to mean that deliberation must have some influence: <https://deldem.weblogs.anu.edu.au/2012/02/15/about-d2g2/>

⁴⁶ Joshua Cohen’s detailed definition of deliberative democracy is outlined later in this chapter.

number of people.⁴⁷ The right action is understood, therefore, in terms of the *consequences* produced. Other theorists place the emphasis on the process used to find the solution; that all those affected by the decision (or their representative) will be involved in the decision-making. This is the democratic part of the definition.

The deliberative part is served by the fact that the decision is made by means of arguments offered by and to participants who are committed to the values of rationality and impartiality, and that the process will be transparent. Thus, there is a robust core of phenomena that anchors each theory but each theorist's position reflects a specific concern. Susan Stokes, for instance, in her studies of South American democracies, defines deliberation by its outcome, allowing propaganda as well as rational debate to count as communication.⁴⁸ Diego Gambetta in his researches of South American democracies is interested in the cultural factors that influence the process rather than the outcome.⁴⁹ Bohman considers the demands

⁴⁷ This is the Principle of Utility. It is defined in various ways, including as pleasure, economic well-being, and the lack of suffering. On the Utilitarian view one ought to maximize the overall good — that is, consider the good of others as well as one's own good.

⁴⁸ Susan Stokes, "Pathologies of Deliberation" in *Deliberative Democracy*, ed. Jon Elster, (Cambridge: Cambridge University Press, 1999):123-139. Also Susan Stokes, "What do Policy Switches tell us about Democracy?" in *Democracy, Accountability and Representation*, ed. Adam Przeworski, Susan Stokes, and Bernard Manin, (Cambridge: Cambridge University Press, 1999): 98-130.

⁴⁹ Diego Gambetta, "Claro! An Essay on Discursive Machismo" in *Deliberative Democracy*, ed. Jon Elster (Cambridge: Cambridge University Press, 1998):19-43.

made on deliberative democracy by cultural pluralism.⁵⁰ Some investigate the impact of being in the public arena, and the influence of the media;⁵¹ others, the procedures that give legitimacy.⁵²

In this chapter, I consider Jon Elster's essay "The Market and the Forum" (1982)⁵³ in some depth as he sets out three strands of democracy that influenced the thinking of late 20th century theorists seeking a more inclusive way of doing politics. He details rational choice theory and then considers two opposing theories: participatory and deliberative. This is followed by consideration of Jürgen Habermas' work which considers the reason for the contemporary flowering of democracy and its emphasis on communication. I conclude the chapter by considering Joshua Cohen's model for deliberative legitimacy.

1.2.1: Three Ways of doing Politics

In "The Market and the Forum," Jon Elster considers three different ways of doing politics, each with its own perspective. Rational choice understands politics as a

⁵⁰ James Bohman, *Public Deliberation: Pluralism, Complexity and Democracy* (Cambridge, Mass: M.I.T Press, 1996). See also Joel Anderson, "Competent Need-Interpretation and Discourse Ethics" in *Pluralism and the Pragmatic Turn*, ed. William Rehg and James Bohman, (Cambridge: M.I.T. Press, 2001): Chap.8.

⁵¹ Graham Smith, "Towards Deliberative Institutions" in *Democratic Innovation: Deliberation, Representation and Association*, ed. Michael Saward (London: Routledge, 2000): 29-39. See also Mark E. Warren, and Hilary Pearse, *Designing Deliberative Democracy: The British Columbia Citizens' Assembly* (Cambridge: Cambridge University Press, 2008).

⁵² Joshua Cohen has written much on this issue and will be discussed in the next section.

⁵³ Jon Elster, in Bohman and Rehg (1997): 3-34.

private matter and the political process as instrumental. It is the outcome that counts. This is 'market behaviour.' For Elster, politics is public or forum behaviour that enables citizens to share their opinions and is, therefore, transformational. He discusses two types of 'forum behaviour': participatory and deliberative. Participatory theorists, such as John Stuart Mill, understand politics as behaviour that takes place in both private and public spheres and will have consequences in both. Its focus, however, is the private transformation of participants through discussion which takes place in public but it is for their private enrichment. The consequences may have a political outcome – but need not. The third type, deliberative political behaviour denies both the private nature of politics and its instrumental character. The focus is the public transformation of individual preferences through rational discourse in public. Political behaviour is concerned with substantive decision-making which will affect all citizens therefore all citizens are entitled to participate in the decision-making process. The theories of transformation emphasise the process by which citizens form their preferences – a reversal of the rational choice theory.

In "The Market and the Forum," Elster illustrates the difference between market behaviour and forum, or political, behaviour by isolating five characteristics of rational choice behaviour. According to rational choice theory there is a *given* set of agents (citizens) who choose from a *given* set of alternatives (policies); the agent's preferences do not change during the political process and the preferences are presumed to be ordinal with, therefore, no possibility of an individual indicating the intensity of her preference; lastly the preferences are

assumed to be complete and final. Elster's objections to rational choice are two-fold. Individual preferences are not usually observable, so cannot be a *given* nor is there any certainty that the preference is 'true' and not dictated by strategy.⁵⁴ Secondly, an individual's preferences could depend on some causal desire and be shaped by others. Therefore, Elster believes, preferences prove a fragile basis for making political choices in an aggregative system. In the market place, according to Elster, self-interest determines transactions. There is no requirement that the agent is obliged to consider others as the transaction does not take place in the glare of publicity but between buyer and seller. It is a very simple exercise in supply and demand. In the market place the agent is sovereign.⁵⁵ Behaviour in the forum, that is, political behaviour, is another matter entirely. It has a long tradition of being conducted in public with all citizens being equally entitled to participate as political decisions are decisions which affect us all.

Charles Lindblom (1982) takes a different perspective of rational choice theory but comes to a comparable conclusion.⁵⁶ He believes that 'democracy is a political market' and 'democracy, competitive politics' but argues that market behaviour has so dominated contemporary political thinking that market behaviour, by

⁵⁴ An example is the strategic voting in the Epsom electorate in the 2011 and 2014 elections.

⁵⁵ An example is the escalating cost of Auckland houses. It was not until fewer and fewer citizens were able to afford to buy a house in Auckland that the private transactions became 'public.'

⁵⁶ Charles Lindblom, "The Market as Prison," *Journal of Politics* 44, no. 2 (1982): 324-36.

treating preferences as given, has been allowed to 'imprison' policy. Any attempt to alter the market settings triggers a punishment mechanism such as a rise in unemployment. In "The Market as Prison" Lindblom concludes that rational choice theory ignores the reality of the all-pervasive effect that politics has on the formation of an individual's preferences, and thus it devalues democracy.

In comparison to rational choice theory, Elster considers first the work of J. S. Mill. For Mill, the involvement in politics is an end in itself. Simply by participating with others through discussion and pursuing opportunities for education, the citizen's own life will be enriched. It is thus a good in itself; and as a consequence of the individual citizens' desire for self-improvement, the nation as a whole will benefit. The involvement is not primarily in pursuit of an outcome, other than a private one, although as a Utilitarian any outcome would be judged on what brings the greatest good or happiness to the greatest number. This is in keeping with Aristotle's belief in the educative benefits of sharing different views in the public forum and the transparent decision-making that took place there.⁵⁷ Aristotle argued that the involvement delivered more robust political decision-making. J. S. Mill, however, was not so sure. Mill supported the idea of democracy because of its educative effects, acknowledging that education enabled individuals to achieve

⁵⁷ Aristotle, in *the Politics* Bk. 3, considers various definitions of 'citizen' and in Section 4 acknowledges that 'their perceptions' (that is, *metics* and *hoplites* who may vote but not hold office 'singly') 'are quite good enough and combined with the better class are useful to the state.'

greater self-knowledge. It was empowering, a private good. He was less supportive of democracy as a political decision-making process, fearing the tyranny of the masses.⁵⁸ For Mill, as a Utilitarian, the aim of education with its associated dialogue was the individual's own happiness with any political outcome a by-product. Elster finds this view 'internally incoherent.'⁵⁹ That deliberation does have a transformative propensity is not in dispute but this Utilitarian view denies the fact that public discussion is undertaken with a purpose; it therefore is a political act which may realize personal development and happiness; it may not produce the expected or desired outcome however. To suggest that participatory democracy is only useful if it 'educates' citizens and therefore is undertaken for that reason alone denies the possibility, and indeed the expectation, that political discussion is a means to an end, and that end is decision-making that addresses the 'common good.' Historical events of Mill's own time testify to the truth of this view; for example the focus, and success, of the Chartists.⁶⁰ The Utilitarian view of personal happiness through self-knowledge had an unintended consequence as it fostered a broader understanding of societal commitment among citizens. Thus a

⁵⁸ John Stuart Mill, *Considerations on Representative Government*: www.gutenberg.org/files/5669/5669-h/5669-h.htm, Chap 7.

⁵⁹ Jon Elster, "The Market and the Forum," in *Deliberative Democracy: Essays on Reason and Politics*, eds. James Bohman, and William Rehg (Cambridge, Massachusetts: MIT Press, 1997), 19.

⁶⁰ Chartism was a working-class movement for political reform in Britain and became a national protest movement. It took its name from the People's Charter of 1838 put out by the London Workingmen's Association. It influenced the passing of the Reform Bills of 1867 and 1884.

public and a private good was achieved. In Mill's lifetime the great Reform Bills of 1832 and 1867 were passed - both responses to public discussion and action.⁶¹ No doubt the many involved in effecting these legislative changes had participated in educative discussion. This would have afforded them personal satisfaction, happiness, and cumulatively contributed to the greatest good for the greatest number. However, the Chartists and others went further and sought to widen society's horizons, not just their own, and in doing so promoted social change. Such commitment does not suggest a mere by-product of a search for personal growth and happiness. Instead it suggests a different set of priorities and expected outcomes.

The third way of doing politics that Elster discusses offers the possibility of transformation of both one's self, and one's polity, through rational discussion. He draws on Habermas's theory of communicative action as an example of deliberative politics.

Habermas denies the private character of political behaviour arguing that any critical evaluation of moral, social and political matters must be grounded in the nature of human communication.⁶² His focus is on the way deliberation is done

⁶¹ Mill was MP for Westminster during the period the Great Reform Act was debated and passed.

⁶² See: Jürgen Habermas, "Three Normative Models of Democracy," *Constellations* 1, no. 1(1994):1-10. See also: Roger Bolton, *Habermas's Theory of Communicative Action and the Theory*

and therefore his ideal speech situation is both public and rational.⁶³ It is through the speech act that we tell each other how we feel, what we think, and express our preferences. It is the medium for progress, invention, friendship. Habermas seeks a way by which equality can be reconciled with liberty, unity with diversity and the rights of the majority with the rights of the minority. He maintains that understanding is a matter of genuine, unforced consensus that can only come about in open, unconstrained discussion; his famous phrase puts it neatly: in discourse the unforced force of the better argument prevails.⁶⁴

For the ideal speech situation to occur the participants must follow certain rules. They must evaluate each other's assertions solely on the basis of reason and evidence in an atmosphere completely free of any non-rational 'coercive' influences, both physical and psychological. Habermas's theory of communicative action rests on the idea that social order ultimately depends on the capacity of actors to recognize the intersubjective validity of the different claims on which social co-operation depends.⁶⁵ In conceiving co-operation in relation to validity

of *Social Capital*, accessed October 1, 2015, for an outline of the value of Habermas's theory in practical applications. <http://web.williams.edu/Economics/papers/Habermas.pdf>.

⁶³Jürgen Habermas, *Between Facts and Norms*, trans. William Rehg, (Cambridge:Polity Press, 1996).

⁶⁴ Quoted in Antje Gimmler, "The Discourse Ethics of Jürgen Habermas," accessed October 8, 2015. <http://caae.phil.cmu.edu/Cavalier/Forum/meta/background/agimmler.html>

⁶⁵ Habermas reminds us that different life experiences not only give us different perspectives but also imbues the language we use with slightly different connotations. This subtlety has to be acknowledged.

claims, he highlights its rational and cognitive character; to recognize the validity of such claims is to presume that good reasons can be given to justify them in the face of criticism – a core principle of deliberative democracy. Habermas’s view of deliberative democracy gives an insight into the importance and influence of speech acts, thus underscoring the need for political behaviour to be transparent. Jean-François Lyotard thought this view misguided.⁶⁶

Thus Elster outlines three major themes in contemporary democracy: rational choice, participatory and deliberative. Each has a different perspective on the interpretation of the core principles of democracy: equality and liberty.

1.2.2: Jürgen Habermas and the Public Sphere

In “Popular Sovereignty as Procedure,” Habermas makes the claim that the historical influence of the French Revolution can ‘scarcely be compared with any other historical event’ and that there is reason to assume that the present is still

⁶² Lyotard thought that Habermas’s commitment to a fully rational society was misguided. His own view is that the nature and status of knowledge has changed and the emphasis is now on information technology and efficiency – post-modern pragmatism. See Lyotard, Jean-Francois, *The Post-Modern Condition: A Report on Knowledge*, trans. Geoff Bennington and Brian Massumi (Manchester: Manchester University Press, 1984):

influenced by those long ago events and that another revolution is taking place, albeit in a very different manner.⁶⁷

Habermas in this essay explains that the English, Dutch and American (bourgeois) 'revolutions' were the outcome of events. Capitalistic trade, a bureaucratic form of legal authority, even a constitutional state did not emerge from a radically different consciousness; they were the end result of essentially traditional thinking which understood authority as God-given. The French Revolution, however, came about from the ground-swell of a totally different consciousness which promoted the energy, and violence, of the revolution in France – and gave us a genuine democratic awareness that carried with it a new way of thinking. Authority had shifted from God, or despot, to the people – Napoleon notwithstanding.⁶⁸ This revolutionary consciousness was expressed in the conviction that a new beginning could be made, that individuals could jointly decide the rules and the manner of their lives, together, and that political power need not be beholden to either

⁶⁷ Jürgen Habermas, "Popular Sovereignty as Procedure," in *Deliberative Democracy: Essays on Reason and Politics*, eds. James Bohman, and William Rehg (Cambridge, MA: MIT Press, 1997): 36-39. Once again the cleavage between those who make the decisions and those who have to live by them is presenting challenges. The present does not accept that doing politics 'our present way' is necessarily the only way, that change is possible; those who want to rebuild the existing order are looking to the future, as in 1789, acknowledging our responsibility towards the environment and future generations and willing to take action (but not necessarily revolution) to achieve it.

⁶⁸ Napoleon, later France's first Emperor, was a supporter of the revolution. In 1795 he helped suppress a royalist insurrection against the new government in Paris. During his 'reign' he worked to restore stability to post-revolutionary France centralising government, instituting reforms in banking and education and supporting the arts and science. In 1804, he established the Napoleonic Code, a unified legal system based on the idea that common sense and equality should replace one based on custom and societal divisions. The moral justification for the Code was because it was rational and just. It remains the basis of France's legal system and has had a worldwide influence.

religious or metaphysical authority, to neither divine nor natural law. This shifted politics into the realm of reason, very much grounded in the present. Rousseau, who as an early democrat predates the French Revolution, appreciated that for legislative authority to be just it must emanate from those who were to be governed.⁶⁹

In Habermas's view the cultural dynamic released by the French Revolution has not been lost. Today in our increasingly plural polities there is an energy directed at being involved, of being included, in individuals taking control of those aspects of their lives that are of significance to them; it might be cultural in the sense of ethnicity or it may span class and ethnic groupings or be future-oriented as in environmentalism.⁷⁰ The theory of deliberative democracy is a modern descendent of this search for a new way of doing politics. This energy is present in the dialectic between liberalism and radical democracy with its opposing forces of individuality and collectivism, and other polarities. It is the nature of these exchanges that interests Habermas, what they reveal of the life-world of each individual and how the energy can be harnessed. This energy is unlikely to erupt in western democracies as it did in France 200 years ago but it could well, slowly,

⁶⁹ Jean-Jacques Rousseau, *On the Social Contract*, ed. Donald A. Cress (Indianapolis: Hackett Publishing Company, 1987).

⁷⁰ See: Amy Gutmann, and Dennis Thompson, *Democracy and Disagreement* (Cambridge, Massachusetts: Belknap Press of Harvard University Press, 1996). See also Elizabeth Anderson, "The Epistemology of Democracy" *Episteme*, vol. 3, no.1-2, (2006): 8-22.

shift the established goalposts of liberalism with its market model of politics to a more inclusive model where the Athenian qualities of participation and deliberation flourish once more, and all citizens' preferences are adequately acknowledged.⁷¹

Since John Locke, Liberals have institutionalised equal liberties as rights held by individual subjects; these pre-political liberties, in their view, enjoy normative priority over democracy. Opposing this position are the advocates of egalitarianism, notably Rousseau, who understand human rights as an expression of the people. For Rousseau, liberty relies on the autonomy of the people, both individually and collectively. For Rousseau an autonomous individual is able to self-legislate (it would be coercion should anyone else legislate for him) therefore a legislative authority can be attributed only to a united will of participating autonomous individuals. Such a system can only express itself in abstract and general law, therefore the general will of the people must exclude all non-generalizable interests and include only those regulations that guarantee equal liberties to all persons. Such a position embraces the plurality of contemporary society.

Liberals countered this view two hundred years ago, and still do, citing the diverse interests that must be accommodated and the possible 'tyranny of the majority.' It

⁷¹ Amy Gutmann and Dennis Thompson (1996).

is an instrumental argument. In answer, Habermas quotes the German democrat, Julius Fröbel (1805-1893), rather than J.S. Mill on the educative value of discussion - but on distinctly non-utilitarian lines:

We seek the social republic that is, the state in which freedom, happiness and dignity of each individual are recognised as the common goal of all, and the perfection of the law and power of society springs from the mutual understanding and agreement of all its members.⁷²

Habermas highlights Fröbel's link of discussion with voting which makes public discourse the universalizing force. Fröbel recognized that the communicative conditions under which opinion-formation is sought can be combined with majoritarian will-formation. This is an early appreciation of the reasoning that underpins much contemporary deliberative democratic thinking. As Habermas points out, Fröbel retains Rousseau's concept of autonomy that requires that laws are justified by the assent of all autonomous persons. Fröbel's position shows that the normative tension between equality and liberty can be resolved if an overly specific reading of the principle of popular sovereignty is relaxed. Rather than focusing on the formation of the General Will by autonomous persons as Rousseau does, Fröbel focuses on the procedure of opinion-formation oriented to truth

⁷² Julius Fröbel, *System Der Socialen Politik* (Mannheim, 1848), quoted in Habermas (1997): 46.

which can be combined with majoritarian will-formation. If the political will is not identical with the general will, the political will must demonstrate that it has reason on its side.⁷³

Speaking from a contemporary pluralist perspective, if the sovereign body is perceived not as embodied power but a collectivity of 'voices' that have shared the will-formation process, then the will of the majority can be accepted. It is, thus, reasonable to accept that those 'voices' are able to represent the community. This understanding of the sovereign body acknowledges the plurality of contemporary societies; it also raises the issue of whether a simple majority is sufficient. I will come back to this in Chapter 5.

Fröbel's answer to the Liberal view, as outlined by Habermas, gives primacy to public discourse as a way forward to negotiate difficult decision-making in plural societies. Certainly the legacy of the French Revolution was alive and well with one mid-19th century German politician.

The issue of the relationship between the law and political power in a large democratic polity is fundamental. It is also problematic as the law is normative in its perspective and political power is instrumental. In Athens the law was made by the people and administered by the people and their selected officials. In Habermas' words it was an action-upon-self programmed by laws. In liberal

⁷³ See also Bernard Manin, *The Principles of Representative Government* (Cambridge: Cambridge University Press, 1997): 190-2.

democracies of today, from the law's perspective, policies as well as laws and decrees need normative justification but from the perspective of power, policies, laws and decrees are means to an end and that end may be the preservation of political power, rather than the public interest established through reasoned discourse. This disconnection of law and power, each of which need the other, is a stumbling block for many theorists - if for no other reason than that the size of the polities requires representative government – an instrumental process which has placed the sovereign power of the people in the hands of a few.

If one believes with Kant and Rousseau and Habermas in individual autonomy, it seems logical to have the opportunity to deliberate with others on the problems to be solved. The argument against this is, often, that the public is gullible, ill-informed and so on.⁷⁴ Yet, it is acceptable for this gullible public to select a representative. There is a contradiction here, one that Habermas attempts to solve with his conception of a contemporary radical democratic polity that engages in public reasoning in units of various size and diverse backgrounds which will mediate between the opinion-formation of all and the will-formation of representatives.⁷⁵ This incorporates Fröbel's multi-vocal process which substitutes

⁷⁴ For example J. S. Mill, Schumpeter, Downs, Robert Dahl, *Democracy and Its Critics*. (New Haven: Yale University Press, 1989), and Robert Nozick, *Anarchy, State and Utopia* (Oxford: Blackwell, 1974) have all expressed similar concerns.

⁷⁵ See Shawn W. Rosenberg, "Rethinking Democratic Deliberation: The Limits and Potential of Citizen Participation," *Polity* 39, no. 3 (2007): 335-60. Rosenberg while not rejecting the

mutual understanding for power and thus rationally motivates a majoritarian decision. This procedure of opinion - and will- formation secures equal liberties through the general rights of communication and participation. Habermas admits it is a normative theory which would depend on a socio-cultural climate that is egalitarian, divested of all educational privilege and thoroughly intellectual - challenging criteria.⁷⁶

The increasing interest in deliberative democratic theory is a response to escalating population growth and increased industrialisation which have brought with them some practical issues. Constituencies in western democracies have grown larger and hands-on participation has decreased for a number of reasons.⁷⁷

Internationally, New Zealanders rank as keen voters. Even so, in 2014 almost one million registered voters did not cast their votes.⁷⁸ An estimated 77.04% of enrolled voters took part in the election, slightly higher than the 74.2% turnout in 2011, which was the worst in percentage terms since before women got the right

deliberative position, aims to reconstruct it, emphasising the social dimension of individual capabilities and orientation. This leads to a reconsideration of the democratic values of autonomy and equality, and how best to institutionalize deliberative practices.

⁷⁶ For an appraisal of the challenging criteri, see David M. Ryfe, "Does Deliberative Democracy Work?" *Annual Review of Political Science* 8 (2005): 49-71. He gives a succinct outline of the difficulties including the lack of conclusive empirical evidence. His *tentative* conclusion is in favour of deliberative democracy.

⁷⁷ One reason is the size of each electorate. In New Zealand, electorates are comparatively equal in population but not in size. Large electorates like Northland and Westland present problems for both the local MP and constituents. Personal contact and public meetings are problematic.

⁷⁸ <http://www.elections.org.nz/search/results/average%20voter%20turnout>. - accessed 23 September, 2015.

to vote in 1893. New Zealand ranks third in a world survey of voting by registered voters since 1945 to 2001.⁷⁹ Nevertheless, as in other western democracies, voter participation has declined.

There are many reasons for declining engagement. Some are personal: lack of interest, lack of time, lack of information and opportunity. Some are systemic. Young people, for instance, even if they are contributing to the economy cannot vote if they are under 18 years of age. Although voting is no longer clearly along socio-economic lines, the young and unemployed are less inclined to vote and therefore are disenfranchised.⁸⁰ Parties themselves, particularly the two largest, are trying to appeal to 'a broad church' so are less clearly defined thus a citizen may well have divided loyalties. There are parties that campaign primarily on an issue. The Greens, for instance, in all their policies focus on the policies' impact on the environment, in all its ramifications.⁸¹ New technologies have challenged the effectiveness of the old system of elections adequately acknowledging citizens'

⁷⁹ <http://www.idea.int/publications/vt/upload/Voter%20turnout.pdf>. Five of the top seven countries have compulsory registration - Australia, for instance; accessed 20 September, 2015.

⁸⁰ See Richard Mulgan, *Politics in New Zealand*, 3rd ed. (Auckland, New Zealand: Auckland University Press, 2004): Chap.11. See also Gerry Stoker, *Why Politics Matters: making Democracy Work* (Houndsmill, UK: Palgrave Macmillan, 2006): 87-88.

⁸¹ See Raymond Miller, ed., *New Zealand Government and Politics*, 4th ed. (Melbourne, Australia: Oxford University Press, 2006), particularly 4.1: Jack Vowles, "Voting," and 7.5: Helena Catt, "Participation and Citizenship."

preferences;⁸² the established democracies have experienced what has been called a crisis of political parties.⁸³

In an attempt to engage citizens more effectively some western democracies have trialled various types of discussion group. Participatory budgeting is in operation around the world: in Porto Alegre, Brazil, and many other South American cities; Vallejo in California, Rogers Park in New York, in Chicago, and the Auckland City Council has held a staff seminar on participatory budgeting.⁸⁴ In Canada there has been the British Columbia Assembly on Electoral Reform; in the US and the United Kingdom there have been interesting projects using Policy Juries and in Germany ‘the planning cell project.’⁸⁵ Nearer to home, Australia has trialled citizen juries in Sydney and people panels in Melbourne.⁸⁶ In New Zealand the Electoral

⁸² The new internet technologies allow connection with others across traditional boundaries and tap into, possibly, ephemeral groupings. Youth are technically literate and often not represented in the traditional forums so technology gives them a voice. See Danielle Allen, and Jennifer S. Light, *From Voice to Influence: Understanding Citizenship in a Digital Age* (Chicago: Chicago University Press, 2015):ch.2.

⁸³ <http://www.idea.int/publications/vt/upload/Voter%20turnout.pdf>. By Rafael López Pintor, Maria Gratschew and Kate Sullivan, “Politicians by Lottery: an Option for the Future?”

⁸⁴ <http://www.aucklandcouncil.govt.nz/EN/planspoliciesprojects/plansstrategies/Councilstrategies/Documents/giovanniallegrettiparticipatorybudgeting.pdf>

⁸⁵ See <http://participedia.net/en/cases/british-columbia-citizens-assembly-electoral-reform> for a detailed account and assessment of the British Columbia Assembly; for an appraisal of citizen juries in the US and United Kingdom see http://sru.soc.surrey.ac.uk/United_Kingdom/SRU37.html; and <http://onlinelibrary.wiley.com/doi/10.1111/j.1475-6765.1986.tb00831.x/>. See also Detlef Garbe, “Planning Cell and Citizen Report: a report on German experiences with new participation instruments,” *European Journal of Political Research*, 14. See also James Fishkin, “Making Deliberative Democracy Real” <https://www.youtube.com/watch?v=Hr1MqokjqRQ> in which he talks about deliberative polling.

⁸⁶ <http://www.abc.net.au/radionational/programs/futuretense/citizens-juries-and-deliberative-democracy/5762684#transcript>

Commission has considered a variety of ways to link first-time voters into the system.⁸⁷

As citizens of a democracy we are all equally entitled, and free, to live our lives as we wish irrespective of our socio-economic circumstances. It would be foolish to deny this. Nevertheless in representative government with large constituencies all citizens are distanced from the decision-making forum. The opportunity for citizen engagement is, most significantly, every three years around election time when there may be interaction with other constituents and with the local representative. The distancing effect is deepened by the fact that modern parties are tightly managed organisations with party discipline a deterrent to deliberation in the public interest, and a deterrent to the engagement of the public's interest. The number of small initiatives around the world, in large cities and villages⁸⁸ is testament to citizens' desire to be consulted and acknowledged.

Habermas's "Popular Sovereignty as Procedure" is a forerunner of many papers which address the issues of contemporary democracy such as the tension between the deliberative ideal and the actual conditions of pluralism and complexity.⁸⁹

⁸⁷ Helena Catt and Peter Northcote, "Prompting Participation: Can a Personalised Message to the Newly Enrolled Have an Impact on Turnout?" paper presented at *Australasian Political Studies Association Conference*, University of Newcastle (New Zealand Electoral Commission, 2006).

⁸⁸ Hiware Bazar, India. https://en.wikipedia.org/wiki/Hiware_Bazar accessed 10 January, 2016.

Habermas's belief in the power of words and the salient effects of deliberation makes a case for systems of decision-making validated by public reason so that citizens' preferences are adequately acknowledged.

Not all deliberative democrats hold essentially the same understanding of the capabilities of citizens or indeed democracy itself but, like J. S. Mill, they argue that deliberation is justified on the grounds of human fallibility. Deliberative democracy as a theory emphasises the process, rather than the outcome. The process may be the same but the question to answer will vary. Even so, Susan Stokes in her South American research defines deliberation by its outcome, noting the change in preferences through communication.⁹⁰ Some theorists, such as Drew Westen, consider the role of motivation in political decision-making.⁹¹ Others, like Will Kymlicka (2006) and Annette Baier,⁹² investigate the impact of political decision-

⁸³ Some theorists are concerned primarily with the intrinsic value of deliberation: See Thomas Christiano, "An Argument for Democratic Equality" in *Philosophy and Democracy*, ed. Thomas Christiano (Oxford: Oxford University Press, 2003): 39-68; Piotr Perczynski, "Active Citizenship and Associative Democracy" in *Democratic Innovation: Deliberation, Representation and Association*, ed. Michael Saward (London: Routledge, 2000): 161-171.

Others consider ways and means of acknowledging legitimate sovereignty in a deliberative democratic environment: See: Graham Smith, "Towards Deliberative Institutions" in *Democratic Innovation: Deliberation, Representation and Association*, ed. Michael Saward (London: Routledge, 2000): 29-39; also John Dryzek, "Discursive Democracy vs. Liberal Constitutionalism," in the same volume: 78-92.

⁹⁰ Susan Stokes, "Pathologies of Deliberation," in *Deliberative Democracy*, ed. Jon Elster (Cambridge: Cambridge University Press, 1998): Chap.5.

⁹¹ Drew Westen, *The Political Brain: The Role of Emotion in Deciding the Fate of the Nation* (New York: Public Affairs, 2007); also John R. Hibbing, and Elizabeth Theiss-Moore, *Stealth Democracy: Americans' Beliefs about How Government Should Work*. (Cambridge: Cambridge University Press, 2002).

⁹² Will Kymlicka and Keith Banting, "Immigration, Multiculturalism and the Welfare State," *Ethics and International Affairs* 20, no. 3: 281-304. See also: Annette Baier, "The Need for More than Justice," *Canadian Journal of Philosophy* 17: 41-56.

making on minorities; some reflect on the impact of being in the public arena and the influence of the media;⁹³ others, like Joshua Cohen, analyse the procedures that give legitimacy.⁹⁴

1.2.3: Joshua Cohen on Legitimacy

As Cohen states in “Deliberation and Democratic Legitimacy” the ideal of democracy is a familiar one. He highlights three circumstances of that ideal. The first is that political debate centres round alternative conceptions of the public good; the second, that the democratic ideal has egalitarian implications, and the third that the way politics is done should encourage self-respect leading to the development of political competence and the formation of a sense of justice which in turn should promote a political culture.⁹⁵

Cohen outlines what he calls an intuitive notion of deliberative democracy. It has five main characteristics: firstly, that as a deliberative democracy it is an on-going,

⁹³ Graham Smith, “Towards Deliberative Institutions,” in *Democratic Innovation: Deliberation, Representation and Association*, ed. Michael Saward (Cambridge: Cambridge University Press, 2000): 29-39.

⁹⁴ Joshua Cohen, “Deliberation and Democratic Legitimacy,” in *Deliberative Democracy: essays on Reason and Politics*, eds., James Bohman and William Rehg (Cambridge, Mass.: M. I. T. Press, 1997): 67-92.

⁹⁵ See also John Rawls, *Justice as Fairness: A Restatement* (Cambridge, Mass.: Belknap Press, Harvard University, 2003). Public reason-giving, according to Rawls, involves justifying a particular position by way of reasons that people of different moral or political backgrounds can accept thus building a political culture. He uses the work of the US Supreme Court as an exemplar. Cohen sees this approach as too specific being tied to a specialist group in society.

independent association of persons which will continue into the future; secondly, that members of the association will share the view that the appropriate terms of association provide the framework through which they will arrive at ways to make deliberation possible and thereby establish norms. 'For them, the free deliberation among equals is the basis of legitimacy';⁹⁶ thirdly, as it is a pluralistic association and therefore shares a commitment to the deliberative resolution of collective problems, they will acknowledge their different aims, and, significantly, that there is no mandatory set of preferences; fourthly, that because the members of the association regard deliberative procedures as the source of legitimacy, it is important to them that their deliberations and its results are transparent and can be tracked; and lastly, that the members of the association recognise each other as having deliberative capabilities, that is, are able to reason publically and are willing to act on the result of such public reasoning. These five characteristics are an explicit statement of the conditions required for Cohen's intuitive model of deliberative democratic decision-making and therefore determine the features that deliberative democratic institutions must exhibit. Cohen's theory of deliberative democracy aims to give substance to any formal ideal and that

⁹⁶ Joshua Cohen (1997): 72.

substance must be based in reality not on a hypothetical situation as in John Rawls' *A Theory of Justice* and in the more recent *Justice as Fairness*.⁹⁷

Having determined how the real world can establish deliberative democracy, Cohen details the three general aspects of deliberation: the need for an agenda; the proposal of alternative solutions for the problems on the agenda, all supported by reasons; and finally approving the alternative to follow. This ideal procedure leads to outcomes that are democratically legitimate if, and only if, they are the result of free and reasoned agreement among equals. For Cohen an ideal deliberative procedure captures the democratic principles of freedom and equality of persons. It is a comprehensive moral theory unlike Rawls' 'political conception' which is framed for a specific case, the basic structure of a liberal representative democracy.

Ideal deliberation, according to Cohen, satisfies four conditions. Firstly, it is free in the sense that the participants regard themselves as bound only to the outcome of the deliberation, not to any pre-conditions, and in the sense that the outcome will be actioned. Secondly, ideal deliberation is reasoned. Participants put forward their proposals, supported by reasons, in the expectation that in this give-and-take of reasons among equals, a solution may be found. The deliberative conception of

⁹⁷ John Rawls, *Theory of Justice* (Cambridge, Mass.: Harvard University Press, 1971). See also: John Rawls, *Justice as Fairness: A Restatement* (Cambridge, Mass.: Belknap Press, Harvard University, 2003).

decision-making emphasises the third condition, namely that the participants are substantively equal in that the existing distribution of power and resources does not shape their chances of contributing to the deliberative process. And, finally, this leads to the conclusion, and aim, of the ideal deliberation which is a rationally motivated consensus. Of course not all deliberation will successfully achieve this, in which case voting occurs.⁹⁸

This search for a consensus is criticised by Manin.⁹⁹ He argues that it is unrealistic to assume unanimity is possible and cites Sieyès and Rousseau to substantiate this. Manin's belief in deliberation is that it enables the best solution to be found to take to the forum/parliament.¹⁰⁰ This is not unlike Fröbel's multi-vocal process. Manin also points out that the majority principle only acknowledges there is a consensus among the majority of voters. In addition, he maintains that such a consensus cannot be challenged, nor can it be justified. The will of the minority thus gets subsumed into that of the majority. Cohen accepts this stricture but believes that deliberative forms of collective choice are more persuasive than an

⁹⁸ In another essay, "Democracy and Liberty," in *Deliberative Democracy*, ed. Jon Elster, (Cambridge: Cambridge University Press, 1998): 185-231, Joshua Cohen argues that democracy is not just a political matter about voting but has as well a public dimension in the formation of will and opinion and therefore it taps into the plurality of comprehensive philosophies of life. Democracy is a substantive ideal not just a procedural one.

⁹⁹ Bernard Manin, Elly Stein, and Jane Mansbridge, "On Legitimacy and Political Deliberation," *Political Theory* 15, no. 3 (1987): 338-68; and Bernard Manin, *Principles of Representative Government* (Cambridge: Cambridge University Press, 1997): 188-9.

¹⁰⁰ 'parliament' fr. OF *parlement* fr. *parler* (to speak): a formal conference for discussion of public affairs. (*Merriam Webster*, 1966). Manin sees discussion taking place among constituents and with their representative before the representative takes the 'best solution' to parliament to discuss with other representatives; we have retained the terminology but altered the practice.

aggregate of non-deliberative preferences and, significantly, that the consequences would be different; that the focus of the political debate on the common good would provide favourable conditions for the exercise of the deliberative powers that are required for autonomy and would also, in time, shift the culture of the polity towards a more compassionate collective understanding – and thus better accommodate the perspectives of plural societies. Collective decision-making accords respect to individual autonomy and fosters an emphasis on the common good.

Chantal Mouffe is another theorist critical of the search for consensus.¹⁰¹ She argues in *The Democratic Paradox* that the tension between liberalism and democracy, individualism and equality, cannot be ignored or eliminated, particularly in plural societies. Seeking a consensus, she maintains, diminishes the autonomy of the individual and leads to citizens withdrawing *from* participation in political affairs or withdrawing *into* more fundamental positions. She argues that during the course of democratic deliberation, the qualities of citizenship will serve the purposes of a plural society better than the search for a consensus.¹⁰² This view is not unlike Cohen's common good.

¹⁰¹ Chantal Mouffe, *The Democratic Paradox* (London: Verso, 2005).

¹⁰² Mouffe proposes 'agonistic pluralism' where 'persons who are friends because they share a common symbolic space' are 'also enemies because they want to organise this common symbolic space in a different way.' Mouffe: ch.4.

The 'common good' is a difficult term that defies easy definition. Cohen uses it to characterise the intention of deliberative decision-making. It has no fixed definition as the 'definition', or common good, will be determined by the participants as they deliberate and modify their preferences. It will not be precisely the same each time but a position will be arrived at that is other-regarding. Philip Pettit agrees with Cohen that the motivation for democratic deliberation is to find a solution to a problem that in his phrase is in the 'public interest of citizens.'¹⁰³ He argues that in complex polities there is no escaping the need for people to make informed judgements about what their interests are, *as citizens*. Such interests, he believes, will be the same as everyone else's 'interests as citizens' and that for this to be so the deliberation must be supported by reasons that can be accepted by reasonable people. Regardless of the difficulty of categorically defining the 'common good' it remains a worthy goal.

In conclusion, Cohen focuses on institutions. He believes the ideal deliberative procedure provides the model. The institution's focus is not to implement the results of deliberation – quite the reverse. Its task is to provide the framework for the formation of the will of the people and ensure that there is equality, and that deliberation is free and reasoned, that public and private autonomy is valued. The institution will ensure that the democratic liberties are respected. Such institutions

¹⁰³ Philip Pettit, "The Common Good" in *Justice and Democracy*, eds., Keith Dowding, Robert E. Goodwin, and Carole Pateman (Cambridge: Cambridge University Press, 2004): 150-169.

that reflect democratic deliberation will not differentiate between public and private matters as the deliberation has been in public and there have been no preconditions regarding the type of discourse.

There are objections to Cohen's conception of democratic institutions, as shown above. David Estlund doesn't see the need to go beyond the instrumental view of decision-making. He believes that in the long run citizens will more often get it right than wrong; that the opportunity to debate issues will assist citizens in choosing wisely.¹⁰⁴ In 'What sort of Equality does Deliberative Democracy Require,' Jack Knight and James Johnson argue that 'deliberative democracy requires a particular, relatively complex sort of equality.'¹⁰⁵ They suggest that equality of resources and an equal capacity to present persuasive claims is an unreal expectation. For instance, they cite the language barrier to deliberation in multi-cultural societies. Nevertheless, Joshua Cohen has been influential in furthering philosophical enquiry into ways of democratising liberalism, and reflecting on ways in which greater participation can lead to legitimate decision-making.

¹⁰⁴ David Estlund, "Beyond Fairness and Deliberation," in Thomas Christiano, ed., *Philosophy and Democracy* (Oxford: Oxford University Press, 2003).

¹⁰⁵ Jack Knight, and James Johnson, "What sort of Equality does Deliberative Democracy Require," in James Bohman, and William Rehg, eds., *Deliberative Democracy: Essays on Reason and Politics* (Cambridge, Massachusetts: MIT Press, 1997): 279-320. See also James Johnson, "Arguing for Deliberation," in *Deliberative Democracy*, ed., Jon Elster (Cambridge: Cambridge University Press, 1998):161-184.

1.3: Conclusion

This chapter has sought to clarify the different histories of representative and participatory democracy that support our present political arrangements. It has picked up on one of Habermas's themes concerning the shift in perspective as the public sphere grows, or shrinks, in significance. The search for a more inclusive way has reconsidered the ancient Greek practice of making decisions in public by participating/discussing with one another. In doing so it has paid attention to the opinion-and will-transformation of citizens. Some theorists, such as J. S. Mill, place the emphasis on the citizen and his/her self-development which is a private matter but one which may have a beneficial public outcome. This makes political behaviour both a public and a private affair. Others, like Habermas, see the transformation process as a public endeavour seeking a transformation of the whole with the end result consensual.

Politics is about decision-making so any form of government has to have a method of legitimating its authority. It is one of the criticisms of deliberative democracy that it lacks a legitimation procedure. Habermas admits that his theory is an ideal. Cohen, though, has an intuitive notion of how deliberative processes could be legitimated under our present arrangements. In this chapter I have indicated some of the issues that are addressed by scholars investigating the way we do politics in an age of large, complex societies; it is 'a work in progress.' In the next chapter I look in more detail at the two models of democracy, representative and deliberative.

Chapter 2: The Two Models of Democracy

Certain circumstances of the second half of the 20th century have supported the desire of citizens to participate more explicitly in the decision-making processes of their world/s.¹ National and international upheavals have contributed to what Habermas predicted, a shift in perception. One of Habermas's themes is the rise and decline of the public sphere.² Increased technology which facilitates political polling, and tightly controlled political parties, once again, diminishes the public sphere. With universal franchise, the public sphere was inhabited by all adult persons. However, as political parties became more tightly organised and more sophisticated in expertise the impact of the public sphere was reduced. Citizens of the western world in growing numbers pressed for more specific participation in the decision-making of their polity; massed protest action would express the public's dissatisfaction with a particular political decision.³ To give an example: most Governments, certainly in the western world, no longer go to war without

¹ Contributory factors were: the civil rights movements, the collapse of the Berlin Wall signifying the end of the Cold War and the collapse of the Soviet Union combined with changed global economic circumstances.

² Habermas sees the public sphere as that arena where private people come together as a public. (Habermas, "Popular Sovereignty as Procedure.") This is not a constant but ebbs and flows as social mores change. See also Nancy Fraser, "Rethinking the Public Sphere: A Contribution to the Critique of Actually Existing Democracy," in *Habermas and the Public Sphere*, ed. Craig Calhoun, Cambridge MA.: M.I.T. Press (1992):109–142.

³ In particular, matters concerning human rights such as Martin Luther King's efforts to combat inequality through non-violence; also the protests against the Vietnam War in the US and here. In New Zealand, there were rallies in support of a nuclear-free New Zealand among other matters.

some indication of public consent – and the support required has strengthened over the years. Individual citizens want their democratic right to be equal, one with another, and free to determine how they live their lives, to join the armed services or not.⁴ Although contemporary democratic polities have become increasingly large and complex, their constituents continue to consider themselves entitled to participate meaningfully in the political decision-making that will affect them; and to seek more effective ways to achieve this.⁵ For a democracy to function effectively, it is fundamental that citizens do not become disengaged from political decision-making to the degree that a critical cleavage develops within the polity thus threatening the stability of the state. Such a cleavage could be between those who do vote and those who do not;⁶ between those who benefit from political decision-making and those who do not; other cleavages could be along ethnic or ideological lines.

⁴ Using New Zealand as an example, the tide of public opinion has forced governments to acknowledge the wishes of the people. For over a century, since 1845, Government used conscription to recruit the necessary personnel. The last war New Zealand fought based on citizen-soldier ‘volunteers’ was with the United Nations Force in the Korean War (1950 – 1957). It was a very small contingent, bowing to public opposition to the war. Now we limit our involvement to professional soldiers (or police) in peace-keeping roles. The majority of modern states do not have conscription. Exceptions are: Russia, Brazil, Chile, Cuba; the Scandinavian countries and Switzerland have the option of an alternative service.

⁵ Once again to use New Zealand as an example, in the elections of 1978 and 1981, under First-Past-the-Post (FPP), the National Party won the majority of the electorates and formed the government. However, on both occasions the majority of citizens had voted for a representative of the other major party, Labour. Effectively New Zealand had a minority government. Citizens sought electoral reform. After a lengthy period of consultation and two referenda, the legislation was passed to change to a system of multi-member proportionality (MMP).

⁶ In New Zealand non-voters are predominately young and Maori or Pacifica. See Catt, and Northcote, (2006).

In the decades that have elapsed since the major statements outlined in the last chapter, academic interest in citizen participation has increased. Rawls' *TJ* (1971) was an early statement of the desirability of deliberation as a process for public decision-making.⁷ Since then political philosophers and more recently political scientists have explored many aspects of political decision-making in an effort to understand the political process better and thus propose procedures that would more adequately reflect the preferences of citizens. In doing so, theorists consider not only the system but also, by implication, any ideological preconception. In representative liberalism the focus is on protecting the individual from arbitrary coercion. The liberty of individuals is confirmed by the security ensured by the state – an instrumental approach. If one harks back to Aristotle, the liberty of the citizen, that is the freeborn, land-owning Athenian male, was both individualistic, as above, and democratic in that, as each individual citizen sought the ethical and intellectual virtues necessary to experience *eudaimonia*, he contributed to the well-being of the state.⁸ In large modern democratic polities, neither focus

⁷ There are two definitions of 'deliberation': the philosophical tradition, going back to Aristotle, takes deliberation to mean the process of the formation of the will, the particular moment that precedes choice. Rousseau uses 'deliberation' in a different sense, one that is accepted in common language, and uses it to mean 'decision'. See Bernard Manin, Elly Stein, and Jane Mansbridge, "On Legitimacy and Political Deliberation," *Political Theory* Vol.15, no. 3, 338-368, for further discussion. Manin maintains that Rawls' conception of deliberation is like Rousseau's: requiring unanimity, the absence of deliberation in the strong sense, and the predetermined will of individuals.

⁸ The reality of ancient Athens was less perfect than the ideal of democracy that we use as a yardstick. Aristotle did not think all persons were able to achieve *eudaimonia* having neither the excellence nor merit to attain such virtue. Nevertheless their endeavours contributed to the flourishing of the polity. The modern ideal of all persons ruling and being ruled in turn and

provides an easy solution that ensures its citizens' political aspirations will be met. There are many who, like Francis Fukuyama,⁹ believe that what we have is the best that can be expected in today's world. There are other less pessimistic persons who envisage a better world for everyone.¹⁰ And there are those who offer possible solutions as will be seen later in the thesis.¹¹ In this chapter, I will first consider the arguments in favour of representative governance with particular reference to the impact of the three 'facts' of modern democracies: size, pluralism and complexity. This is followed by consideration of the three significant capabilities of deliberative democracy: its respect for pluralism, its transparency and the intrinsic values it fosters. To conclude the chapter, I will pay particular attention to the issues of legitimacy and consent, autonomy and access to information, assessing their contribution to modern democracy.

contributing to a flourishing state is, if nothing else, a worthy goal. It continues to give guidance as to how matters might be organised.

⁹ Francis Fukuyama, "The End of History" *The National Interest* (Summer 1989). See also: Schumpeter, *Capitalism, Socialism and Democracy* (1950). In a different vein: Robert Nozick, *Anarchy, State and Utopia* (Oxford: Blackwell, 1974).

¹⁰ See Erik Olin Wright, *Associations and Democracy*, ed. Erik Olin Wright, *Utopias Project*. (London: Verso, 1995); also Alan Hamlin, and Philip Pettit, eds., *The Good Polity: Normative Analysis of the State* (Oxford: Blackwell, 1989); and Robert Dahl, *Democracy and its Critics* (New Haven, US: Yale University Press, 1989).

¹¹ See: John Dryzek, and Simon Niemeyer, *Foundations and Frontiers of Deliberative Governance* (Oxford: Oxford University Press, 2010); Michael Saward, ed., *Democratic Innovation: Deliberation, Representation and Association* (London: Routledge, 2000); John Parkinson, and Jane Mansbridge, eds., *Deliberative Systems* (Cambridge: Cambridge University Press, 2012); Hamlin and Pettit, eds. (1989); and James Fishkin, and Peter Laslett, eds., *Debating Deliberative Democracy* (Oxford: Blackwell, 2003): particularly ch.2, Amy Gutmann and Dennis Thompson; and ch.10, Jeffrey K. Tulis.

2.1: The Case for Representative Democracy

New Zealand's parliamentary democracy has been in existence since 1852.¹ Initially members of parliament were independent representatives of small communities, physically remote from the Parliament. Today, they are representatives of political parties accountable to approximately 65,000 constituents.² The representative system has been able to accommodate such a shift in circumstances. Theorists point to three 'facts' of modern society that are well-served by representative democracy: its size, pluralism and complexity. Within these three facts are issues of political process and conviction.

2.1.1: Size and the need for political legitimacy

Modern democracies are huge in land area and population both of which present challenges in political system design and operation. This is a practical problem which requires an efficient solution if the governing body's legitimacy is to be validated and the citizens' preferences acknowledged. Representative government does both. By dividing the state up into small parcels of equal population size, and similar interests, citizens are able to 'know' those citizens they select to be their

¹ The British Parliament passed the *New Zealand Constitution Act* in 1852. It provided for an elected House of Representatives and an appointed Legislative Council. It first met in 1854.

² Electorate size is calculated from the number of registered voters in the South Island which is guaranteed 16 electorates. <http://www.stats.govt.nz/methods/research-papers/research-papers-pre-2007/the-maths-of-electoral-district-in-nz.aspx> If the 50 list MPs, who are not affiliated to an electorate, are included the ratio is approximately 1:38,500 persons - as of 13 January, 2016. http://www.stats.govt.nz/tools_and_services/population_clock.aspx

representative in the governing body.³ It also allows the representative to become familiar with the issues that that community confronts. The problem of territorial size can be addressed in a number of ways. For small countries like New Zealand, Great Britain, and Norway, for instance, the representative system, with local variations, is appropriate. In large countries where there exists a more diverse group of people with diverse needs but a common culture the federal system is more appropriate.⁴ Australia, the United States and India are examples of federal systems.⁵ These political arrangements efficiently enable citizens to participate in the nation's decision-making processes, to specify their preferences. In the New Zealand system, we are able to vote for a constituent representative and also vote for the party that we think will best serve our own interests and/or those of the country as a whole.

These political arrangements also establish the legitimacy of the government – although not without some reservations. As Robert Paul Wolff points out, it is not the right to rule that is the problem but the duty, or moral obligation, to obey the

³ The governing body could be the national or state parliament or the local council.

⁴ A federal government is a system of dividing power between a central national government and local state governments that are connected to one another by the national government. Below the state government there is a layer of local councils such as our own.

⁵Ronald L. Watts, *Comparing Federal Systems in the 1990s* (Ontario: Queen's University Press, 1996). <http://www.queensu.ca/iigr/pub/archive/books/ComparingFederalSystemsInThe1990s-Watts.pdf>

ruler that comes with it.⁶ This would not be a problem if everyone agreed but immediately a directive is given there will be some reasonable persons who will be required to 'agree' to an action with which they do not agree, with reasons, and consequently deny their own autonomy. (They are coerced.) Robert Ladenson, however, argues that an authority is justified if those who disagree with directives are acquiescent – the silent majority perhaps.⁷ However, acquiescence could well be due to the consent process itself which may obscure structures of subordination such as those referred to by Carole Pateman in *The Sexual Contract* (1988).⁸ The issue of structural challenges appears to be borne out by a number of theorists from J. S. Mill to Jane Mansbridge, and here in New Zealand too.⁹

In spite of these reservations, for a state to function in an orderly fashion it must have credibility; its citizens have to deduce that having some form of political arrangement is better than having none at all – that it is reasonable to agree to

⁶ Robert P. Wolff, "The Conflict between Authority and Autonomy" in *Authority*, edited by Joseph Raz (Worcester: Basil Blackwell, 1990): Chap.1.

⁷ Robert Ladenson, "In Defence of a Hobbesian Conception of Law" in Raz, ed., (1990): Chap. 2.

⁸ Pateman argues that the traditional social contract between men and women is a male construct and that change is inhibited because law-givers have been predominately male.

⁹ See J. S. Mill, *On Liberty* and Jane Mansbridge, "Clarifying the Concept of Representation" in *American Political Science Review* 105, no. 3: 621-630; Iris Marion Young, *Justice and the Politics of Difference* (Princeton: Princeton University Press, 1990); Anne Philips, *The Politics of Presence* (Oxford: Clarendon Press); Will Kymlicka, "Multi-cultural Citizenship: a Liberal Theory of Minority Rights" in *American Political Science Review* 105, no. 3. For New Zealand, see: Maria Bargh, ed., *Maori and Parliament: Diverse Strategies and Compromises* (Wellington, New Zealand: Huia Publishers, 2010).

obey, on agreed matters, in return for security and stability;¹⁰ that maintaining one's autonomy is secondary to maintaining one's life. Both Hobbes, in 1651,¹¹ and Locke, thirty years later,¹² recognised that for Britain to live in peace there had to be changes to the way authority was legitimated. The 'divine right of kings' was no longer acceptable. Thomas Hobbes argued the need for a Sovereign Power established by covenant 'of every man with every man, in such a manner, as if every man should say to every man, I authorise and give up my right of governing myself to this man, or this assembly of men, on the condition that thou give up thy right to him and authorise all his actions in like manner.'¹³ Hobbes believed that man's life would be 'solitary, poore, nasty, brutish and short' without an overarching authority with the power to enact laws and thus protect man's personal security. Locke, too, favoured a sovereign power but one with specifically restricted powers. His emphasis was on individual freedoms. His social contract was to protect a citizen's right to live as he chose and do as he chose with his property. Thus, it can be argued that the right to rule is the result of a need to be

¹⁰ The social contracts of Hobbes and Locke begin by describing man in the hypothetical 'state of nature' before any social organisation existed, assuming that the 'state of nature' was an undesirable state. See also John Dunn, "Situating Democratic Political Accountability" in *Democracy, Accountability, and Representation*, eds. Adam Przeworski, Susan Stokes and Bernard Manin (Cambridge: Cambridge University Press, 1999): 329-345. See also Robert Dahl, *Democracy and its Critics* (New Haven, US: Yale University Press, 1989): 43-50.

¹¹ Thomas Hobbes, *Leviathon* (1651).

¹² John Locke, *Second Treatise of Government*, ed. C. B. Macpherson, (Indianapolis: Hackett Publishing Company, 1980).

¹³ Thomas Hobbes, *Leviathan*, ed. R. Tuck (Cambridge: Cambridge University Press, 1991).

ruled, a need arising from the desires of a community for security and stability. Representative democracy answered this need and still does.

A century later, the Utilitarian philosopher, Jeremy Bentham, supported individual and economic freedom but broadened the scope of political interest. He promoted a number of politically radical ideas such as equal rights for women.¹⁴ Bentham, and others, added another dimension to representative liberalism – a concern for others.¹⁵

The early 19th century was a period of social change in England. The industrial revolution and the Enclosure Act (1773)¹⁶ forced large numbers of rural families into the cities for work. The factories were unsafe and the sanitation non-existent. Agitation for better conditions mounted and the demand for universal suffrage gathered momentum. With it came the desire, and need, for education. When the 1832 Reform Bill did not extend the vote beyond male property owners, the London Working Men's Association, formed in 1837, drafted the People's

¹⁴ Bentham promoted the right to divorce, and the decriminalising of homosexual acts; he was against slavery, the death penalty, and the physical punishment of children. Bentham's ideas influenced the development of welfarism, the set of policies, practices, and social attitudes associated with a welfare state. See Amartya Sen, "Utilitarianism and Welfarism," *The Journal of Philosophy* 76, no. 9 (1979): 463-89.

¹⁵ Examples are the Welsh social reformer Robert Owen and the Chartist William Lovett. A book which explores the relationship between liberal ideology and the social aspects of human life is: Will Kymlicka, *Liberalism, Community, and Culture* (Oxford: Oxford University Press, 1991).

¹⁶ There were many Enclosure Acts beginning in Tudor times. The law enabled landowners to enclose land creating legal property rights to land that was previously considered common, thus removing the right of commoners' access and their right to grow arable crops there.

Charter¹⁷ which led to the Great Reform Act, 1832. Working men, and soon working women, wanted their opportunity to express their preferences. They too wanted to be involved in the decision-making of the polity.

A new dynamic had begun. Elite groups of citizens with common interests, such as those of ancient Athens and 17th century Britain, no longer welded political power unchecked. In its place was a large population of adult men and women with diverse views eager to participate in the decision-making of the state. With universal suffrage came challenges. J. S. Mill, for instance, though in favour of democracy was not enthusiastic of a wide franchise, advocating a preferential system.¹⁸ Although representative democracy had evolved for an elite group with similar interests, it was able to accommodate the increase in voters. Over the last two hundred years the representative system has been fine-tuned so that constituencies have become similar in size, and, as citizens became literate, voting by secret ballot eliminated coercion. Finally the conduct of the election was formally determined and supervised so that the results could not be manipulated. In New Zealand we have the Electoral Commission to ensure free and fair

¹⁷ The People's Charter had six demands: votes for all adult males; equal electoral districts; abolition of requirement that Members of Parliament be property owners; payment for M.Ps; annual general elections; and the secret ballot. Later in the century, women campaigned for the vote.

¹⁸ Hanna F. Pitkin, *The Concept of Representation* (Berkeley: University of California Press, 1967).

¹⁸ John Stuart Mill, *Considerations on Representative Government* (1861): specifically ch.3. (Andrews UK Ltd, 2011): www.andrewsuk.com accessed Oct. 26 2015.

elections. Achieving this admirable state of affairs took time.¹⁹ As the franchise widened and the number of citizens increased, it became more difficult to adequately acknowledge their diverse interests.²⁰ Representatives could not represent every point of view, whether they adopt the trustee model (Burke) or the delegate model (Maddison) or the 'gyroscopic' (Mansbridge).²¹ However, the later development of political parties went some way towards accommodating different values and views of life.

The argument that representative democracy establishes authority efficiently, in small or large polities, is reinforced by the consent process employed. In western democracies, the legitimacy of the government is established through the consent of free and equal citizens ratified, numerically, at regular intervals in fair elections. It does not disrupt the community unduly and once the government is endorsed political and civil life goes back to normal. Such an electoral system treats all constituents in the same manner. In New Zealand, all adults are free to vote, or not,²² each vote carries the same value. At election time, each citizen chooses an

¹⁹ In New Zealand we did not achieve all adults voting by secret ballot in equal electorates until 1937. It was first used in the general electorates in 1870 – 63 years earlier.

²⁰ Initially this cleavage was between property-owners and workers but as society became more complex with ethnic and cultural divides as well, acknowledging preferences became more difficult and increasingly desired.

²¹ Jane Mansbridge, "Rethinking Representation" *American Political Science Review* 97 no. 4: 515-528.

²² This is not true of all countries. Australia, for example, has compulsory voting. See Annabelle Lever, "Compulsory Voting: a Critical Perspective," *British Journal of Political Science* March (2009). <http://eprints.lse.ac.uk/23098/> (LSE Online)

electorate representative (not necessarily on party grounds) and a preferred party that supports a view of life that the citizen can accept.²³ Thus the citizen has choice. She chooses whom she wants to make decisions in her stead, to re-present her preferences as Hanna Pitkin explained.²⁴ This acknowledges the twin needs of valuing a citizen's interests and providing an efficient method of collecting citizens' preferences and thus endorsing the political authority and the efficacy of representative democracy.

Theorists such as Bernard Manin, Hanna Pitkin, Adam Przeworski and John Dunn²⁵ maintain that representative democracy establishes, competently and effectively, the necessary political authority to ensure the nation's security and stability and the law and order that supports individual rights. From an instrumentalist point of

²³ This is the theory but what motivates voters' choices is not clear-cut. See Bronwyn Hayward, "Public Participation", in *New Zealand Government and Politics*, 4th ed., edited by, Raymond Miller (Auckland, NZ: Oxford University Press, 2006): 7.1; and in the same volume: Jack Vowles, "Voting": 4.2. See also Andrew Heywood, *Politics*, 3rd ed., (Basingstoke UK: Palgrave Macmillan, 2007): 265-269.

²⁴ Hanna F. Pitkin, *The Concept of Representation* (Berkeley: University of California Press, 1967), particularly ch.6.

²⁵ Bernard Manin, *The Principles of Representative Government* (Cambridge: Cambridge University Press, 1997): 190-2; Hanna F. Pitkin, *Ibid* (1967): 54-7; Adam Przeworski, Susan Stokes, and Bernard Manin, eds., *Democracy, Accountability and Representation* (Cambridge: Cambridge University Press, 1999): 23-5; and by John Dunn, in the same volume, "Situating Democratic Political Accountability," 329-345, and *Setting the People Free: the Story of Democracy* (London: Atlantic Books, 2005): 179.

view this claim is valid. Representative government convincingly addresses the first 'fact' regarding modern states, that of size.

2.1.2: Pluralism

The second 'fact' concerning modern democracies is that they contain many groups of different persuasions. Nation-states as recently as a century ago were primarily mono-cultural. The divisions in society were socio-economic. In today's world, populations are of mixed ethnicity, have a diversity of value systems and are likely to become more so. Thus, for a government to have the authority to make decisions on behalf of all its citizens, the preferences of all citizens have to be taken into consideration; all citizens have to be treated equally. Democracy is egalitarian and a democracy worthy of the name has to demonstrate this. Representative democracy's majoritarian elections do so; all citizens are entitled to vote and all votes have the same value. Such a system provides the government with the necessary legitimacy.

Pluralism does present some difficulties. There are those who challenge the view that the majoritarian electoral system treats all citizens fairly. Certainly it gives all citizens the same opportunity to express their preferences. It is the outcome that may not deliver justice. Iris Marion Young in "Polity and Group Difference" argues that universality of citizenship assumes that citizen status transcends particularity

and difference.²⁶ Young argues that universality of citizenship in the sense of inclusion and participation of everyone in the political sphere overlooks two other meanings of universality: 'universality as generality and universality as equal treatment' and that there is no guarantee that universality of citizenship will ensure the other two. Kymlicka and Maria Bargh for New Zealand express similar views.²⁷ Brian Barry rejects this objection. His argument is that the issues of particular groups within the polity, the private sphere of life, are not the concern of the 'general will' as determined by an election in the public sphere. Where there are tensions, such as over religious dress, the rights to religious freedom and freedom of expression, these tensions need to be addressed in such a way as to include all citizens.²⁸

²⁶ See Iris Marion Young, "Polity and Group Difference: A Critique of the Ideal of Universal Citizenship," *Ethics* 99 (1989).

²⁷ Will Kymlicka, "Multi-Cultural Citizenship: A Liberal Theory of Minority Rights," *American Political Science Review* 105, no. 3 (1995); and for New Zealand: Maria Bargh, ed., *Maori and Parliament: Diverse Strategies and Compromises*, Maori and Parliament Conference Papers (Wellington, NZ: Huia Publishers, 2010).

²⁸ As an example, in New Zealand Muslim women may wear the niqab, full-face covering, if they wish but like all New Zealanders must present their full face to a jury. In 2004, two Afghani women were called as witnesses in a fraud case. They refused to uncover. A compromise was reached. They uncovered before the jury – but were screened from the public. Recently, there have been instances where Muslim women have been discriminated against in employment situations. Such behaviour is illegal in New Zealand and fines were imposed on the employer. https://www.hrc.co.nz/files/3014/2387/9042/12-Jan-2007_10-00-07_Muslim_Dress_Notes.pdf

By universalising laws and procedures the state assumes that all citizens are the same, *as citizens* to use Peter Pettit's term.²⁹ In many instances this universalisation is a good thing. For all citizens to drive on the same side of the road is sensible. For all citizens to be taught to read and write is also sensible. The problem in a plural society is which language to teach the child. It is easy for the majority language to ease out the language of smaller groups. The history of New Zealand's race relations shows this. In the early colonial period Maori was the dominant language – the missionaries and traders were bi-lingual due to necessity.³⁰ However, as the colony developed English became the official language and the numbers of native Maori-speakers steadily declined. Since the 1970s there has been an effort to reverse this trend and in 1987, Maori was made the second official language of New Zealand, all official documents are bi-lingual and Maori speakers may address the courts in Maori.³¹ Maori language schools have been set up.³² Language barriers make it problematic that all citizens are able to access the necessary information to make the appropriate choices but as New

²⁹ Peter Pettit, "The Common Good," in *Justice and Democracy*, eds, Keith Dowding, Robert E. Goodwin, and Carole Pateman (Cambridge: Cambridge University Press, 2004): 158-159.

³⁰ <http://www.nzhistory.net.nz/culture/maori-language-week/history-of-the-maori-language>

³¹ Interpreters are available for speakers of other languages through the Migrant Centres, Citizen Advice Bureaux, district health boards and specialist agencies such as www.interpret.org.nz/. They are available to help citizens of other nationalities gain the information they need to function in their new society.

³² Kōhanga Reo (language nest) for pre-schoolers opened in Wainuiomata in 1982 and the first Maori immersion school (kura kaupapa), Te Kura Kaupapa Maori o Hoani Waititi, opened in West Auckland in 1985. <http://www.teara.govt.nz/en/maori-education-matauranga/page-5>

Zealand has shown by printing official information in many languages citizens have the chance to make an informed choice.³³ Representative democracy gives every citizen the opportunity to access the information on which to make a choice.

It is argued by some,³⁴ that pluralism undermines the deliberation that precedes decision-making by producing intractable conflicts as the re-emergence of nationalism and religious fanaticism seems to demonstrate.³⁵ The ideals of a 'general will' or common good or even public discussion can seem further away than ever. Thus it is both a practical problem and one of conflicting theoretical belief. By dealing with the practical problem of political decision-making effectively, representative democracy encourages the acceptance of 'reasonable comprehensive doctrines' as outlined by John Rawls.³⁶ Being reasonable, none of the adherents of these doctrines will advocate the use of coercive political power

³³ For example, the Flag Referendum paper was printed in 25 languages.

³⁴ Robert Nozick, *Anarchy, State, and Utopia* (Oxford: Blackwell, 1974); Lynn M. Sanders, "Against Deliberation," *Political Theory* 25 June (1997).

³⁵ As the world 'shrinks' due to improved communication, a desire to retain a sense of place has led to a more fervent nationalism, particularly in less technically advanced countries. Also worldwide, fundamental religious sects have exerted more influence in the face of advances in scientific knowledge that challenge traditional belief. See an historical overview by William T. Cavanaugh, "The Invention of Fanaticism," *Modern Theology* 27, no.2, 2011, accessed October, 26, 2015.

³⁶ John Rawls, *Justice as Fairness: a Restatement*, ed. Erin Kelly (Cambridge, Mass.: Belknap Press of Harvard University, 2003): 32-38.

to impose conformity on non-believers. They will endorse Pettit's concept of the 'public interest as citizens.'³⁷

For the security of the state, dangerous cleavages in the areas of moral disagreement need to be addressed. To address differences through discussion and a process of preference-giving allows a polity to come to a resolution on matters of moral disagreement. The democratic values of equality and liberty, reciprocity and reason-giving, will thus enhance the public sphere making society the richer because of its diversity. Representative government understands the election process as harvesting the preferences of constituents' pre-determined wills and provides the opportunity for citizens with different life-views to state their case, to educate others about their concerns, particularly at election time, and thus sanction or reward their representatives.³⁸ The complexity of modern states makes it imperative for the government to have some official guidance from all its citizens as to how the country is to be governed.

³⁷ Philip Pettit, "The Common Good" in *Justice and Democracy*: ch.9.

³⁸ It is in this way that citizens of representative governments show their opinion of individual representatives and indicate who is to have the power to make decisions on behalf of the citizen body as determined by a majority vote.

2.1.3: Complexity

The 'third' fact of democracy focuses on the complexity of both the 'modern dynamic pluralist' (MDP)³⁹ environment and the *substance* of the decisions that confront governments in today's world. It is argued that only specialist knowledge can do justice to such matters. It is anticipated that experts of diverse disciplines will solve problems capably and efficiently and that although this denies the capabilities of citizens it is in their best interest. Joseph Schumpeter, as early as 1942, argued that participatory democracy was untenable in a large modern capitalist society and that for its efficiency, and legitimacy, representative government was essential. Democracy in his view is not rule by the people but rule by politicians chosen by the people.⁴⁰ This is an elitist view and a plausible one. It is disputed by many theorists who argue that citizens may not be experts but they

³⁹ Robert Dahl, *Democracy and Its Critics* (New Haven, US: Yale University Press, 1989): 251ff. Dahl categorises nation-states in relation to their stability as a polyarchy, that is, an approximation of democracy based on the accountability of the power holders through regular and competitive elections. (Definition: Andrew Heywood, *Politics* (Basingstoke UK: Palgrave Macmillan, 2007). See also Dahl, "What Political Institutions does Large-Scale Democracy Require?" *Political Science Quarterly* 120, no. 2 (2005): 187-197.

⁴⁰ Joseph A. Schumpeter, *Capitalism, Socialism and Democracy* [1942], (New York: Harper Perennial, 2008): ch. 23. See also Arend Lijphart, "Australian Democracy: Modifying Majoritarianism," in *Australian Journal of Political Science* 34, no. 3 (1999): 313-326.) Lijphart's research classifies democratic government as majoritarian or consensus.

are capable of understanding matters that concern their lives.⁴¹ The budgetary participatory assemblies in a poor district of Porto Alegre, Brazil, are an example.⁴²

Robert Dahl in his research of how modern states are governed finds that as states get larger they are less able to 'do democracy'. It is a normative ideal that requires adjustment. Polyarchy is such an adjustment. Dahl sets out seven criteria for polyarchies: 1) government decisions vested in elected officials; 2) elected officials selected and removed in regular, free and fair elections with limited coercion; 3) all adults have the right to vote; 4) most adults have the right to run for office; 5) right to freedom of expression effectively enforced; 6) citizens have access to alternative sources of information; 7) citizens have effectively enforced right to form and join autonomous associations.⁴³

Although the matter to be decided may well be complex and/or technical, citizens do have a right to be consulted because they will be affected by the decision, and any unintended consequences. Ordinary citizens may not be experts in the technical sense but they are familiar with their world and have a practical

⁴¹ That the ordinary citizen has the cognitive competence to make political decisions is spelt out by Gerry Stoker, *Why Politics Matters: Making Democracy Work* (Houndsmill, UK: Palgrave Macmillan, 2006) and John Dryzek, and Simon Niemeyer, *Foundations and Frontiers of Deliberative Governance* (Oxford: Oxford University Press, 2010), p.158-9. Susan Stokes is not so sure. See "Pathologies of Deliberation" in *Deliberative Democracy*, ed., Jon Elster (Cambridge: Cambridge University Press, 1998): 123-139.

⁴² Gianpaolo Baiocchi, "Emergent Public Spheres: Talking Politics in Participatory Governance" in *American Sociological Review* 68, 2003: 52-74.

⁴³ Dahl (1989)

awareness of how issues may evolve. This is especially important in plural societies. It is this 'expertise' that motivates their decision at election time.⁴⁴ All citizens are free to vote as they choose and to do this citizens have to assess the parties' policy-information which will be prepared by experts but still needs the public's authorisation. In all matters of moral disagreement, it is critical that citizens are involved in the decision-making process as the outcome will affect the lives of all citizens, experts and the not-so-expert alike. This pre-election consideration of information enables citizens to appreciate the pros and cons of the party manifestos. To do this effectively citizens need adequate and balanced information to be made available in a variety of media. Representative government, as a system, is able to acknowledge the complexity of problems that require solutions and provide the information that allows citizens of large, plural polities to make decisions accordingly and choose their representatives wisely. By doing so representative government upholds the core values of democracy and acknowledges the contribution of experts in the quest for a robust decision that citizens can accept.

⁴⁴ There is much research on what motivates voters. Voters may choose not to vote; they may consider which representative would best suit their particular interests, economic or social, benefit their constituency, or the nation as a whole. See Bronwyn M. Hayward, "Public Participation" in *New Zealand Government and Politics*, ed. Raymond Miller (Auckland: Oxford University Press, 2006); and in the same volume Jack Vowles, "Voting". Such variety moderates the development of a permanent dominant group.

2.1.4: Accountability

An important aspect of any type of government is accountability. Representative government, with its majoritarian system, demonstrates its accountability twice-over. At election time, constituents have the opportunity to register how accountable they find the government as a whole. First they select who they want as their electorate MP. When the votes are counted in each electorate, the total number of representatives for the respective parties determines whether the governing party will have another term in office or some other political party will become the legitimate government. As well, with MMP, New Zealand voters have the opportunity to indicate their preference for a particular political party, regardless of how they voted in the electorate. This vote determines the proportionality of the parties in the parliament. Representative democracy offers an efficient compromise that acknowledges the democratic values of liberty and equality with their attendant justice; and it offers a mechanism to measure accountability. Also in between elections it is possible for constituents to take issues to their electorate representative. This enables the representative to keep in touch with his constituency and possibly solve a constituent's personal difficulty. Any citizen may write to a Minister of the Crown on an issue to do with his/her portfolio and/or appear before a select committee. All feedback to and from representatives provides the political party with a snapshot of voter concerns

– another avenue of registering voter preferences that demonstrates accountability.⁴⁵ And there are surveys and protest groups as well as the opportunity to have one's say on social media or talk-back radio. These are more informal communication channels that possibly reach a wider audience. Between elections, although the electorate may seem silent, engaged citizens have opportunity to share their views with others. At least every three years, in New Zealand, every citizen who wants to express a preference has the right to do so in a free and equal manner without coercion of any sort. Representative democracy ensures that through the secret ballot.

An example of accountability was the *MMP Referendum and Review* in 2011, the conclusion of the 'electoral reform package' that began with the first indicative referendum in 1992.⁴⁶ The result of the 2011 referendum showed the public wanted to keep MMP.⁴⁷ In that event the Electoral Commission was required to review MMP and after two rounds of public consultations make recommendations

⁴⁵ In New Zealand the institution of the parliamentary select committees, with members appointed from all parties in parliament, discuss and debate proposed legislation thus providing another opportunity for voters' preferences to be shared.

⁴⁶ The impetus for electoral change in the 1980s was because under FPP the party that won the most electorates became the government even when they did not have the majority of the votes.

⁴⁷ 57.77% voted to keep MMP; 42.23% voted for change.
<http://www.elections.org.nz/events/past-events-0/2011-referendum-voting-system/results-referendum> accessed 10 December.

for change, if thought desirable.⁴⁸ These processes showed accountability in action. The Commission recommended two changes in particular: that the one electorate seat threshold for the allocation of list seats should be abolished; and that the party vote threshold for the allocation of list seats should be lowered to from 5% to 4%.⁴⁹ The 2011 referendum was the conclusion of the electoral reform process and the opportunity for citizens to acknowledge that their decision had been the appropriate one.

2.1.5: Summary of Representative Democracy

The 'facts' of modern democracy are indisputable. They will each be valid some of the time and therefore always need to be kept firmly in mind. Representative government gives compelling answers to all three. It is a manageable system for large polities. It 'manages' the fact of pluralism as all groups, whether political parties or interest groups, are entitled through their representatives to provide 'expert' opinion to all constituents and take the concerns of the constituents back to the government. Representative government provides efficient and informed decision-making; and in addition, it is an established system of governance which offers the polity legitimacy and accountability, together with practical solutions

⁴⁸ The first round asked for comment about MMP and how it operated. The second round was to get public feed-back on the opinions put forward in round 1.

⁴⁹ A party that wins an electorate seat is allocated party votes, even though the party may not have won 5% of the votes nationally. By having the threshold at 5% small parties were eliminated and thus did not receive their share of the party vote. These recommendations were not acceptable to the governing National Party so there has been no change.

and their implementation. Representative democracy is an instrumentalist approach to governance based on individualism and rights. According to J. S. Mill 'the ideal type of a perfect government must be representative.'⁵⁰

However, there is nothing sacrosanct about representative government as it is presently practised. Its history shows that it is eminently flexible.⁵¹ It has accommodated increased numbers of citizens, increased diversity among citizens and the increased complexity of the modern world. What New Zealand has today is a far cry from the representative system enacted for us in Britain in 1852. During the intervening 163 years New Zealand has notched up some notable 'firsts' universal suffrage in 1893 being one; others are the 'welfare state', the establishment of the Waitangi Tribunal in 1975 and our anti-nuclear stance. As circumstances change in the 21st century, certain arrangements may need to be modified to accommodate the new conditions. The trick is to be open to change and to keep firmly in the forefront of one's pondering the core democratic principles of liberty and equality and hence justice. This becomes essential as our world becomes less bound by national boundaries and we join in a world which legislates across national borders. New Zealand has legislation that supports the

⁵⁰ John Stuart Mill, *Considerations on Representative Government*, specifically ch.2. <http://www.gutenberg.org/files/5669/5669-h/5669-h.htm> - accessed October 25, 2014.

⁵¹ Adrian Little, "Democratic Melancholy: On the Sacrosanct Place of Democracy in Radical Democratic Theory" *Political Studies* 58, no. 5 (2010): 971-987.

United Nations Declaration of Human Rights and other international agreements. In 175 years, New Zealand has moved from being a colony ruled from Britain, to a small island nation managing its own affairs, to a member of the international community. Representative government, representative democracy, has enabled the citizens of New Zealand to move with the times.

2.2: The Case for Deliberative Democracy

Supporters of deliberative democracy point to three intrinsic merits. Firstly, it demonstrates the core democratic principles of liberty and equality in a conspicuous way. By participating in deliberative decision-making, citizens acknowledge one another as free and equal rational beings. Secondly, such decision-making requires that reasons be given, face-to-face. It is a transparent approach to making binding decisions. Thirdly, there is a dignity about such interactions that can contribute to civic well-being and thus reinforce a belief in justice. And, it links back to the Athenian democracy which, although imperfect, has given to ordinary citizens an exemplar that continues to be attractive.

In 1789, Abbé Siéyès addressed the French Assemble Constituante saying: it is not a question of democratic election, but of proposing, listening, concerting, changing one's opinion, in order *to form in common* a common will [my italics].¹ And in 1861, J. S. Mill was advocating 'government by discussion.'² Both argue that discussion and deliberation are justified on the grounds of human fallibility; they were, of course, referring to discussion between male citizens who owned

¹ Abbé Siéyès quoted in *Deliberative Democracy*, ed. Elster (1998): 3.

² John Stuart Mill, *Considerations on Representative Government* (1861): specifically ch. 5. <http://www.gutenberg.org/files/5669/5669-h/5669-h.htm> - accessed October 25, 2014.

property.³ Even in our political environment of universal suffrage, recent empirical studies confirm their view indicating that, although ideal deliberation is rare, group interaction sometimes works surprisingly well according to such ideals.⁴

Representative democrats will argue, rightly, that there is opportunity for discussion in the representative system. But there is a difference between discussion and deliberation: *'discussion'* is the consideration in open debate or argument for the sake of arriving at truth;⁵ *'deliberation'* is the act of weighing up and examining reasons for or against a choice or measure.⁶ The difference may be subtle but it can be instructive and will be noted in more detail later in this section. Whether discussion or deliberation or voting is the most appropriate will be determined by the setting and the issue.⁷ Many settings are relatively self-contained and their outcome likely to affect only the participants, whatever decision-making system is used. Where the outcome will affect all citizens, it is

³ Mary Wollstonecraft (1759-1797) was an early women's rights campaigner.

⁴ See: David M. Ryfe, "Does Deliberative Democracy Work?" *Annual Review of Political Science* 8 (2005): 49-71; also, Janusz Reykowski, "Deliberative Democracy and 'Human Nature': an empirical approach," *Political Psychology* 27, no.3 (2006): 323-346.

⁵ 'Truth' is hard to define as it is influenced by its context.

⁶ Both definitions are from *Merriam-Webster* (1966).

⁷ Deliberation occurs among citizens in groups associated through a common purpose such as at a school or sports club committee meeting. Deliberation also occurs between parliamentarians: at parliamentary select committees, or in caucus as well as in meetings with bureaucrats, such as Treasury officials. There is deliberation too in local government sub-committees and with citizens as has occurred in relation to LGC proposed unitary plans for Northland, Hawkes Bay and Wellington.

critical that the process be transparent, and deliberative, even if the final decision is taken by a vote.⁸

Having outlined the strengths of representative democracy in the first section of this chapter, I will now consider the significant capabilities of deliberative democracy. They are threefold: its relevance in plural polities, its transparency in decision-making and its democratic virtues. I will deal with them in that order. In each case it will be apparent that the democratic principles of liberty and equality are fundamental to the development of deliberative democracy.

2.2.1: Pluralism

Plural societies offer a challenging diversity of interests. Such diversity, if managed well, makes for a vibrant society but it can also lead to destructive tensions. Nevertheless, deliberative democracy is able to accommodate the diverse range of individual preferences in a plural society. Deliberative democracy is a process, it has a normative intention: to seek a solution to a moral disagreement that deals equally with all persons thus allowing all those affected by the decision a genuine opportunity to have their views heard; it is this opportunity to speak and be heard, listen and respond and thereby reflect on one's own thinking that makes

⁸ The Countering Terrorist Fighters Legislation Bill, enacted December 11, 2014, is an example of legislation, rushed through Parliament with only two days allocated for public submissions, which allowed little opportunity for the public to deliberate or even fathom the measures enacted. By passing this legislation, the Government has decided on the 'solution' to a number of moral disagreements: individual freedom, security, New Zealand's place in the world ...

deliberative democracy's outcomes acceptable to all reasonable people, and thus legitimate. Legitimacy for any system of governance must be morally justifiable and rationally produced – as noted by Cohen (1997). The process of deliberative democracy recognises each person's preferences as equal to all other preferences and all such persons capable of participating in the decision-making process if they wish. Although all types of democracy are a mixture of procedural and substantive considerations, it is the balance that is significant. For democracy to live up to its core principles, the system of governance must offer each citizen the opportunity to participate freely and equally in fair decision-making situations.

It is the aggregative, majoritarian focus of representative democracy that gives a government an apparently unassailable legitimacy.⁹ With each person who wishes to vote casting his/her vote, the people have spoken and the ensuing government is deemed legitimate. There are two problems here. At election time, voters vote for a bundle of policies; it is not clear where their preferences lie. They have to take the package. This gives rise to the second problem: it is the citizens' representatives who promote the policies – in ways that seem appropriate to themselves and their party. This is a crucial shift in emphasis. The voter is no longer an actor in political decision-making arrangements – except by proxy. Thus

⁹ This emphasis is the linchpin of what Carole Pateman calls 'the contemporary theory of democracy.' See Carole Pateman, *Participation and Democratic Theory* (Cambridge: Cambridge University Press, 1970). See also Adam Przeworski, "Deliberation and Ideological Domination," in *Deliberative Democracy*, ed. Jon Elster (Cambridge: Cambridge University Press, 1998):140-160. Both argue that aggregation is a crude way to assess preferences.

the citizen is denied her individual autonomy. Deliberative democracy offers all citizens who choose to participate the opportunity to express their views on the issue at hand. There will be only one issue, not a bundle of issues. Those citizens for whom this issue is important are able to participate in finding an acceptable solution. Through participating in the exchange of views and developing an understanding of the various attitudes involved, a citizen gains a more inclusive appreciation of the problem and the range of possible solutions. This is particularly relevant in plural societies. Deliberative democracy seeks a public good that all reasonable persons of all persuasions can be seen to accept – a win-win situation. This is ‘the good-faith exercise of practical reason’¹⁰ which does not happen according to a timetable but as moral disagreements arise.

There are, according to Elster, three ways in which a collective decision can be achieved: by arguing, bargaining and voting.¹¹ They can be used separately or in combination. Deliberative democracy focuses, primarily, on the speech acts of arguing and bargaining, representative democracy on voting thus revealing a differentiation in perspective: voting is procedural, impersonal, while the two speech acts are oriented towards substance and because speech acts involve more than one person each participant is both influenced and influential. In both

¹⁰ Joshua Cohen, “Procedure and Substance in Deliberative Democracy,” in *Philosophy and Democracy*, ed. Thomas Christiano (Oxford: Oxford University Press, 2003): 18.

¹¹ Jon Elster, (1998): Introduction.

representative and deliberative democracy, it is the speech acts that carry the message and thus invite further engagement and the exchange of reasons; they do this through debate, discussion, and deliberation – or some combination. These three are not synonyms; this highlights another difference. *To debate* is to contend by means of words and argument and has an adversarial intention.¹² *Discussion* and *deliberation* in their different ways further the principles of reciprocity and respect that underpin the ethical function of deliberative democracy. Such an approach, using reasons and supporting impartiality, echoes John Rawls' reflective equilibrium¹³ and Habermas's ideal speech situation.¹⁴ Both emphasise rational discourse, focus on deliberative intent, and have a well-defined procedural component, that is, Type 1 deliberation with the ultimate goal to reach understanding, or consensus. Type II deliberation involves more flexible forms of discourse, more emphasis on outcomes than process and more attention to the constraints of the 'real world.'¹⁵ It allows less formal speech, such as anecdote,

¹² The subject matter of 'debate' is contentious, as might be expected in political matters, and the style of the exchange confrontational – hence the adversarial element in the definition; as is shown in parliamentary debates and question time. 'Discussion' and 'deliberation' may address the same subject matter but the approach will focus on reciprocity and respect as appropriate at select committee hearings. Definitions from Merriam-Webster (1966) as were 'discussion' and 'deliberation', cited previously.

¹³ John Rawls, *Justice as Fairness: a Restatement* (Cambridge, MA: Belknap Press, Harvard University, 2003): section 32.

¹⁴ Jürgen Habermas, *Between Facts and Norms*, trans. William Rehg (Cambridge: Polity Press, 1996).

¹⁵ For a detailed discussion of types I and II deliberation see: Bächtiger, Andre, S. Niemeyer, M. Neblo, M.R. Steenbergen, and J. Steiner, "Disentangling diversity in deliberative democracy: competing theories, their blind spots and complementarities," *Journal of Political Philosophy* 18, no. 1: 32-63.

particularly in the initial interactions thus allowing participants to become 'acclimatised' to the situation and each other and consequently, hopefully, easing the inevitable imbalances in power, status, confidence and experience.¹⁶ Type II deliberation is broadly defined by Mark Warren to include 'all activities that function as communicative influence under conditions of conflict.'¹⁷ It is certainly a shift away from the idea of purely rational discourse which may intimidate many. Although Type II deliberation may well lead to greater citizen engagement, it does raise the issue of whether the means and the end cohere in a satisfactory way. Undoubtedly, there is greater certainty with Type I deliberation but on the other hand there is an element of detachment, intellectual and psychological, as well as physical, between the representative who engages in the deliberation and the citizens he represents.¹⁸

¹⁶ For some theorists, this imbalance is inevitable and irreconcilable: for example Schumpeter, (1942): 57ff. Others identify a contemporary democratic inclination towards some sort of cohesion between types I and II. See: Jane Mansbridge, "On the Importance of Getting Things Done," *Political Science and Politics* 45, no.1 (2012): 1-8; and Anne Phillips, "Defending Equality of Outcome," *Journal of Political Philosophy* 12, no. 1 (2004):1-19. See also Iris Marion Young, *Inclusion and Democracy* (Princeton: Princeton University Press, 2000. Young objects to liberalism's focus on impartiality and its subsequent denial of difference.

¹⁷ Quoted in Bächtiger et al. Mark Warren is a sociologist whose research focuses on community development.

¹⁸ The rise of the new technologies such as blogs and other Type II deliberation is a response to this lack of connection. It is especially attractive to youth who may not be old enough to vote, nor perhaps pay taxes, so are less engaged with traditional civic decision-making. See: Danielle Allen, and Jennifer S. Light, eds., *From Voice to Influence* (Chicago: Chicago University Press 2015).

In deliberative democracy the opportunity for citizen involvement is on-going. Representative democrats point out that deliberative democrats could take years to reach a position acceptable to all reasonable persons. This may well be true, but in that time the deliberative democrats will have been sharing opinions and information, one with another, which will contribute to a robust decision – one that is supported by those affected, and hence legitimate, and gives consent for the action taken. This is the epistemic function of deliberative democracy which along with the ethical and democratic functions gives legitimacy to the outcome – not to a group of representatives.¹⁹

The authority to govern is paramount for any administration. Deliberative democracy achieves this through the process of individual citizens, as autonomous persons, expressing their preferences in public, in an atmosphere of respect and reciprocity, what Joshua Cohen calls ‘public reasoning.’²⁰ This leads to the robust solution of a problem because it is the result of deliberation that has enabled individual citizens to review their own beliefs and preferences in the light of the information and understanding gained from other participants.

¹⁹ See John Parkinson, and Jane Mansbridge, eds., *Deliberative Systems* (Cambridge: Cambridge University Press, 2012), Introduction. They identify three functions of a deliberative system: epistemic, ethical and democratic.

²⁰ Joshua Cohen, (2003): 17-38.

Deliberative democracy differs from representative democracy in the degree and style of citizen involvement within the political system. The difference is substantial yet both systems have a similar objective – to establish the authority that gives legitimacy to the decisions taken to solve moral disagreements. Deliberative democracy arrives at its decisions, and legitimacy, by an inclusive, transparent process which is on-going and allows for the cultural and other differences found in a plural society. This contrasts with representative democracy's formal instrumental approach.

2.2.2: Transparency

A second point of difference is the degree to which the requirement for public reasoning is invoked. Representative democracy is essential in polities that are large, territorially and in population, and thus public reasoning in the Athenian sense is not possible. Nevertheless, the ideal of citizen participation remains; liberal representative democracy which was never designed for universal suffrage is the current response to that ideal.²¹ Over a century ago the number of citizens, and the ever-increasing range of their interests, promoted the development of political parties which served the interests of either particular groups or particular philosophies. As a result representatives are more likely to act as trustees (of their

²¹ One could date representative government from Locke or the American War of Independence, the French Revolution or the franchise movement of mid-19th century Britain and no doubt many other points in history. I am thinking of it as roughly a century old.

party's policies) than delegates of their increasingly mixed constituencies and thus 'public reasoning' has become less open to the public at large although still readily available to party members. Thus, bit by bit, little by little, the individual citizen, the basis of the representative democratic system, has become less visible, and less responsive – until election time. Although the initial enthusiasm for political involvement has dwindled, citizens now have access to social media and blogs as well as the print media, petitions and opinion polling.²² This issue will be addressed further later in the thesis.

In contrast deliberative democracy focuses on the in-put of the citizens, face-to-face. This is important because democracy is about contestation; it is about finding solutions to moral disagreements, solutions which all citizens will have to live by. Deliberative democracy seeks ways to enhance the opportunities for citizens to meaningfully and capably engage with each other over the issue of the time.²³

Deliberative democracy is also less likely to over-simplify an issue. The tendency to treat an intractable situation as if it is one dimensional tends to focus on the common or general aspects of the issue even though a variety of features may all

²² See John R. Hibbing, and Elizabeth Theiss-Moore, *Stealth Democracy: Americans' Beliefs about how Government should Work* (Cambridge: Cambridge University Press, 2002). Their research supports this view but posits different reasons than the prevailing participatory view. Hibbing and Theiss-Moore contend the public's angst is against self-serving politicians.

²³ Examples include the British Columbia Citizens' Assembly on representation; deliberative polls as advocated by James Fishkin, and used in Japan to gauge opinion about nuclear power; Danish consensus conferences and smaller local initiatives like Whangarei's Hundertwasser referendum.

contribute to its gravity. Thus, the issue may seem more manageable than it really is, and the solution therefore will be less robust than it might have been with greater deliberation. As well, by implication, it assumes that the situation is the same for everyone. It need not be. Democratic deliberation allows, indeed encourages, the citizens to contribute to the solution thus ensuring a broad focus; it is important that those who will be affected by a decision participate in the decision-making process and thus understand the solution's rationale, and are able to accept it. To recognise this is to respect individual difference and acknowledge that all persons have the right to choose the life that best suits them. In other words the democratic principles of equality and liberty are endorsed.

The representative process can claim to be efficient; the deliberative outcome can claim to be more robust as it is sanctioned by the citizen in person, according to each individual's own will-formation and transformation. Both have their uses! As Thom Brooks says, 'Democracy is about more than elections, democracy is also about more than deliberation between citizens.'²⁴

²⁴ Thom Brooks, "A Critique of Pragmatism and Deliberative Democracy," in *Transactions of the Charles S. Peirce Society* 45 (2009): 50-54. See also Michael Saward, "Democratic Legitimacy and Deliberative Theory," in *Democratic Innovation: Deliberation, Representation and Association*, ed. Michael Saward (London: Routledge, 2000): 66-77.

2.2.3: Democracy's Intrinsic Values

The third strength of deliberative democracy is that it demonstrates the intrinsic values of democracy; it practises what it preaches: that all citizens are equal and free to choose. Thus deliberative democracy is able to accommodate the aspirations of the diverse communities of modern polities and the expression of citizens' preferences. With all citizens able to participate in the decision-making they acknowledge, unconsciously perhaps, the democratic virtues of reciprocity and respect. The process acknowledges the normative democratic principles of equality and freedom of choice. By operating in a transparent manner a polity demonstrates its belief in these principles and thus accepts its obligation to be accountable, one to another. This in turn confirms the principle of inclusion.

Today, most populations include a wide range of interests, some cultural, some according to age and experience. There may be language differences and a range of sincerely held values. The adage 'one size fits all' might suit a T-shirt but is inappropriate for a political society. In majoritarian politics it has been shown that minorities can remain minorities and become second class citizens.²⁵ Their needs are not met. Deliberative democracy gives citizens the opportunity to seek an

²⁵ Lynn M. Sanders, "Against Deliberation," *Political Theory*, 25, (June, 1997). Lynn Sanders maintains that having civil rights without an equal opportunity to benefit from them entrenches a long-term situation. See also Young, *Inclusion and Democracy*; Young objects to liberalism's focus on impartiality and its subsequent denial of difference; also see Anne Phillips, "Defending Equality of Outcome," *Journal of Political Philosophy*, 12 no. 1, (2004): 1-19.

overlapping consensus, to use Rawls' term, and in the process come to understand one another better.²⁶ Such a position recognises the principles of respect and reciprocity and improves the chances of solving moral disagreements. It provides diverse citizens with an opportunity to share their stories, explain their values and seek common ground.

A related advantage is that deliberative democracy allows for a wide range of public groups to be involved: groups such as NGOs, interest groups, unions, the unemployed, children, cultural and heritage groups, ethnic groups, religious groups and others.²⁷ The process of deliberative democracy allows groups to arise in response to a particular moral disagreement. This flexibility increases the possibility of 'capturing' the interests and concerns of the people as a whole. Because the structure is broad and 'elastic' it can accommodate any number of groups and viewpoints; and they are able to form and disband as appropriate. This recognises that a citizen's autonomy is not a single-focus aspect of personality but the melding of many influences into a whole for that individual. Together, autonomous individuals can share perspectives and broaden their horizons – becoming more inclusive in their vision. Such initiatives have a spin-off; they can

²⁶ Rawls' restatement of his theory of an overlapping consensus in *Justice as Fairness* (2003) extends his view of comprehensive doctrines as stated in *Political Liberalism* (1993) to incorporate different, partially comprehensive doctrines thus enabling the pursuit of a common outcome.

²⁷ Representative democrats would argue that such groups are able to put their case forward. It might be to a select committee or an MP or a commission. This is not necessarily a transparent process; it is debatable as to how 'public' the reasoning is and how many citizens are involved.

foster an appreciation of what Aotearoa New Zealand means to each of us as a people.

In attempts to understand the dynamics of deliberation, attention has been directed at juries. A panel of one's peers would seem to be an example of deliberation at its best – and it may well be but research shows that jurors defer to one another and do not leave the status, power and privileges at the door of the jury room. It may be formal, rational, traditional – all good things – but perhaps not as impartial as one would expect. On the other hand restorative justice procedures focus on the needs of the victims and the offenders, as well as the involved community, rather than satisfying abstract legal principles or simply punishing the offender. Restorative justice is based on a theory of justice that considers crime and wrongdoing to be an offence against an individual or community, rather than the state.²⁸ It fosters dialogue between victim and offender - and shows an encouraging rate of victim satisfaction and offender accountability.²⁹ Juries are democratic in that they are a panel of the accused's

²⁸ Many indigenous peoples have maintained law and order in this way rather than crime being seen as an act against the impersonal state/group/tribe – a notion introduced to Britain by the Normans. The concept of restorative justice can be seen in the Maori concept of 'utu,' a concept of reciprocation, or balance. To retain mana, both friendly and unfriendly actions require an appropriate response - hence **utu** covers both the reciprocation of kind deeds, and the seeking of revenge.

²⁹ The 2011 Ministry of Justice Restorative Justice Victim Satisfaction Survey found that: 77% of victims were satisfied with the overall experience; 74% felt better after participating in the process; and 80% would recommend restorative justice to others. Offenders also expressed satisfaction at a similar level and re-offending was lower than in the control group. <http://www.justice.govt.nz/policy/criminal-justice/restorative-justice>

peers (although this can be challenged) and restorative justice is democratic in that all who are in some way involved with the crime can contribute to the resolution. One is more inclusive than the other, however, thereby reinforcing the democratic virtues of a democratic society.

2.2.4: Summary of Deliberative Democracy

Deliberative democracy is not an ideology, that is, it is not a set of ideas associated with a distinctive political standpoint as to how the world ought to be, and how the gap should be bridged between what is and the normative ideal. It is not liberalism or capitalism or socialism, or anarchism although it may seem anarchic to some. Deliberative democracy does, however, assert that the world ought to espouse democratic values and reach decisions in a deliberative manner. It is a process that may incorporate elements from many systems of political arrangement and in doing so allows citizens to gain an appreciation of other viewpoints, to accept other value systems and come to see where there is common ground on which an accommodation may be made. Critics point out that not everyone will participate, that a 'common good' is unlikely to be achieved and that the process would take forever. On the other hand not everyone votes in representative elections and deliberative democrats will reply that even those who do vote will not necessarily see their preferences acknowledged. Deliberative democrats do not expect to arrive at a common good; they recognise that that is unrealisable but what is realisable is a position civilly arrived at that reasonable people from various value systems can reasonably accept. The process may well

be slow – and even cumbersome – but everyone will have had the opportunity to participate in the process of offering and receiving information and evidence, and in the light of such discussions revisiting their own values/attitudes in a willingness to seek a solution that is acceptable to all reasonable persons. That leads to a robust decision and a community of good will.

2.3: Areas of Tension

2.3.1: Legitimation

Jürgen Habermas points out that the two sources of legitimation are conflicting. There is tension as to which should have priority: the individual liberties of the moderns in a market economy, or the rights of democratic citizens to political participation, the liberty of the ancients. In *Constitutional Democracy: a Paradoxical Union of Contradictory Principles* (1997), Habermas contends that the two concepts are interdependent; one not being possible without the other.¹

This dichotomy is not new. The concern centres round the establishing of basic rights.² Did a sovereign people's individual will-formation, together, authorise basic rights; did human-kind drift into an understanding that basic rights existed?³ If this were the case the political autonomy of citizens is embodied in the self-organisation of a community that freely makes its own laws – in the manner of

¹ A paradox is a proposition that is contrary to received opinion, or, a statement seemingly contradictory or opposed to common sense. Definitions: *Merriam Webster* (1966).

² For the 18th century English and American political activist, Thomas Paine, the natural rights of man are those that 'appertain to man in right of his existence,' that is, the liberty to think and act in a way that benefits himself and harms no other person. In *Rights of Man* (1791) Paine claims that all are born equal in rights but not necessarily in status. <http://www.gutenberg.org/files/3742/3742-h/3742-h/3742>.

³ They are commonly understood as inalienable fundamental rights to which a person is inherently entitled simply because s/he is a human being. Basic human rights are moral principles regarded as being universal and egalitarian in the sense of being the same for everyone. They include the right to life and liberty, freedom of thought and expression, and, once a rule of law is established, equality before the law. The *Declaration of Human Rights* (1948) lists 30 rights.

Rousseau.⁴ Or was the concept of basic rights put forward by a law-giver (who got the idea from somewhere) and was accepted by the sovereign body because reason suggested it was the sensible thing to do, the way to legitimise authority – in the way of Hobbes and Locke. In this case the private autonomy of the individual is guaranteed by the anonymous rule of law. Individual freedom is possible because there is a rule of law. How to rank these two principles constitutionally is a challenge. If basic rights were ‘in place’ as an outcome of individual will-formation, the behaviour was extant without the benefit of the law and therefore it is possible to argue that basic rights have priority. However, in the modern context, for authority to be legitimate, it has to comply with the rule of law and therefore if the basic human rights are not enshrined in that law, they can be ignored.⁵

Habermas argues that we should consider both principles equally original. It is his ‘intuition’ that they share co-originality. For Habermas the internal connection between the will and reason can only develop in the dimension of time and only if one understands the founding act of conceiving a constitution as the beginning of an on-going project continuing through the centuries and into the future. For Habermas a constitution that is democratic is a tradition-building project with a

⁴ Jean-Jacques Rousseau, “On the Social Contract” in *The Basic Political Writings*, ed. Donald A. Cress (Indianapolis: Hackett Publishing Company, 1987).

⁵ Modern polities enact basic human rights in accordance with the Declaration of Human Rights (1948).

clearly marked beginning incorporating the co-original partners.⁶ It exemplifies the paradox. The theory and practice of deliberative democracy supports Habermas's 'intuition.'

As New Zealand has no one written constitutional document, unlike the US,⁷ some of the specifics of Habermas's argument, particularly in regard to judicial review, don't fit the New Zealand situation. Even so, the tension between the liberty of the moderns and that of the ancients is just as real.⁸ In 1840, the Treaty of Waitangi was signed between two peoples. The colonising English brought with them a concept of law that was enshrined in statutes. Such law is positive, compulsory and individualistic.⁹ Maori had a system of law based on ideals, and therefore adhered to principles rather than rules.¹⁰ The ideals were not necessarily achievable but something to aspire to, akin to the intrinsic values of democracy. The debate as to what the parties to the Treaty actually agreed to is an example of

⁶ Habermas, *Constitutional Democracy*: 768.

⁷ The American Constitution (1789) was originally only five pages long. It now has had 27 amendments attached to it.

⁸ New Zealand does not have a written constitution but we do have the Bill of Rights (1990), and a body of law that over time has come to stand in the place of a written constitution. Since the passing of the State-owned Enterprises Act, 1986, the principles of the Treaty of Waitangi, our founding document, have been incorporated into new legislation. The subsequent court action set out a number of principles it saw encapsulated in or derived from the Treaty. Legislation thereafter is required to acknowledge these.

⁹ Habermas, *Constitutional Democracy*: 766.

¹⁰ The values were derived from korero tawhito (deliberation) and became the basis for the integrity, harmony and balance of Maori society. <http://www.justice.govt.nz/publications/2001/>.

the tension between the two views of 'law': the liberal impersonal rule of law that protects the private autonomy of citizens, and the political autonomy embodied in a self-organised community. Habermas 'intuitively' believed the two views had 'co-originality', private and public autonomy requiring each other, and that in the 'dimension of time' would become interdependent. Thus, in the dimension of time, in 1975, the Waitangi Tribunal was established.¹¹ Its *raison d'être* seems to support Habermas's 'intuition.' After 135 years, the claims made by Maori were to be addressed, and a way found to move forward in partnership, and thus address the tension between two different world views, primarily as they related to land.

This tension, I think, is also seen in opposition to legislation such as the *Foreshore and Seabed* (2004), and the sale of 49% holdings in state-owned assets (2013).¹² In both instances it was a clash between the market and the forum, as Jon Elster might put it. And as Habermas would have it, between public and private autonomy. In the first instance, a private company wanted to use a natural resource, available to all, for a commercial venture. Local Maori protested on the basis of historical possession and the Treaty of Waitangi. Legislation was drafted to place the foreshore and seabed in public ownership, overturning a court of appeal decision to allow Maori to take their case to the Maori Land Court. Maori and non-

¹¹ *Treaty of Waitangi Act, 1975*. The Tribunal is a commission of inquiry charged with making recommendations on claims brought by Māori, relating to actions or omissions of the Crown that breach the promises made in the Treaty of Waitangi.

¹² Commissions on the issue of child poverty come to mind (last of many 2013) as does the Land and Water Forum (3rd report, 2012)

Maori protested. In the second instance, the Government proposed to sell a 49% share in public assets, such as electricity generation, that had been built with taxpayer money for the benefit of the nation as a whole. The tension between a view of life based on the rule of law and one based on a concept of the public good is ever with us requiring us to address moral disagreements in a respectful manner, and transparently.

2.3.2: Autonomy

As I have set out the case for representative democracy, I have indicated the challenge of autonomy to liberalism. Liberalism understands autonomy as the capacity of an individual to rationally choose, and be able to substantiate, a life of his own making. This, according to Gerald Gaus, is 'the fundamental liberal principle' with any limitation thereof requiring justification.¹³ Isaiah Berlin's two concepts of liberty spell this out: 'negative freedom', or freedom from interference, and 'positive freedom', or freedom as self-mastery, which asks not what we are free from, but what we are free to do. As Berlin points out, these two different conceptions of liberty can clash with each other.¹⁴ Dahl's position on

¹³ Gerald Gaus, "The Place of Autonomy within Liberalism," in *Autonomy and the Challenges to Liberalism*, ed. John Christman (Cambridge: Cambridge University Press, 2005): 272-306.

¹⁴ Isaiah Berlin, "Two Concepts of Liberty," in Isaiah Berlin, *Four Essays on Liberty* (Oxford: Oxford University Press, 1969).

autonomy also acknowledges a dichotomy. As he argues, it is much easier to presume autonomy for an individual making decisions that satisfy her own self-interest than it is to presume the autonomy of collective decisions.¹⁵ Only an individual knows that individual's preferences, therefore, each individual has to be involved in the collective decision. There is no other way for all to be treated equally.¹⁶ Therefore, liberal democracy arguing in favour of personal autonomy is required to accept, as well, the principle of equal consideration of interests and hence address the issue of social justice. This is a contentious issue. The question is whether social justice is served by ensuring that all citizens have an equal opportunity for self-development regardless of the fact that individuals have varying capabilities to use their equal share – capabilities that might be genetic or environmental. To what extent is luck involved or desert?¹⁷ Legislating to prevent harm to others, for instance, can earn the charge of paternalism.¹⁸

Joel Anderson and Axel Honneth argue that liberalism underestimates the degree to which the focus on individuality reduces the opportunity of the vulnerable to

¹⁵ Robert A. Dahl, *Democracy and Its Critics* (New Haven: Yale University Press, 1989): Chap. 7.

¹⁶ *Ibid*: 123.

¹⁷ Serena Olsaretti, "Justice, Luck, and Desert," in *The Oxford Handbook of Political Theory*, ed. John Dryzek, Bonnie Honig and Anne Phillips (Oxford: Oxford University Press, 2006): 436-449. See also Andrew Williams, "Liberty, Equality and Property" in the same volume: 488-506.

¹⁸ Examples are: how fast you may drive your car, how much alcohol you can legally drink before driving; whether you may cut down native trees on your property or dam the stream.

make choices and ‘give one’s self one’s own law’ – to be autonomous.¹⁹ Rainer Forst supports this view in his article, “The Rule of Reasons,” in which he compares liberalism, communitarianism and deliberative democracy.²⁰ He argues that for individuals to develop the democratic capacities and virtues and thus be able to participate equally in the decision-making of their polity ‘a number of resources such as the basic ones of health, education, access to media and public discussion, or, complex ones such as self-respect as an independent and equal citizen, are required.’²¹ In Forst’s view representative liberal democracy, as explained by Rawls, focuses on the institution of public reason rather than the capacities of reciprocity and wide-ranging discourse among individuals. Thus public reason becomes substantiated, and set apart from a person’s autonomy, rather than being a process, by autonomous persons, to find a public reason to act – one that can be revisited if need be. This critique of Rawls’ position is supported by Amartya Sen.²² At the heart of Sen’s argument is a respect for reasoned differences in our understanding of what constitutes a ‘just society.’ People of different persuasions might, each, reasonably, see a clear and straightforward

¹⁹ Joel Anderson, and Axel Honneth, “Autonomy, Vulnerability, Recognition, and Justice,” in *Autonomy and the Challenges to Liberalism*, ed., John Christman and Joel Anderson (Cambridge: Cambridge University Press, 2000): ch.6.

²⁰ Rainer Forst, “The Rule of Reason: three models of deliberative democracy,” *Ratio Juris* 14, no. 4 (2001): 345–378 .

²¹ *Ibid*: 371.

²² Amartya Sen, *The Idea of Justice* (Cambridge, Mass.: Belknap Press, 2009).

resolution to questions of justice; and yet, these clear and straightforward resolutions could be completely different.²³ The modern conception of autonomy considers that individuals realise their autonomy by gaining independence from their consociates and thus a just society requires people to be as little dependent on others as possible; this is easier done if one is fortunate in matters of birth and background; autonomy requires self-trust, self-respect and self-esteem and these are sustained by the attitudes of others; thus autonomy is not a totally independent individual matter, as liberals would have it, as the type of environment/culture that surrounds the individual can assist or detract from the development of an autonomous person.²⁴ In the light of this, Sen argues for a comparative perspective on justice that can guide us in the choice between alternatives that we inevitably face. In other words 'justice' is not, politically speaking, an absolute but a position that we arrive at, respectfully with reasons. Will Kymlicka puts forward another argument that extends the liberal view of rights.²⁵ He considers the liberal view concerning the nature and value of community and culture, particularly as it affects two basic groups of minorities:

²³ Sen cites as examples: Utilitarians, economic egalitarians, labour right theorists, no-nonsense libertarians. It is also true for groups with different value systems.

²⁴ Joel Anderson and Axel Honneth propose a recognitional model of autonomy according to which autonomy represents an emergent property of individuals as the "bearers of certain socially situated capabilities." For a discussion of this issue see Anderson and Honneth, "Autonomy, Vulnerability, Recognition, and Justice," in *Autonomy and the Challenges to Liberalism*, ed. Christman and Anderson (2000): ch.6, and also ch.10: Rainer Forst, "Integrating Five Conceptions of Autonomy."

¹⁰⁷ Will Kymlicka, "Multi-Cultural Citizenship: A Liberal Theory of Minority Rights," *American Political Science Review* 105, no. 3 (1995).

migrant groups and national minorities such as Maori. He links the familiar liberal views on individual rights and state neutrality with the ‘fact’ of plural societies arguing for group rights. An individual’s capacity to choose how she lives her life is not entirely hers alone. The world we live in influences our choices in varying degrees; the family, and culture, we are born into sets our course. This is accepted; but for some the influence of their world denies them autonomy, as Rainer Forst maintains.²⁶

Representative democracy with its emphasis on liberty, and rights, denies some persons their equal opportunity to become autonomous and all of us the greater wisdom gained through understanding the experiences of our peers.

2.3.3: Access to Information

Access to information is fundamental to a democracy; it underpins effective decision-making in both representative and deliberative democratic systems. For constituents to make informed judgements as to what is appropriate for a given situation, adequate and fair information must be available. This is a coherent way for constituents to assess the accountability of their representatives. Alas, fair and balanced information is not always easily available.

²⁶ Rainer Forst, “The Rule of Reasons”(2001).

In modern society, the news media is the chief purveyor of information and opinion about public affairs. Last century, initially newspapers and political periodicals, and later radio, and then TV, supplied their readers or audience with information on issues of the day. These were relatively easy to monitor for factual accuracy or bias.²⁷ It was also a period when nation states, though large and complex, were more focused on internal matters; the influence of the global village was less apparent. By the beginning of the 21st century, the internet and then social media had become widespread, well-used and essentially uncontrolled with the result that the ordinary voter is unable to ensure a fair and balanced view of any specific subject unless the citizen is able to spend the necessary time and resources to investigate what is on offer. Few ordinary voters have either the skills or the leisure.²⁸

Representative democracy with its organised resources and system of policy analysts, press secretaries and media releases can certainly provide information to constituents. Whether it is fair and balanced overall is debatable. Each political

²⁷ Legislation was introduced that imposed certain standards with monitoring mechanisms and penalties. An example is the New Zealand Broadcasting Standards Authority established under the *Broadcasting Act* 1989. A self-regulatory industry initiative, the Online Media Standards Authority, was launched in July, 2013 to monitor news and current affairs on radio and TV.

²⁸ The development of technology reduced isolation in every sense of the word. New Zealand is a case in point. Our position at the bottom of the world had insulated us from many pressures but with the development of the aeroplane we could travel far and wide and with communication technology able to link us to the world at large we could be informed of events abroad as they happened. The new technologies also offered increased opportunity for individuals to connect with many others in informal and instant ways. See Danielle Allen, and Jennifer S. Light (2015).

party develops policies which it will put before the electorate for ratification at the next election. To do this effectively, political parties have developed two streams of expertise: those that develop/manage the information and those that disseminate the policies in person. The first group is responsible for gathering the complex information and data that supports the party's policies and distilling it, making it accessible to the ordinary citizen. There is no requirement for balanced argument. However, balance could be provided by the media comparing parties' policies and debating their merits. This presupposes an independent media which according to Margie Comrie has rarely been the case.²⁹ On the other hand, the second stream, that is the party's representatives, is the conduit of the policy information to the citizens and it is his/her task to persuade constituents to support the party's manifesto. Schumpeter believed that the general voter would benefit from the development of such elites.³⁰ The problem with elites, however, is their separation from the lives of ordinary citizens and the temptation for any expert group to be inclined to see things 'their way' rather than pursue a broad

²⁹Margie Comrie, "Politics, Power and Political Journalists," in *Scooped, The Politics and Power of Journalism in Aotearoa New Zealand*, eds. Martin Hirst, Sean Phelan and Verica Pupar (Auckland: AUT Media, (2011):114-127. There have, however, always been journalists from the left and right of the political spectrum.

³⁰ This argument has a very long history, beginning with Plato and advancing through the 18th and 19th centuries with Adam Smith and J. S Mill to the modern era and Joseph Schumpeter, *Capitalism, Socialism and Democracy*, (1950). For a dissection of this view see David Copp, "Could Political Truth be a Hazard for Democracy," in *The Idea of Democracy*, ed. David Copp, Jean Hampton, and John Roemer (Cambridge, Cambridge University Press: 1995):101. Our own parliament demonstrates this elitism. More and more MPs have higher university qualifications and less experience of the world their constituents inhabit.

objective; thus the temptation to be guilty of paternalism which denies a person's autonomy.³¹ Relying on elites also implies that the ordinary citizen is not capable of making complex decisions – an issue already touched on.³²

Those without resources are dependent on information produced by others. Ideally access to adequate and balanced information should be made available by an independent body, possibly the state, but of recent times independent news sources have been replaced by commercial entities. This does not necessarily result in biased reporting but it can very easily do so.³³ However, it is possible to go to the source. Parliament has its own website which documents legislation and posts relevant information about parliamentary processes and how to access them. Government departments have detailed websites. Inland Revenue provides information and services related to taxes and specific social policy services administered by the department. 'Work and Income' provides employment services and financial assistance throughout New Zealand.³⁴ Non-government

³¹ See Gerald Gaus, "The Place of Autonomy within Liberalism," in John Christman, ed. *Autonomy and the Challenges to Liberalism: New Essays* (Cambridge: Cambridge University Press, 2005): 272-306.

³² See Robert A. Dahl, *Democracy and Its Critics* (New Haven, US: Yale University Press, 1989): 97-105.

³³ See Sean Phelan, "Media Power, Journalism, and Agency," in *Scooped* (2012): 80-95. See also Stephanie Croft, "Press Freedom and Responsibility," in *Journalism Ethics: a Philosophical Approach*, ed. Christopher Meyers (Oxford: Oxford University Press, 2010): 39-52.

³⁴ 'Work and Income' is a section of the Ministry of Social Development. Others government departments are: Ministry of Health, Ministry of Education, Ministry of Justice, Department of Conservation and many more all with comprehensive websites.

organisations as well as commercial firms have informative websites.³⁵ In the modern era information is more readily available than ever before. The problem is the quantity available and the amount of time a citizen has available. And it will not necessarily be balanced making it even more important that there is discussion and deliberation.

Those with resources are able to provide information through the various media outlets that support their view on a particular issue; such partisan reportage denies access to fair and balanced information to citizens in general; and, significantly, it denies those without resources the opportunity to put their view before the public - equally.³⁶

Representative democrats assume that the provision of information is more problematic for deliberative democracy because of what might be seen as a less structured system.³⁷ Certainly, information will be available through different

³⁵ For example: the Salvation Army, Greenpeace, Amnesty International Aotearoa New Zealand, Lions Club of New Zealand, the National Council of Women and many more including 'think tanks' of which there are more than 6,600 in New Zealand including non-profit and libertarian, and charities such as the Foundation for the Blind. (www.victoria.ac.nz › Home › Centres & Institutes).

³⁶ Two examples of private individuals promoting their views are: Peter Shirtcliff in the early 1990s funded the Campaign for Better Government against the introduction of MMP. More recently, Gareth Morgan funded a flag design competition because he did not think the choices selected for the referendum honoured the Treaty of Waitangi adequately.

³⁷ See John Boswell, Simon Niemeyer, and Carolyn M. Hendriks, "Julia Gillard's Citizens' Assembly Project for Australia: a Deliberative Democratic Analysis," *Australian Journal of Political Science* 48 no. 2 (2013): 164-178. This article outlines the opposition to the project and suggests reasons for it. See also Shawn W. Rosenberg, "Rethinking Democratic Deliberation: the Limits and Potential of Citizen Participation," *Polity* 39 no. 3 (2007): 335-360; and Tiina Rattila,

sources as well as the official channels. However, deliberative democracy does give all citizens the opportunity to deliberate one with another, treating each other as equals and providing reasons for their opinions. Some will be more expert than others, some will have more hands-on experience than others; the final decision will have been arrived at in a more inclusive manner.³⁸ In comparison, representative government arrives at its decisions efficiently with each person casting one vote every three years, say, which allows the party in government to go about its business in between times, making decisions in accord with the information given to the public during the election campaign. The challenge to provide fair and balanced information is, I think, a test case for democracy of any persuasion. An informed society is like an unofficial control mechanism that keeps those with political power mindful of their responsibilities to all constituents both now and into the future.

Recently concern has been expressed about the availability of background information on Government policies. Questions have been asked about the operation of the Official Information Act (OIA) which is designed to promote access to information held by various Government agencies.³⁹ Its guiding principle

“Deliberation as Public Use of Reason – or, What Public? Whose Reason?” in Michael Saward, ed. (2000): 40-52; and Schumpeter, *Capitalism, Socialism and Democracy*.

³⁸ Aristotle recognised the ‘wisdom’ of the collective view. See *Politics*: Bk 3, 11.

³⁹ The Official Information Act was passed in 1982. “Your Right to Know” is set out at <http://www.justice.govt.nz/publications/global-publications/> Accessed: 2 December, 2015.

is that information should be made available within 20 working days unless a good reason exists under the Act for withholding it. This has not always been the case in 2015. Editorials and blogs have voiced concern.⁴⁰ A strong democracy requires transparent deliberation by its representatives and a media that comments on those deliberations.⁴¹ The integrity of the OIA is vital if the public is to be well-informed by the media or their own efforts. The dissemination of balanced information is one of the ways citizens hold their representatives accountable, as Gordon Campbell observes.⁴² It is this transparency that keeps the citizens informed and ensures the integrity of their representatives in parliament.⁴³ Access to vital information allows citizens to make informed decisions. Whether it is a deliberative or representative decision, to be robust it must be able to be accepted by reasonable people.

⁴⁰ “Safety, trust and transparency” in <http://www.odt.co.nz/opinion/editorial/365561>, accessed 24 December, 2015; also <http://www.stuff.co.nz/dominion-post/comment/editorials/74763977/>, accessed 24 Dec., 2015.

⁴¹ *Integrity Plus* (2013) although positive about the New Zealand media in general, expressed concern at the low profile of investigative journalism. <http://www.transparency.org.nz/docs/2013/Integrity-Plus-2013-Pillar-11-Media.pdf:262>, accessed 10 December, 2015.

⁴² <http://gordoncampbell.scoop.co.nz/2015/11/05/gordon-campbell-on-holding-the-powerful-to-account/>, accessed 20 December, 2015.

⁴³ This point is well-made by Andrew Geddis: <http://www.pundit.co.nz/content/comes-the-rule-with-no-exception>: accessed 20 December, 2015.

2.4: Conclusion

Having sketched the main differences between representative liberal democracy and deliberative democracy, it seems to me, provisionally, that each needs the other. It is essential that there is an efficient way to make binding decisions for a large polity, one that recognises the principles of freedom and equality. At the same time, it is necessary that the citizens of that polity are able to participate in the decision-making processes in such a way that their preferences are genuinely sought and acknowledged. These two objectives are not mutually exclusive; they could, I believe, be mutually supportive so as to provide citizens with a blended system that emphasises efficiency with inclusion, reason-giving and respect. Politics is about contestation; it will be adversarial but it need not be a tussle between ideologies; it could be an exchange of ideas with the emphasis on fair outcomes.

In this chapter, I have outlined the theories of representative and deliberative democracy that have influenced the way democracy is practised in the 21st century. In the next chapter, Chapter 3, I consider the two theories in action. The two case studies are complementary. The first, the Northland by-election, is an example of representative democracy, while the second, the LGC's *Proposal for the Reorganisation of Local Government in Northland*, demonstrates the deliberative model. In each case, I indicate how the model acknowledges the preferences of citizens.

Chapter 3: Two Case Studies and an Observation.

In this chapter I outline two events that took place in Northland, New Zealand, at the end of 2013 and early 2014: the Local Government Commission's *Proposal for the Reorganisation of Local Government in Northland* and the by-election for the Northland electorate. The opportunity to focus on these two events was fortuitous for my thesis as they independently demonstrated how the two models of democracy addressed the core values of democracy in the acknowledgement of citizens' preferences.

I posed eleven questions, using the same format for each case study:

1. Who were involved?
2. What purpose was addressed?
3. What democratic processes were involved?
4. How was the decision arrived at?
5. Does the process involve all citizens?
6. What critical issues were addressed?
7. How adequately are the core values of democracy addressed?
8. How well were the preferences of the citizens acknowledged?
9. What does the result tell us?
10. What happens next?
11. How well does the case study fit the model of either representative or deliberative democracy?

In addition, in 2014, the WDC's Hundertwasser project 'resurfaced.' This long-running debate offered the opportunity to observe local government in governance mode. Although not part of the original thesis 'design,' it is worthy of inclusion as an example of the specifically local issues that councils and citizens are required to address. It gave me the opportunity to observe a local government initiative. Unlike the case studies, the decision-making process was not laid down by statute but shaped by the elected local representatives' desire to reach a conclusion/solution that its constituents could reasonably accept

In Chapter 4, I reflect on the case studies and observation and suggest how the Northland region could benefit from a 'blended' system.

Case Study 1: Northland By-election, 2015.

Who were involved?

On March 28, 2015, the Northland electorate went to the polls.¹ The occasion was the unexpected by-election made necessary when the Member of Parliament (MP) for Northland, Mike Sabin, vacated his seat six months after the General Election of September, 2014. All NZ citizens and permanent residents registered on the electoral roll for Northland were eligible if they had lived in the electorate for at least the last month and were over 18 years of age.

The conduct of the election is the responsibility of the Electoral Commission as set out in Electoral Act 1993.² The Commission with paid staff and local volunteers set up 250 polling places open on Election Day from 7am till 9pm with the on-the-night final results available by 10pm. They organised the voting papers, established procedures for international and advance voting, as well as publicising the by-election and the need to register to vote. The Commission also handles the nominations from candidates. Potential candidates do not have to be resident in

¹ The Northern Region contains two electorates, Northland and Whangarei, a small, more industrial and affluent enclave. 'Northland' in this case study refers to the electorate; in case study 2 it refers to the region.

² Electoral Act 1993, passed to incorporate the changes required for the implementation of MMP and subsequently amended: latest no. 97, 2014.

the electorate but they do have to have been in NZ for the previous three years and be a registered voter.

There were 11 nominations.³ Public interest, however, centred on three: Mark Osborne, the National candidate, the asset manager for the Far North District Council (FNDC), Kaitaia, and a relative new-comer to Northland and politics; Winston Peters, already a list MP for New Zealand First, born and bred in Northland, and of Ngati Wai descent. Peters has been a politician for 40 years and has held ministerial positions with both Labour-led and National-led governments. Although Peters lives in Auckland, he is well-known in Northland.⁴ Willow-Jean Prime, the Labour candidate, of Ngapuhi descent, is also a born and bred Northlander; she unsuccessfully contested the seat for Labour in the 2014 General Election. Prime, a lawyer, has established her own consultancy business handling whanau, hapu and community projects as well as Treaty of Waitangi claims and settlements thus interacting with a broad range of people and issues.⁵ She is a FNDC councillor.

³ There were 11 nominations for the Northland by-election: Adrian Paul Bonner – Independent; Joe Carr - Focus New Zealand; Robin Grieve – ACT; Maki Herbert - Aotearoa Legalise Cannabis Party; Adam Holland – Independent; Mark Osborne – National; Rob Painting - Climate Party; Winston Peters - NZ First; Reuben Taipari Porter – Mana; Willow-Jean Prime – Labour; Bruce Rogan – Independent

⁴ The Peters family are well-known in Northland. Winston Peters grew up in Whananaki and has a house there which he visits frequently from his home in Auckland. Whananaki is mid-electorate.

⁵ Prime: http://campaign.labour.org.nz/willow_jean_primed_for_action

The candidates are the public face of a sizeable political machine that includes the campaign manager for each candidate. Like the candidate, s/he may be from out-of-town but all electoral campaigns depend on the efforts of local supporters. They knock on doors, deliver leaflets and encourage citizens to vote and thus are central to the success of their party's campaign. Each campaign team arranges venues, decides on tactics, and disseminates policy information with the aim to get alongside as many voters as possible and persuade them that their candidate's policies are in the citizen's best interests. The focus for both citizens and media⁶ is the candidate and his/her delivery of party policy.

The Northland campaign illustrated contrasting approaches. Peters had a 'lite' blue bus of middling age which toured the electorate day after day, being seen everywhere, in large and small townships. The colour of the bus, 'lite' blue, is saying to voters 'we, NZ First, are a centrist-right-leaning party – but less conservative than the National Party.'⁷ It is a bit 'edgy', has a touch of humour and is in keeping with the candidate's confidence. Media clips of Peters showed him in his navy or lighter blue suit, relaxed, chatting with people in the street, getting on and off the bus with a smile, often seemingly on his own. It seemed a very natural 'day at the office'. He seemed approachable; and his message was focused on

⁶ TV, radio, print and social media were all active during the be-election campaign.

⁷ The National Party has a darker, bright blue. National 'lite' is a *tidy* way to describe NZ First.

Northland.⁸ There were not many clips of Prime on TV but those few showed her dressed in red and black,⁹ smiling, chatting with groups, surrounded by friendly faces¹⁰ and only occasionally with Labour Party leader, Andrew Little, or other Labour MPs. In contrast Mark Osborne, the National candidate, was shown in the media with as many as four maybe five senior National MPs or officials, usually male – and all in suits of grey. They travelled in the ministerial BMWs which seemed if nothing else ‘tactless’ in an electorate where owning a car and maintaining its road-worthiness is a struggle for many. Often it was the senior MPs who did the talking. This did not allow voters to get to know their possible MP, an aspect of the campaign that emphasised the distance between the ‘unknown’ and the voters. Osborne chose a more informal dress code which highlighted the ‘distance’ between him and senior party members. It may well have reflected his personality better and been in tune with the more relaxed dress codes of the region but it isolated him – this time from his own ‘team’.

What purpose was addressed?

The official purpose of the by-election was to elect a replacement MP for the vacating incumbent. This is obligatory unless the necessity arises within six months of a General Election.

⁸ Peters has over time raised some issues repeatedly. An example is immigration. Immigration is not a pertinent issue for Northland; it has not been raised during the campaign.

⁹ Party colours: red for Labour; red and black for Maori.

¹⁰ Prime’s campaign team, headed by her sister, Season-Mary Downs, is female – no uniform.

From the constituents' point of view, the by-election had a two-fold purpose. It was the formal opportunity to select the candidate they preferred to represent them and their electorate in parliament. It was also an opportunity for citizens to affirm the Government's policies or to register their dissatisfaction. In this very broad sense of either 'for' or 'against', the constituents had the opportunity to state their preferences.

The opposition used the catch phrase "send them a message" to invite the supporters of all opposition parties to cast their vote for the most popular opposition candidate, Winston Peters, and thus indicate to Government the strength of their feelings.

What democratic processes were involved?

Democracy is based on the belief that everyone has equal rights and is entitled to participate in the democratic decision-making processes that affect their ability to live the lives of their choice. In the circumstances of any election, this begins with the selection of the party's candidate which, nowadays, is dominated by the party's central office. The New Zealand Labour Party Council develops their Strategic Selection Criteria in close consultation with the Parliamentary Caucus;

the branches and regions follow this directive; their nominees are vetted.¹¹ The National Party's process is similar except for the 'candidate's college' which selects potential prospects and trains them for the selection process at branch level and the final selection board.¹² The concepts, 'of the people' and 'by the people', are honoured to the degree that the hierarchy has been democratically selected and refrains from top-down decision-making. The decline in party membership in recent years means the number of citizens involved in the selection of the party candidate has also declined.

Labour chose Willow-Jean Prime who had acquitted herself well in the 2014 General Election six months previously. NZF chose Winston Peters, a seasoned campaigner. Although the public was not involved with these decisions the logic of them seemed clear. These candidates knew their party's policies and protocols. And the people knew the candidates. The National Party's choice, Mark Osborne, was new to politics, and did not appear to be familiar with National's policies, nor his prospective constituents. Candidate selection is important; the candidate is the party's representative in the electorate and needs to be able to reach out to all

¹¹ The Labour Party selection process is set out in *Labour Constitution and Rules*, 2014. The size of branch and the number of voting delegates is outlined in considerable detail.

¹² The process is set out in *Constitution and Rules of the New Zealand National Party*, 2013. In a National Party news release, President Peter Goodfellow said: National runs a robust and highly democratic selection process. Applicants must first complete a formal application and then face a pre-selection panel interview. Successful applicants then go before local party members for a final selection to elect the candidate who can best represent the electorate. <https://www.national.org.nz/news/news/media-releases/detail/2015/02/02/national-opens-selection-for-northland-by-election-candidate>

citizens. This is a particular focus for by-elections where there is no second vote for the party of the citizen's choice. All is won or lost by the candidate who gets the most votes. Proportionality is not involved at the electorate level. Campaigning is a challenge and to select someone who has had no experience in such an environment is a risk.

All three parties held public meetings where the candidate outlined their party's policies and answered citizens' questions. All three gave out information in pamphlet form and by formal and informal gatherings with their candidate; all three had local supporters 'door-knocking' and urging people to go to the poll on March 28. The media, particularly TV but also radio, interviewed candidates, reported on events, and with observers and experts discussed the issues and the candidates' prospects. The print media carried reports and political analyses. Friends and families and workmates discussed those issues particularly relevant to themselves. The social media engaged in on-going debate. All of this suggests there was dissemination of information. What seemed to be missing was in-depth analysis, supported by reasons, and balance. Most TV 'information' was in sound bites on the news bulletins although there were programmes that ran more in-depth analysis.¹³ Radio kept abreast of the campaign and interviewed candidates

¹³ TV1's *Q & A* and TV3's *The Nation* in particular.

and commentators.¹⁴ In newspapers and some social media sites, for example, blogs, there was some investigative work on the issues that dominated the campaign, poverty and unemployment, but social media, in particular, was prone to unsubstantiated opinion.

The democratic process could be seen to be at work but it was also noticeable to this observer that the costs and benefits of policy issues were not adequately addressed thus limiting the ability of the citizen to make an informed decision.

How was the decision taken?

After the month of the official election campaign,¹⁵ the constituents voted – one person, one vote, one value – in a free and fair election. Voters expressed their preference, by secret ballot, in the numerical way, that is, First-Past-the-Post (FPP). By-elections do not include a party vote. Strategic voting by opposition voters as suggested by Labour brought about the defeat of the National candidate.

Does the process involve all citizens?

The process is certainly set up so that all citizens registered on the General Roll who want to cast a vote may do so with minimum inconvenience and no coercion.

¹⁴ Radio New Zealand's *Morning Report* for example, and talk-back shows such as *Newstalk ZB*.

¹⁵ The campaign officially began on March 3, 2015. The timetable is set out in accordance with section 129 of the Electoral Act (1993).

29,590 of the 45,955 registered voters¹⁶ in Northland cast their votes in 250 polling places.¹⁷ An estimated 5000 eligible citizens did not register to vote – mostly in the younger demographic. These figures suggest a similar awareness of the democratic responsibility to vote as at the General Election in 2014 when 65.4% of registered voters.¹⁸

However, the electorate overlaps with the Maori electorate of Te Tai Tokerau so many Maori voters who live in Northland would not be eligible to vote in this by-election which is for a representative for the General Electorate of Northland. Kelvin Davis, Ngapuhi, holds the Te Tai Tokerau seat for Labour and assisted during the campaign.

Each party presented their policies without hindrance and is required to be transparent as to funding and support.¹⁹ Under law, TVNZ is required to screen opening and closing statements for all parties contesting the election.²⁰ Television interviews, newspaper articles and advertising, billboards, leaflets, social

¹⁶<http://www.scoop.co.nz/stories/AK1504/S00152/northland-by-election-official-results>.

¹⁷ Specified polling booths accepted advanced voting and international votes were also received.

¹⁸ <http://www.elections.org.nz/events/2015-northland-election-0/northland-advance-voting-statistics>

¹⁹ *Electoral (Finance Reform and Advance Voting) Amendment* bill, which Parliament passed by a majority of 116 votes to 5 has clarified the funding issues.

²⁰ This requirement is presently being challenged by TVNZ on the grounds that it is a fully commercial entity and these broadcasts (during prime time) rate very poorly - in an industry where ratings matter. But for democracy it matters that information, without bias, is readily available to all.

networking sites and open meetings are available to all citizens without favour.²¹

Whether the citizen chooses to engage with the electioneering material is the citizen's democratic choice.

Critical issues addressed

The opposition parties, Labour and NZF, repeatedly pointed out that Northland had been won by National since NZ changed to the mixed member proportional (MMP) voting system, and had indeed returned National MPs previously under FPP. The National-led government had had time and opportunity to at least begin to address the problems. Yet, the electorate is still beset with the problems of unemployment, with a lack of educational training centres,²² poverty, poor housing, and the ill-health that comes from both. Nor does it have an adequate 21st century infra-structure. The issue is huge and needs addressing on all fronts simultaneously. The He Korowai Trust of Kaitaia understands this.²³ As does the iwi, Te Rawara, also centred on Kaitaia. The severity of the problem was highlighted, as was the inadequacy of the Government's proposals, but no tangible solution was offered.

²¹ Billboards and hoardings must be removed by midnight of the day before the election. There can be no electioneering of any sort on the day itself.

²² The dilapidated state of Northland College is another example of educational neglect. No child should have to get its education in a leaking, run-down and unhealthy environment. See Kristy Johnson, "The worst classrooms in New Zealand," *NZ Herald*, 3 June, 2015; and Jessica Roden, "Red tape 'stalls' School's Up-grade," *Northern Advocate*, 4 June, 2015.

²³ 'Foundation North' is the new name of the ASB Community Trust which funds not-for-profit organisations in Auckland and Northland. The He Korowai Trust is one; it focuses on housing.

The Government's answer was to announce that it would be up-grading ten one-way bridges.²⁴ Of the ten bridges, only one, Kaeo Bridge, is rated a priority by the Northland Regional Council (NRC). Two others are ear-marked for up-grading in the NBC's long term plan, when funds permit. The other seven do not, in the NRC's view, require attention. Conservationists were surprised, and dismayed by some of the bridges listed.²⁵ It is true that some, like the Darby and Joan Twin Kauri Bridge, are on tourist routes and Northland does not want to deter tourists. However, maintaining the beauty of the natural environment is more likely to attract appreciative tourists even if they have to slow down for a one-way bridge very occasionally. Northlanders saw this offer as a bribe, and were offended by it. These ten bridges were to cost up to \$69m,²⁶ a figure that if spent wisely on such infrastructure as sewage schemes and water quality, and sought solutions for the current social ills, would greatly improve the quality of life for everyone in Northland.

²⁴ The 10 bridges are Taipa Bridge, Kaeo River Bridge, Waihou River (Rangiahua) Bridge, Tirohanga Stream Bridge, Taheke Bridge, 2 over Waimamaku River (Hallahans and Lowes Bridges), Darby and Joan Kauri Bridge, Matakohe River (Hardies) Bridge, and Andersons Bridge.

²⁵ Geddis, Andrew, "To call each thing by its right name." <http://pundit.co.nz/content/>. And for another opinion see: Cameron Slater, *Matthew Hooton on Northland's Bridges* - accessed March 16, 2015. <http://www.whaleoil.co.nz/2015/03/matthew-hooton-on-northlands-bridges-too-far/>

²⁶ Lindy Laird, "Funding for 10 bridges up in Air," (*Northern Advocate*, 26 March, 2015). Laird reported that the New Zealand Transport Authority (NZTA) revealed the bridges may not meet their funding criteria.

The pork-barrelling did not stop there. The Government also announced that the extension of the State Highway 1 motorway from Puhoi to beyond Warkworth would be brought forward.²⁷ This section of the State Highway 1 is known as the 'Holiday Highway' because over holiday periods such as Easter, Christmas and school holidays, and on long weekends, like Queen's Birthday, its usual traffic flow is augmented by holiday-makers going north to the beaches - particularly those on the Mahurangi Peninsula in the Rodney Electorate but also those further up the coast to Lang's Beach and Waipu in the Whangarei Electorate.

This would presumably deliver more tourists which, no doubt, would be 'a good thing' but it will have little impact on the quality of life for those Northlanders 'up north'. It would certainly make commercial trucking more efficient – as far as the highway goes. The second section from Warkworth to Wellsford on the southernmost boundary of the Northland electorate would have more immediate impact on the electorate. However, the roads in the north will still be in need of maintenance.²⁸ As a way of combatting the damage done to roads by heavy

²⁷ This motorway extension is deemed 'a road of national significance'. The objectives for the project are:

- To enhance inter regional and national economic growth and productivity
- To improve movement of freight and people between Auckland and Northland
- To improve the connectivity between the growth areas in the northern Rodney area
- To improve the reliability of the transport network through a more robust and safer road between Auckland and Northland.

Other benefits include reducing congestion during peak periods, and improving economic development and tourism opportunities in Northland.

<http://www.nzta.govt.nz/network/projects/puhoi>.

²⁸ Matt L. (31 December, 2014) claimed the public have yet to see any real economic analysis for this project, accessed 27 April, 2015. <http://transportblog.co.nz/tag/puhoi-wellsford-motorway/>

logging trucks, in particular, the NZF candidate, Peters, campaigned for extending the rail network which has been allowed to decline. An electorate such as Northland which is long and thin and sparsely settled does not have a high rate-take but, like other regions, it does have many kilometres of roads to maintain, possibly more than most. It is a sad reflection that representative government, of the people by the people for the people, can produce neglect of some of the people for a very long period.

New Zealanders expect orderly government in which spending is prioritised and distributed in acknowledgement of citizens' preferences and need, preferably at a safe distance from political interests. The Government did not appear to be listening to the people.

How adequately were the core values of democracy addressed?

The core values of democracy, equality and liberty, are addressed in regards the conduct of the election, right up to the voter entering the ballot booth. There, the voter has to put a tick beside the candidate she prefers. At election time, the political parties put bundles of policies before the citizens in their attempts to win the citizens' votes.

Representative democracy makes two assumptions at this point: that every voter will endorse all the policies of a single party; that no voter will want to endorse policies from more than one party. Some voters do not fit either category, and, therefore, feel excluded, and may not vote at all. This is, of course, the citizen exercising her freedom of choice. But it is a choice made in response to a system that has no mechanism to adequately acknowledge her preferences. This is significant as it skews the formal acknowledgment of preferences and does not distinguish between a citizen who does not bother to vote and the sincere voter who does not vote because she does not think the bundles of policies, as presented, address the issues of the day adequately.

In an electorate such as Northland which is elongated, mostly sparsely populated but interspersed with sections of more affluent urban centres,²⁹ the FPP procedure, coupled with the practice of bundling policies, can give a distorted 'picture' of the citizens' preferences. This is exacerbated, particularly in the Far North, where there is a high Maori population many of whom have chosen to register on the Maori roll and therefore are not entitled to vote in the by-election for a general electorate seat.³⁰ This possibly skews the vote as to win the seat a

²⁹ There are four population centres of some size: Kaitaia (5590), Kerikeri (7050) and Kaikohe (4380) in a cluster to the north and east of the Far North District, and Dargaville (4780) further south and on the west coast. The city of Whangarei and its environs have been a separate electorate since 1972. It is a pocket of greater prosperity and does show improving employment and economic development.

³⁰ Northland electorate had 4434 registered Maori voters and 1957 Maori who were enrolled but did not vote.

political party may choose to canvass the votes of the more affluent and politically engaged south. This would mean the core democratic values are not being addressed equally for all citizens of the region.

The fact that the theme of neglect is long-standing, and Northland part of NZ's poorest region, suggests that the Government has not been governing in the interests of *all* New Zealanders as one would expect in a democratic polity. Equality of opportunity to express a preference at election time does not appear to have brought with it the equality of opportunity to live the life of one's choice. The concept of governing 'for the people' has not been adequately met.

How well are the preferences of the people acknowledged?

It is debatable how well the preferences of the people were acknowledged for two reasons. A by-election is usually an unexpected event, as was this one. The ground work that goes into the gathering of preferences for a General Election continues throughout the parliamentary term – three years. In this case there was two months which gives little time for in-depth analysis. The second reason, which also applies to General Elections, is that political parties bundle their policies together, as already stated. Voters are not asked to prioritise their policy preferences.

<http://www.elections.org.nz/events/2014-general-election/election-results-and-reporting>
Statistics for Northland Region give the Maori population as 43,527 with 17,604 living in the Whangarei electorate. Therefore approximately 26,000 live in the Northland electorate.
<http://www.stats.govt.nz/Census>.

Although the opposition parties' general theme was one of neglect there was no way a voter could indicate that the most serious concern for her was social neglect which could refer to health or housing or education, to list three. But perhaps the voter's most pressing concern was the neglect of economic development. There was no opportunity for the voter to indicate that her concern was about employment opportunities, or training, or support for local initiatives, once again to list three.

The opposition parties, especially Labour, focused on the issues of poverty and the consequences of children being raised in sub-standard housing, and hungry. It pointed out the need for wrap-around services so that the next generation could genuinely aspire to health, education and the opportunity to escape poverty. NZF hammered home the theme of neglect by National-led governments. These themes certainly picked up the dissatisfaction within the electorate, especially in the North.

Neither the Labour Party nor the National Party put forward a raft of solutions, a vision of the future. The Government's offering of non-essential infra-structure is not a solution. Both parties used information from the *Ministerial Committee on Poverty* (2015) (the last of many reports) and statistics available from the *Census* (2013). The National Party pointed to improved employment figures but they were for the Northland *Region* and therefore included Whangarei and environs, that is,

the Whangarei *electorate*, which is making a slow economic recovery.³¹ The National Party as the party in Government had the advantage of its policy-making powers to offer voters various pledges such as the bridges and high-speed internet which has been a carrot to the residents of Northland region for some time.³² However, the Government offered no specific new policy that would act as a change mechanism.

No party formally collected information from the citizens but the pollsters did.³³ Candidates listened to citizens' views but primarily the focus was on each party telling the electorate's citizens what it would do for them. In an adversarial setting this is to be expected but it is an uneven contest. In a by-election, the party in power has an obvious advantage. It is able to fulfil the promises, unless blocked by legislation. The opposition parties of Labour and NZF challenged the integrity of the promises. Time will tell.

Deliberation is slow and unsuited to the format of an election campaign. Representative democracy with its emphasis on procedure and data seems more

³¹ Whangarei is a separate electorate. The Electoral Commission is charged with altering electorate boundaries so that they are approximately the same in population size, *and*, community of interest.

³² The Prime Minister said that ultra-fast broadband would significantly boost Northland's tourism, business and employment prospects. <http://www.radionz.co.nz/news/regional/268522/northland-receives-broadband-funding>

³³ For example, surveys by political pollsters 3News-Reid Research, and Colmar-Brunton.

in control of the situation, a situation where the intrinsic values of democracy such as respect for others, and reciprocity, can easily be forgotten.

What does the result tell us?

Winston Peters (NZF) won with a majority of 4441. Osborne was second with 11,347 votes.

It is true that by-elections are notoriously fickle. BUT it is at by-election time that an electorate can overcome being swamped by the majority of the nation's electorates and be seen with greater clarity. No individual likes to be ignored, nor does a group of citizens. Democracy, representative or deliberative, is supposed to be 'making decisions that take into consideration the preferences of *all* the people'. 'Fickle' by-elections may be (I think *are*) trying to tell us something about the democratic process: that it does not adequately acknowledge the policy preferences of the citizens; that it does deliver the numerical democratic authority to govern but not the obligation to govern with the interests of all the people in mind.

The Northland voters' choice for their new MP of a charismatic local personality whose political career has never shied away from controversy suggests that the by-election gave Northland voters the opportunity to select a candidate who may make a difference. It was an opportunity to highlight their concerns to the National-led government which had held the seat for so long.

What happens next?

The by-election result altered the proportionality of the House as set by the 2014 General Election as National lost a seat and NZF gained one. Winston Peters, on becoming the MP for Northland, vacated his list seat which went to the person next on the NZF list, Ria Bond. NZF now has 12 MPs in Parliament. The Government, even though it has lost an MP, still has the confidence of the House thanks to support from three minor parties: ACT, the Maori Party and United Future. It is a less amenable political environment for the Government.³⁴ To ensure that the Government's legislation is passed, some accommodations may have to be made, possibly to the point that the legislation does not address the purposes of the Government. Negotiation will be required. Amendment of the Resource Management Act (1991) is such a case. In 2013, the Government could not get the numbers to pass its proposed amendments which many felt undermined the environment protections of the original act. The position since the by-election will be no easier.

The by-election has changed the dynamics of the Opposition.³⁵ With the government's ability to pass its legislation curtailed, the opposition parties have a greater opportunity in the cut and thrust of political debate to range more

³⁴ Composition of the House of Representatives: National (59), Labour (32), NZF (12), the Greens (14), the Maori Party (2), United Future (1) and Act (1). Total: 121.

³⁵ To pass legislation the Government requires support from two of its support parties.

pertinently over an issue. This change of dynamics is heightened by changes to the party leadership in Labour and the Greens and by the new MP for Northland who has given notice that he plans to take the Government to task.

How well does the case study fit the model of either representative or deliberative democracy?

The case study of the Northland by-election fits representative democracy to a 'T'. It is fair, numerically speaking; it is efficient; it achieves a legitimate representative for the electorate; and it is an effective measure of accountability. It is a procedural approach to democracy. It can demonstrate that all citizens are treated equally, that they are free to vote as they choose and therefore the representative chosen is the electorate's legitimate representative.

What the by-election procedure cannot demonstrate unequivocally is that the preferences of all citizens are adequately acknowledged. Nor can it demonstrate the intrinsic qualities of democracy: the core democratic value of equality, or the principles of respect and reciprocity. A different voting system, such the single transferable vote (STV), would offer more opportunity for voters to indicate their preferences but it, too, has its drawbacks.³⁶ However, a by-election is to select a representative for the constituency. Representative democracy does this with a

³⁶ With STV voting, voters rank the candidates they want to vote for. Counting the votes is more complex. It is used by Dunedin, Greater Wellington, Kapiti Coast, Marlborough, Palmerston North, Porirua and Wellington Councils.

minimum of 'fuss' and in a timely manner. Deliberative democracy is not designed for such a purpose.

Deliberative democracy is not suited to an election campaign numbering weeks. Its object is not to secure a final outcome but seek a solution to a moral problem that can be accepted by all reasonable persons in a plural society. This takes time. Deliberative democracy is on-going not episodic; it does not fit into the normal interval of three years between general elections as we have in NZ. Deliberative democracy is reciprocal and conducted with respect for each person, seeking to find reasons that, in a plural society such as NZ, can be accepted, whether it is because citizens approve the solution or because they can accept the reasons for it.

There was some evidence of deliberative democracy at work in the Opposition's 'send them a message' campaign and certainly Labour and NZF had listened to the complaints of neglect but there was little time to deliberate. The National Party campaign policy of telling the citizens what it, the Government, would do for them was the antithesis of deliberative democracy.

Case Study 2: Draft Proposal for Reorganisation of Local Government in Northland.¹

MIHI

Nei rā te Kōmihana e mihi atu ana ki a koutou
ngā hapū ngā iwi o Muriwhenua whānui.
Tēnā koutou ko ngā waihotanga o rātou mā i tēnā marae
kāinga i tēnā hāpori, te mana whenua i te hiku o te ika.
Ko te tūmanako, he kaupapa pūrangiaho,
he kaupapa mārama ēnei kia taea ai koutou
ki te whakahoki whakaaro mai ki a mātou te Kōmihana.
Nau mai haere mai ki te whakarongo
kōrero ki te whakaputa whakaaro!
Nāku, nā
Basil Morrison,
Tumaki, Mana Kāwanatanga-a-Rohe²

Translation

To everyone in all Northland communities, greetings.
In acknowledging you, we acknowledge also the people of old,
through whom you come to live in this land.
We hope our proposals are clear and understandable,
allowing you to make submissions to the Commission.
Please take part in discussions, and express your views.

¹ Local Government Commission, *Draft Proposal for Reorganisation of Local Government in Northland* (Wellington: Local Government Commission, 2013). (As printed; however, a fluent speaker of te reo has indicated to me that the format is not the best.)

² A literal translation of *Mana Kāwanatanga ā Rohe* is “the authority for governance of districts.”

*Basil Morrison,
Chair, Local Government Commission.*

Who were involved?

As the *mihī* states everyone in Northland is involved.³

The proposal for the reorganisation of local governance in the Northland Region was formally presented in November, 2013 by the Local Government Commission (LGC) as an independent agent of the Government. This was in response to an application from the Far North District Council (FNDC) in December, 2012, to become a self-contained unitary authority. This application was accepted by the LGC as it met all legal requirements. However, in the view of the LGC the affected area of the application reached beyond the FNDC to the whole of Northland which includes the district councils of Whangarei and Kaipara as well as Far North.⁴

Throughout 2013, the LGC held meetings throughout the three Districts of Far North, Whangarei and Kaipara and with the Northern Regional Council (NRC). They met with the existing councils, representatives and officials, iwi, and specialist groups such as farmers, the business community and a range of experts.

³ ‘Everyone’ does not mean only those present at this time – men, women and children; it incorporates the aspirations of past generations and the well-being of future generations for whom those of the present strive. It is an inclusive sense of time. ‘Northland’ in this case study refers to the region of Northland not the electorate.

⁴ The Kaipara District Council is presently managed by a panel of commissioners: John Robertson (chair), Richard Booth, and Peter Winder. They will advocate for KDC. <http://www.beehive.govt.nz/release/kaipara-council-commissioners-appointed> (August 2012) Kaipara residents were welcome to consult with them as stated in the *Open Newsletter* of March, 2013. <http://www.kaipara.govt.nz/site/kaiparadistrictcouncil/files/pdf/newsletters/>

Until this point, November 2013, the public at large had little information. All adult citizens, rate-payers and residents, who live in the Northland Region are entitled to participate in the decision-making process set out in the *Draft Proposal for Reorganisation of Local Government in Northland (Draft Proposal)*.⁵ Although all citizens are involved in this decision process, the focus of the response fell to their elected representatives on the three district councils and the regional council. Citizens were reliant on them for information that was accurate and balanced. Whatever arrangement the decision-making process finally establishes for Northland, it will set the structure of local government for the whole of Northland, not just the Far North. It will influence local government decisions into the future and thus shape the decision-making processes of the local bodies as they plan for the future of their region. It will also affect the opportunities available to individuals and thus influence the way they live their lives.

Some background:

The LGC is part of the independent machinery of government which helps to uphold the principles of the electoral system by providing or protecting:

- fair and effective representation for individuals and communities;
 - reasonable and equal opportunities for voters and candidates;
-

⁵ Draft Proposal for Reorganisation of Local Government in Northland henceforth referred to as the Draft Proposal.

- public confidence and understanding of electoral processes.

The Commission's main role is to make decisions on the structure of local authorities and their electoral representation.⁶

In 1989, the Fourth Labour Government set up the LGC as a national system of local government similar to what it is today. Around 850 local bodies were consolidated into 86 multi-purpose local authorities. The *Local Government Act, 2002*, made significant changes to the framework governing local authorities with the Commission's powers redefined. The Commission:

- reports to the Minister of Local Government on matters relating to a local authority.
- considers proposals to reorganise local authorities.
- considers appeals and objections to proposals for boundary changes to a ward or constituency.
- provides information about local government that promotes good practice in the local government field.⁷

⁶ <http://www.lgc.govt.nz/the-role-of-the-commission/>

⁷ <http://www.lgnz.co.nz/home/nzs-local-government/getting-more-from-local-government/>

It is also hears and determines objections to proposals to transfer the ownership and administration of local authority land drainage and water race schemes as well as investigating matters that affect district health board boundaries.⁸

What purpose was addressed?

As outlined above, the purpose of the draft proposal was to investigate a possible reorganisation of local government in Northland as the LGC is required to do in response to the FNDC's application for unitary authority status.⁹ Therefore, the LGC began to investigate other possibilities for the whole of Northland calling for alternative applications of 'reasonably practical options.' There were 41 responses from which the LGC identified seven as 'reasonably practical options,' worthy of further consideration.

- I. Keeping the four existing councils in place but transferring particular council functions from one council to another (called modified status quo option)
- II. Turning the three territorial authorities into unitary authorities
- III. Combining Whangarei and Kaipara Districts with one new council
- IV. Creating a Kaipara Harbour district with a unitary authority

⁸ <http://www.lgc.govt.nz/the-role-of-the-commission/>

⁹Ibid: "considers appeals and objections to proposals for boundary changes to a ward or constituency."

- V. Creating a Hokianga district/region with a unitary authority
- VI. Establishing two unitary authorities covering all of Northland Region with one based on Far North District and one based on the combined Whangarei-Kaipara area
- VII. Establishing one unitary authority covering all of Northland Region.¹⁰

Finally the LGC chose alternative VII for the proposed re-organisation for Northland. In identifying the preferred option, the LGC noted that a number of the alternatives presented were in support of a unitary authority with the establishment of local boards. However, at that time the legislation did not allow this structure, although the Government had signalled in 2012 that such amendments were possible. The desire for local boards came up again at the submission hearings in March, 2014. The legislation allowing local boards was not passed until August, 2014 by which time the decision concerning the Draft Proposal had been made.

To quote from the Executive Summary (ES), the purpose of the *Draft Proposal* is to *'ensure strong regional and local representation, strategic and long-term planning and maximum possible local decision-making.'*¹¹ As stated in the ES, the necessity for this reorganisation is because *'Northland local government is at a crossroads.'*

¹⁰ Draft Proposal: p.13.

¹¹ Executive Summary (ES): 22 (p.6).

*The role and structure of councils must adapt to enable sustainable economic development and to cope with the pressures of intergenerational change.*¹² The purpose of uniting both territorial and regional councils was so that there would be *'[o]ne council and one mayor to speak with a region-wide voice for Northland.'*¹³

In identifying the preferred option, the LGC was required to consider how well it would *'enable democratic local decision-making, meeting the needs of communities, now and in the future for good quality infra-structure, public services and regulatory functions.'* The preferred option must also *'help achieve improved economic performance.'*¹⁴

What democratic processes were involved?

In the case studies of this thesis, I am investigating two models of democracy: representative and deliberative. In the first case study, to elect a replacement member of parliament, the aim was a procedural one, therefore the emphasis was on representative, procedural, democracy; in case study two the emphasis is on a

¹² ES: 16 (p.6).

¹³ ES: 1 (p.4).

¹⁴ Draft Proposal:19.

more deliberative approach with the final decision being by referendum only if the people's preferences are not clear.

In December, 2012, the *Local Government Act, 2002*, had been amended making re-organisation easier. In the same month, the LGC received the application from the FNDC to become a unitary authority. The LGC then called for alternative applications as already stated. The LGC, therefore, as an independent arm of government charged with up-holding the 'principle of fair and effective representation for individuals and communities' went to the people. They sought information and opinion relevant to the proposed reorganisation that was to '*ensure strong regional and local representation, strategic and long-term planning and maximum possible local decision-making.*' Throughout the development period of the *Draft Proposal*, there was considerable communication between the LGC and the four councils involved, their elected representatives and officials. The LGC put out a paper for their discussion to which the Councils individually replied as each council's situation dictated. A wider public became involved through LGC consultations with specific interests groups but the public at large were mainly uninformed, or did not appreciate the significance of the proposed changes, thinking it concerned the FNDC rather than Northland as a whole.¹⁵

¹⁵ The FNDC was known to have first applied to become a unitary authority in 1993 and had pursued the matter further from 2008. <https://www.fndc.govt.nz/your-council/local-government-reorganisation/Application-for-Unitary-Authority-Status.pdf>

Between February and August, 2013, the Commissioners of the LGC made five visits of a fact-finding nature to Northland.¹⁶ They spoke with interested parties such as elected representatives, community board members, local MPs, iwi, interest groups such as farmers and business representatives, economists and subject-matter experts. The LGC also held eleven public meetings to gauge public opinion throughout the disparate region of Northland.¹⁷ The wider public was still not involved.

The information gained throughout these fact-finding tours and the preferences expressed by the communities of interest were the basis of the *Draft Proposal*. There were 41 alternatives suggested by the public, seven 'reasonably practical options' warranted further examination.¹⁸ They were considered against the original application, the status quo, and the possibility of retaining the NRC, as is, while amalgamating the district councils, ten options in all. The LGC chose one unitary authority as its preferred option, option VII.

On 12 November, 2013, at Waitangi, the LGC officially presented its *Draft Proposal* to the three territorial councils and the one regional council. It lacked supporting

¹⁶ Commissioners: Basil Morrison (chair), Anne Carter and Grant Kirby.

¹⁷ *Draft Proposal*: 88 (p.14). "[F]rom Rawene to Russell, Kaitaia to Mangawhai, and six other centres in between."

¹⁸ *Draft Proposal*: The Process, p.14.

documents. It was not until 20 December, 2013, that the appendices and background reports were available.¹⁹ However, the *Draft Proposal* itself was available to all citizens in print form and on the LGC's website and the public was now more aware and engaged. The opportunity for the public to make written submissions to the LGC was from 12 November, 2013, till 21 February, 2014 having been extended by a week at councils' request. Following this, early in March 2014, public hearings were organised so that citizens could put their submissions in person to the Commissioners if they so wished. Not all individuals who requested a hearing actually presented themselves; on one such occasion, to my knowledge, the Commissioners invited the public to participate in a 'question and answer' session.²⁰

It was during this three month period that the public at large became increasingly aware of the issue. Although considerable discussion had taken place with small groups with particular interests, the general public had not been involved. Once the *Draft Proposal* was made public, the LGC advised the WDC that consultation on the *Draft Proposal* was not in its mandate or budget. The Act states that the

¹⁹ [WDC] alleged information supporting the proposal had been slow to arrive and was based on information that was dated. (2 February, 2014)
<http://www.wdc.govt.nz/NewsRoom/Latest-News/Pages/Council-concerned-by-local-government-reorganisation-proposal.aspx>

²⁰ During the hearings the writer attended in Whangarei, the emphasis of submissions by individuals was on reduced representation and rates and debt subsidiarity. Submissions from organisations such as the Primary Health Organisation and the Harbour Board were professionally presented, very informative, and not in favour of the *Draft Proposal*.

LGC may 'undertake, in a manner that it thinks fit, inquiries and consultations in relation to the draft proposal with any other persons, bodies, and groups it considers proper.' This clause is referring specifically to the fact-gathering exercise and therefore entirely appropriate to the LGC's task. Therefore, once the *Draft Proposal* was official, communication with the public became the Councils' responsibility. It would be inappropriate for the LGC to be involved except in regards matters of fact. Nevertheless, the issue of communicating with the public formally (and specifically) did present a problem for the Councils as the timing of the *Draft Proposal* process was over the Christmas-New Year holiday period and thus effectively curtailed the period for public education and consultation. It also cost money. It was expressed by one speaker at a WDC forum that it was another example of central government expecting local government to pay for central government activities.

Regardless of the unfortunate timing, it was the Councils' responsibility to inform their citizens. The Far North was obviously supportive of option VII as it was in accordance with its application. The Kaipara District Council was in the hands of Commissioners, appointed by the LGC. This left the WDC and the NRC.²¹ With the *Draft Proposal* finalised, the WDC set up forums for discussion and provided print material outlining the Council's reaction to the *Draft Proposal*. Even though this

²¹ Both WDC and NRC in their submissions to the Commission commented on the timing in both senses: the time of the year and time allowed for education and discussion.

was over the Christmas break and the New Year holiday period, the forums run by the WDC were well-attended. The LGC received 1894 submissions.²²

Reports were available in the local newspaper, The Northern Advocate, major newspapers, such as The Herald, and there was some political commentary in the news and on TV.

The democratic processes were available to all who wished to participate. As the process progressed it gathered momentum and engaged more people. The information presented was fair and factual and presented in a readily accessible format. This combined with opportunities for discussion allowed citizens to clarify the issues. Although the forum meetings outlined the WDC's view, the Council representatives and officers present were open to criticism and other options.

How was the decision arrived at?

The decision has now been taken. On 9 June, 2015, the LGC announced that the proposal for re-organisation of local government in Northland would not proceed. A Commission spokesperson said that the Commission had decided to return to Northland and work with its communities, to find other options that would meet the challenges the region faces. The LGC had received 1894 submissions which

²² Submissions were 132 in favour and 1686 against. Others were either unclear or irrelevant.

	FNDC	WDC	KDC
FOR:	47	51	34
AGAINST:	463	1088	125

<http://www.lgc.govt.nz/the-reorganisation-process/northland-submissions-and-hearings>

were overwhelmingly against the proposed reorganisation but not necessarily unsupportive of change. In particular, the NRC and the communities wanted local boards rather than the less-powerful community boards.²³ The NRC had told the commission in its submission that it could not support the proposal as it stood noting that the matter of local boards was under discussion and called for a fresh draft when the legal situation was clear. The NRC also called for a wider range of options for Maori representation.²⁴ The decision is the LGC's response to a lengthy period of consultation that allowed citizens' preferences to be clearly enunciated making it possible for the LGC to see a way forward that would be mutually acceptable to the citizens, the councils and the commission.

Does the process involve all citizens?

It is difficult to see how the process could involve all citizens without a very intensive, and lengthy, public education programme. It could have involved more citizens if it had allowed for a longer 'gestation' period, however. Such weighty matters need time for reflection after one has come to grips with the issues. The LGC itself took a year to reflect on the issues involved. The LGC did endeavour to 'meet the people', it did endeavour to interact with the major industry groups;

²³ Local boards became possible from August, 2014. They have more control over their local affairs than the community boards which are only advisory. See ES: 184, 185, and 186 (p.25-26).

²⁴ <http://www.nrc.govt.nz/upload/15376/Regional>

and the LGC gave members of the public the opportunity to discuss the issue with them at the 11 public meetings which spanned the length and breadth of the region and at the submission hearings. But, the time-frame for public submissions was brief, and at the least propitious time of the year.²⁵

The outcome of this proposal will have considerable impact on the future of Northland so it seems to me that taking time to think the Draft Proposal through carefully and discuss it with others is the way to arrive at a good solution. The fact the Draft Proposal has been dropped indicates that the criticisms the elected district representatives, interest groups and individual citizens brought to the LGC were convincing as is signalled in the LGC's public announcement.²⁶ The spokeswoman, Ms Preston, said: There needs to be more emphasis on the role of communities identifying the challenges they face, the options that can address those challenges, and the development of more consensus on their preferred approach to change. Our goal will be to assist both communities to reach sufficient consensus on the changes required and the best form of local government. In conversations with the councillor of this ward, he indicated that the Draft Proposal exercise has acted as a catalyst encouraging the three territorial districts, with the regional council, to focus on issues they have in common and together find an

²⁵ <http://www.wdc.govt.nz/NewsRoom/Latest-News/Pages/Council-concerned-by-local-government-reorganisation-proposal.aspx>

²⁶ <http://www.lgc.govt.nz/the-reorganisation-process/northland-submissions-and-hearings>
See also Lindy Laird, "Northland rejects Super Council." http://m.nzherald.co.nz/northern-advocate/news/article.cfm?c_id=1503450&objectid=11462734. Accessed 15 June, 2015.

appropriate solution.²⁷ The exercise has already taken three years and will continue. Deliberation can't be rushed. When first presented, the *Draft Proposal* seemed more like a 'proposed reorganisation' that would go ahead. Northland has benefited from the opportunity of a structured discussion about "where to from here?" The deliberation that has begun is not only at Council level, the communities have been involved.

Although the process did not involve all citizens, there were a variety of ways in which a citizen could participate if she wished. The publicity about the *Draft Proposal* after it was formally presented was available to all who wanted to take an interest. It did 'set the record straight' on a number of matters such as exactly which councils were involved and how the citizen herself might be affected. The status of the NRC became clear. Initially the public focused on the district councils, expecting the NRC to remain 'aloof' because it already covered 'all of Northland.' As information was disseminated the interest, or anxiety, grew. The only barrier to citizen engagement was the timing over the year's most significant holiday period; the short time-frame for consultations and submissions at this busy, family-oriented, time of the year was ill-advised. It seemed at odds with the sentiments expressed in the *mihi* to the *Draft Proposal*.

²⁷ Greg Innes, Whangarei Heads Ward, personal communication.

How adequately were the core values of democracy addressed?

The core values of democracy, equality and individual liberty, were addressed in an unequal fashion. This is hardly surprising as the tensions between these two key ideas are at the centre of arguments for different types of democratic procedures.²⁸ All citizens were free to express their views to the LGC either in person, or by submission, or through a representative. In this sense the core values of democracy were addressed, procedurally. Everyone could freely express their preference for the proposed reorganisation or for the status quo. At forum meetings with the WDC the principles of equality, respect and reciprocity were evident.

The substance of the Draft Proposal itself, however, was another matter. There, the core values of democracy were less adequately addressed. The opportunity to have one's say is important, one might argue fundamental, but equally important is the content under consideration and the opportunities offered for its deliberation. The LGC's proposed reorganisation of local government in Northland outlined a limited democratic structure with reduced representation. Citizens voiced their concern. I will outline the structure proposed and then consider its implications.

²⁸ Helena Catt, *Democracy in Practice* (London: Routledge, 1999).

The structure proposed reduced opportunities for democratic involvement. The concerns were threefold. Firstly, concern was voiced about the concept of a mayor-at-large, elected independently of the council. The Northland region is not compact like a super-city but is long and thin and sparsely populated. It was felt that a mayor-at-large was inappropriate for such a geographical setting. It would be unlikely that the ordinary citizens of the region would have personal knowledge of many, or even any, of the candidates for the position. If they did, they would vote for the one they knew. This is not informed decision-making at its best.

The second concern was similar. There were to be seven wards: five wards would elect a councillor each; the other two wards, Coastal Northern and Whangarei, would elect two councillors each. The ratio of 1:2,974 citizens per councillor gave fair representation, numerically, but was reduced from the present 1:2,615.²⁹ However, only Whangarei is compact in size. All other wards were territorially large and unequal in area therefore the demands on representatives would be unequal with the result. This in turn results in variable access for constituents to their representative. In such an elongated region with pockets of settlement, citizens considered that in some wards it would be difficult for voters to know the candidates standing for election well enough for them to make an informed decision and that the ward's councillor could well be an unknown to most citizens.

²⁹ In comparison with the compact Auckland Super City this is a very generous ratio. Using figures from the 2013 Census, Auckland has a ratio of 1: 8327. (Grant Duncan, personal communication).

The difficulties of communication due to size would further diminish effective democratic accountability. A relationship with one's representative that suffers from communication difficulties and is only advisory is unlikely to promote the sort of community engagement outlined in the Draft Proposal. Submitters feared that this situation could lead to a small group from a small section of the population becoming an elite thus further eroding the democratic values of equality and individual liberty which, as Helena Catt indicates, would be a backward step.³⁰ Schumpeter was of the opinion that such a group of experts would be 'a good thing' and that people would recognise the need for such expertise.³¹ However, Aristotle, no great enthusiast of democracy, recognised the value of the combined 'expertise' of people working in different walks of life and thus participating in arriving at a more robust decision.³² The possibility that the proposed structure would foster the development of an elite disproves the suitability of the structure as an elite denies individual citizens the opportunity of self-government.³³ By definition, an elite is not 'by, of, and for the people' in accordance with the principles of equality and reciprocity. Such a circumstance

³⁰ Catt (1999): ch.1: "Only very recently has democracy replaced rule by one person or an elite."

³¹ Joseph Schumpeter, (1950).

³² Aristotle, *The Politics*, trans. Ernest Barker, ed. R. F. Stalley (Oxford: Oxford University Press, 1995): Bk III, 11.

³³ This issue is bothering the citizens of NZ's super-city, Auckland. The mayor promised to build an inclusive city proud of its diversity but the executive is 'run by white men from wealthy suburbs.' See Bernard Orsman, "Who's Running Our City?" *NZ Herald*, 22 July, 2015, accessed 22 July, 2015.

does not allow the people, together, to make decisions that the government enacts as their agent.

The third concern related to the community boards which were advisory only. Each ward was divided into 'communities of interest' and each 'community of interest' elected a local person, or possibly more, to represent them.³⁴ The LGC argued that the community boards would be the focus of local government for citizens. This is no doubt true. However, the direction of the region's overall development is equally interesting, and influential, for everyone. The principles of good government, already stated, are of significance to all citizens yet the structure outlined in the Draft Proposal does not invite them to get engaged beyond their immediate local area. Decisions made by the Northland Council could, probably would, affect the scope of the community boards' activities yet the proposed structure emphasises the ward representative, who represents approximately 10,000 (scattered) constituents. The concept of community boards with only an advisory role seems unlikely to engage citizens in the 'one voice for Northland' decision-making model espoused by the LGC. Citizens argued that for 'one voice' to be truly 'for Northland' the opportunities to consult and give effective feedback to the Northland Council were critical. With grassroots preferences given so little voting power, citizens are unable to hold their

³⁴ Five of the seven wards have three 'communities of interest,' Whangarei has two and Te Hiku, four.

representative and legislative decision-makers to account in any truly meaningful way. The assumption here is that, at election time, there will be better options with which to replace them, but if the grassroots voter does not have personal contact with representative or candidate, and is not kept appropriately informed, the 'solution' is little likely to be any better. The LGC is correct to state that people live their lives at the local level but that local level must impact on the macro level of decision-making – not vice versa. Representative democracy's legitimacy, according to Gerry Stoker, 'requires clear rules about how decisions should be made, a sense that those rules can be justified in public debate and a clear demonstration of some element of consent.'³⁵ Northland citizens would agree.

Moreover, the wards were not homogeneous communities of interest but combinations of communities that are separated by difficult terrain and different lifestyles. The 42 elected representatives from the seven community boards were faced with the challenging task of connecting with disparate groups over a wide area. No matter how well-informed each board representative was, he could only advise their ward representative on issues of import to his community; if their Councillor or the Northland Council chose to ignore the advice there was nothing the community's representatives could do about it – until the next local body election. The reduced democratic representation was at odds with the fact that

³⁵ Gerry Stoker, *Why Politics Matters: Making Democracy Work* (Houndsmill, UK: Palgrave Macmillan, 2006): 83.

the LGC acknowledged in the Draft Proposal that the 'level of representation under each of the existing councils is good.'³⁶

All three structural issues had implications as to how adequately the core values of democracy were addressed. These implications, which I set out below, are likely to limit the citizens' interest, engagement with and involvement in local government.

The Draft Proposal sets out good local government principles. It must take account of:

- the social economic and cultural interests of people and communities.
- the need to maintain and enhance the quality of the environment
- the reasonable foreseeable needs of future generations.

Concern was expressed that the system of representation adopted did not adequately take into account the first of the above principles and therefore the realisation of 'the reasonable foreseeable needs of future generations' would be constrained. The core values of democracy, equality and individual liberty, were constrained by the structure of representation proposed, as detailed above. All citizens were able to brief their community board member about their concerns, either individually or as a group, but there was no sure pathway for these

³⁶ *Draft Proposal*: 135 (p.19).

concerns to be clearly heard further afield at the Northland Council. The structure certainly allows all citizens the opportunity to state their preferences. The problem is that the structure doesn't facilitate those preferences being acknowledged at the Council table where decisions would be made.

The Draft Proposal reduced the opportunities for democratic involvement in five ways. Firstly, the reduction of elected representatives infers less democracy and fewer opportunities for 'communities of interest' to share their preferences with their councillor. The LGC commissioners denied this even though the ratio of elected representative to population has increased from 1: 2615 to 1: 2,974. Therefore the number of elected representatives is reduced from 61 to 52 – a significant reduction in a large, long and thin region of scattered settlements. Secondly, effective representation lies with those representatives who can legislate. In the Draft Proposal, only nine plus the mayor-at-large, for a population of approximately 166,000, are so empowered.³⁷ Thirdly, the wards are territorially larger than previously and include significant variety among the 'communities of interest' thus making it more difficult for the ward's legislative representative to 're-present' the citizens' interests or preferences.³⁸ Fourthly, each ward comprises 'communities of interest' which in total elect six representatives. The

³⁷ Using estimated figures for July 2014, and allowing for approximately half being under voting age, the ratio is approximately 1:10,000. https://en.wikipedia.org/wiki/Northland_Region

³⁸ Pitkin, Hanna F. *The Concept of Representation* (Berkeley: University of California Press, 1967): Chap.6.

'communities of interest' are not necessarily similar in anything except population size yet the community board representatives have to advise the single ward (voting) representative on the preferences of their constituencies.³⁹ This structure makes it difficult for the single ward (voting) representative to adequately address the needs of a ward with diverse needs. Fifthly, the community boards' representatives are advisory only. Therefore, the representatives with the most local knowledge are not in a position to make the most effective use of that knowledge thus limiting the opportunity for robust decision-making.

Decisions made by Council could, probably would, affect the scope of the community boards' activities. The question is how well the reasons for the decision are communicated to the constituents and indeed how well the preferences of the constituents were communicated to the Council in the first place. The issue is really one of communication. The structure proposed does not facilitate effective communication and communication is the basis of good decision-making. Without adequate communication, the salience of the exercise diminishes. Consultation leads to greater citizen participation simply because it suggests voters' preferences are important and the more far-reaching the understanding of the issue is, the greater the likelihood of a decision that

³⁹ An example of disparate communities combined into one ward is that of the Coastal Central Community Board which would include Onerahi, a lower socio-economic urban area, with the coastal settlements of more affluent Ngunguru and Tutukaka.

reasonable people can accept. Statistics from the Local Government New Zealand's submission to the Justice and Electoral Select Committee supports this understanding.⁴⁰ Their analysis shows that councils with a lower ratio of council representative to citizens have a higher voter turnout.⁴¹ Auckland which has a ratio of 1: 8327⁴² and, in 2013, had a 'significant reduction in the Auckland vote' (15%) had a noticeably higher turnout in its island local boards, Waiheke Island and Great Barrier. The same is true in Christchurch; the Banks Peninsula ward had a markedly higher turnout.⁴³

In addition to these limitations is the issue of Maori representation. The proposed structure of the Northland Council of nine councillors and one mayor-at-large included a stand-alone Maori Board which would comprise the mayor and three councillors and a representative from each iwi. The Maori Board would include an Advisory Committee to give advice on operational matters of importance to Maori, particularly those that related to resource management. Further, it should be noted that the Maori Board may appoint one of its members to all bar three of the Council's committees.⁴⁴ The formal representation of Maori found favour with

⁴⁰ Local Government New Zealand, "The 2013 Elections - What are the Lessons?" *Submission to the Justice and Electoral Select Committee*. LGNZ: 20 December, 2013.

⁴¹ Ibid: Characteristics of the electorate, p. 6.

⁴² Grant Duncan, personal communication.

⁴³ LGNZ Submission: p. 14.

⁴⁴ The three committees are those reviewing the chief executive's performance or remuneration; sub-committees of council committees, and joint committees of local authorities. *DP*: 36

some although there were those that doubted its efficacy when its powers were, again, advisory only.⁴⁵ Present legislation does allow councils to establish local Maori wards and constituencies.⁴⁶ Some citizens considered that the ‘communities of interest’, the criteria for establishing wards, would provide sufficient opportunity for Maori, particularly in the north, where they are a significant group in the population. Some were concerned about possibly different selection processes as the Draft Proposal sets out that the members for the Maori Board ‘will be nominated by each iwi organisation through their own appointment processes.’⁴⁷

Northland has a large Maori population; this level of representation does not adequately acknowledge the obligation to Maori as a partner to the Treaty of Waitangi, nor the practical expertise of Maori living in their ancestral rohe.⁴⁸

⁴⁵ Janine Hayward, "Mandatory Maori Wards in Local Government: Active Crown Protection of Maori Treaty Rights," *Political Science Journal* 63, no. 2 (2011): 186-204. This paper discusses the opportunities for effective Maori involvement and notes the opportunities missed to meet the Crown's obligations, via local government, under the Treaty of Waitangi.

⁴⁶ *Local Electoral Amendment Act*, 2001. This allowed the introduction of Maori wards for Environment Bay of Plenty. Since that legislation, no Maori wards have been established. See Hayward, "Mandatory Maori Wards," 193.

⁴⁷ *Draft Proposal: 'Maori Participation'* 3, p.36. This issue is discussed by Te Puāwaitanga Linter-Cole in her MA thesis "Māori and the Auckland 'Supercity' Council: An Investigation of the Independent Māori Statutory Board" (*University of Auckland*, 2012): 16-23. See also Will Kymlicka, "Multi-Cultural Citizenship: A Liberal Theory of Minority Rights," *American Political Science Review* 105, no. 3 (1995).

⁴⁸ Janine Hayward, "Local Government and Maori," *Political Science Journal* 50, no. 2 (1999): 182-94.

Formal effective involvement of iwi in the decision-making arrangements of the region is an opportunity for Northland to become a truly integrated community.

What critical issues were addressed?

Although the ES said that the Region of Northland was at the crossroads, it did not spell out what exactly was involved, or how a unitary authority would be a more appropriate way to address these critical issues. Certainly it mentioned intergenerational change but that is not something specific to Northland although because of the lack of employment opportunities many young people leave the region in search of work.

The LGC also believed it was in Northland's interests to 'speak with one voice' to Wellington [Government]. As pointed out in ES: 13, a 'whole of Northland' approach is designed to bind together all communities to create a stronger strategic vision for the region. As shown in considering the adequacy of the democratic representation structure, the logistics of binding the communities together as one unit is challenged by distance and difference. If it were thought to be desirable that a particular issue be dealt with co-operatively there is nothing, in present legislation, to stop the councils making a joint approach and speaking with one voice. Indeed the councils have already moved down this path. Two councils have approached the New Zealand Transport Agency (NZTA) over the matter of

roads that are outside the main national system but are maintained for national economic reasons. Maintaining them from local rates limits maintenance of more frequently used roads. An example is the Mangakahia Road.⁴⁹ It is through a sparsely populated area and used mainly by logging trucks. It is very expensive to maintain and both the FNDC and WDC argue that the outlay for its maintenance limits what they can do elsewhere to improve roads that carry a greater volume of traffic.

The ES also cited the need for economic development and strategic planning for the future. These issues were named but not addressed. There is no doubt that Northland needs economic development and that to achieve this requires strategic planning but the *Draft Proposal* does not spell out how a unitary plan will be better suited to this task than the status quo. The co-operative plan of working together on common problems that arise, such as the Mangakahia Road undertaking, seems more likely to bring about the necessary opportunities. Achieving a single voice for a group of homogeneous communities is a different matter from arriving at a single voice for what is a 'mixed' group of communities, by whatever yardstick is used: socio-economic, employment, education, ethnicity, or age. Nevertheless it is possible for a 'mixed bag' of communities to achieve a

⁴⁹ Mangakahia Road runs from Kaikohe through Poroti to Whangarei.

'single voice' by sharing their concerns and seeking a mutually beneficial outcome as Amy Gutmann and Denis Thompson argue.⁵⁰

How well were the preferences of the people recognised?

The preferences of the people were recognised in a number of ways. Firstly, and formally, the LGC received 1894 submissions. The bulk of them, 89%, were against the *Draft Proposal*. Although the submissions came from the most engaged, the high number against the reorganisation was indicative of the public's concern. Secondly, in a joint statement issued at the official presentation of the *Draft Proposal* on 12 November, 2013, the Northland Councils 'paid tribute to the Commission for the efforts it had gone [to] to address the views expressed by the community.'⁵¹ The LGC's fact-finding mission was an opportunity to listen to the preferences of those groups it met. What was learnt from that exercise enabled the Commission to present a comprehensive *Draft Proposal*. For example, the preference for local boards rather than community boards was noted and the legal situation outlined. Thirdly, later, preferences were made known to the Councils through forums and newsletters. *The Northern Advocate*, the local newspaper, carried articles and letters to the editor stating individual preferences, particularly in regard to representation. Publicity and Councils' submissions would further

⁵⁰ Amy Gutmann and Dennis Thompson, *Why Deliberative Democracy?* (Princeton: Princeton University Press, 2004): 16-21.

⁵¹ Joint statement on behalf of Far North, Kaipara and Whangarei District and Northland Regional Councils <http://www.nrc.govt.nz/News-Archive/2013/> (Posted: 12 November 2013)

inform the LGC. So, although the *Draft Proposal* is not to proceed, the LGC is aware that ‘there needs to be more emphasis on the role of communities identifying the challenges they face, the options that can address those challenges, and the development of more consensus on their preferred approach to change.’⁵²

Fourthly, throughout the 15 months from hearings to final announcement, the four Councils have continued to seek ways to work together for all of Northland. A change of leadership in three of the four councils has facilitated this.⁵³ In the public statement announcing that the proposed reorganisation of Northland would not go ahead, Chief Executive, Sandra Preston, acknowledged that ‘[i]n Northland the councils had made progress in identifying alternative ways to provide good local government since the draft proposal was released and the Commission hopes to work with the community in building on that momentum.’⁵⁴ This reflects the work done by the Councils in 2013 before the *Draft Proposal* was formalised and through the continuing process.⁵⁵ It also reflects the Councils’ recognition of their constituents’ preference for the status quo whilst

⁵² <http://www.lgc.govt.nz/the-reorganisation-process/northland-submissions-and-hearings>

⁵³ FNDC and WDC had new mayors and NRC a change of chairman. Commissioners were appointed to manage KDC in September, 2012. <http://www.nrc.govt.nz/News-Archive/2013/>

⁵⁴ <http://www.lgc.govt.nz/commission-news-and-contact-information/media-statements-and-speeches/amalgamation-decisions-wellington-and-northland/>

⁵⁵ Ibid. The collaboration noted in 2013 continues. This summer WDC has joined the FNDC and KDC Water Conservation Project so that Northland has a unified approach to water conservation.

acknowledging that the increased co-operation among Councils is for the benefit of all of Northland. It also shows a shift in the LGC's stance on the reorganisation of Northland. It now encourages, and will support, a more co-operative approach that maintains and builds on the community focus that already exists so that all communities can contribute to the well-being of the whole of Northland.⁵⁶

What does the result tell us?

The result illustrates the value of having input from the people who are going to be affected whether that input is officially arranged, or is an individual response, or a formal submission. No matter what sort of speech situation is involved, the result is an increased awareness of the community's preferences. Indeed the more varied the types of response, the more robust the final decision is likely to be. The community has benefited from the opportunities that arose for individuals to share their personal preferences on the matter of reorganising local governance in Northland. Many citizens took the opportunity to share their views, either as a member of a group or as an individual. With the result being so overwhelmingly *against the Draft Proposal*, citizens have made it clear that they prefer the style of local government they have at present.⁵⁷ Not only have their preferences been acknowledged, but also, citizens have had a positive experience of 'talking things

⁵⁶ This approach, known as *glocalisation*, is becoming influential in business. See Fiona Rotherham, "Icebreaker Man Cometh," *the Listener* (April, 2015): 39-41.

⁵⁷ However, if at the time of the *Draft Proposal* local boards rather than community boards had been possible, the decision may have been different. Local boards share the decision-making with the governing body. Community boards are only advisory.

through'. The LGC has also I think been similarly influenced. The tone of the final comments suggests a more co-operative approach than that implied by the *Draft Proposal*. The ES, in particular, is couched in decisive language. The announcement that the proposal will not proceed is followed by an acknowledgement of the citizens' desire for more involvement in decision-making.

It should be noted that the LGC is required to work within the parameters of the *Local Government Act, 2002*. The FNDC's application for unitary authority status determined certain formal responses. Now that the application has been dealt with, there is an opportunity for the four Councils of Northland and the LGC to work together on the issues that are common to all of Northland for the benefit of all of Northland and to do so with the support of the communities. This suggests decisions will be more robust.

What happens next?

What happens next will depend on how well the councils co-operate on finding solutions to their common problems. The LGC's analysis of submissions from the Whangarei District showed that 'most opposed the proposal because of a preference for the status quo or *an enhanced version of it* (my italics)' and that 'there was concern that a single unitary authority would not provide for local decision-making, be harder to administer, and potentially trigger an increased rates burden.' Concern was also expressed about the loss of environmental regulatory checks and balances if regional functions were placed in the same organisation that delivered services.

Some submitters did indicate support for smaller scale mergers, transferring functions or developing a shared service arrangement between the existing councils which suggests a willingness to consider further options. But most significantly '[a]ll existing councils in the region recognised the need for improvements in both strategic decision-making and the delivery of services.'

The wording and tone of submissions suggests, on the part of the councils and the public, a readiness to take a broader view of the issues that face Northland. This larger perspective will be most evident at council level. The quality and quantity of information from Council during the proposal period was very good and gained the support and confidence of the public. Progress reports about how councils are co-operating and over what will keep citizens in the information loop and build on the community engagement already begun. Reviewing the process followed by the LGC and considering their willingness to address issues co-operatively, it is tempting to reflect that the experience of deliberative democracy has been worthwhile for all concerned.

How well does the case study fit the model of either representative or deliberative democracy?

This case study is not a model of representative democracy in action as is case study 1. Instead it exemplifies the attributes of deliberative democracy. As Helena Catt points out '[w]hat all groups have in common is the need to make decisions on certain matters that affect all members, and what democratic groups share is a desire to make these decisions in a way that allows every member to participate in

the decision.⁵⁸ There is more than one way to give every person a chance to participate. In case study 1, the process, to elect a replacement MP, was procedural 'one person, one vote, one value' which is the basis of representative government's authority. Here, in case study 2, the process was to allow, and encourage, every member of the community, that is Northland, the opportunity to participate in the decision-making process by sharing their preferences one with another. The *procedural* decision-making process was only to be used if there was no other way to find a solution. It was not needed. Case study 2 is an example of the merits of deliberative democracy.

Citizens from all parts of the region, from all walks of life and adults of all ages were given opportunities to learn about the 'problem' that needed to be 'solved' and, importantly, were given opportunities to make their preferences known either in person or by submission to those who were charged with making the decision. The opportunity to discuss the 'problem' led to a greater understanding of the region-wide issues thus enabling citizens to see issues in perspective rather than narrowly as they impinged on their own district. It gave citizens an insight into other people's lives and an appreciation of how any decision has consequences. The region-wide discussion publicised the difficulties that faced Northland Region as a whole and made it apparent that numerous independent

⁵⁸ Helena Catt, *Democracy in Practice* (London: Routledge, 1999): 4.

'solutions' was no longer tenable. Such engagement emphasises the intrinsic values of democracy, those of acknowledging each person's contribution with respect and giving reasons for one's own opinion.

The LGC's *Draft Proposal* of a unitary authority was a possible 'solution' in that the reorganised system of governance was expected to improve vital decision-making in Northland. It did not appeal to the majority of Northlanders. The process of talking the *Draft Proposal* through and challenging its views gave citizens not only a better idea of the difficulties facing Northland, and their representatives, but also a better understanding of the processes of governance.

The submissions that the LGC received made it clear that the citizens wanted their preferences adequately acknowledged. The submissions also acknowledged some aspects of Northland governance that they were loath to change, specifically the NRC. The fact that the NRC's mandate is for the whole of Northland was seen as a 'safety net' for the environment as it is quite separate from the service centres of politics. The NRC is an example of how groups can work together to improve the environment.⁵⁹ The independence of the NRC is a safeguard that environmental matters will be dealt with for the benefit of all of Northland.

⁵⁹ NRC works with farmers on weed and flood control and to protect erosion-prone hill country; and with local catchment groups to provide local input and recommendations on maintaining and improving freshwater in their area; and with schools on initiatives involving pupils in a variety of activities.

The fact that the reorganisation of Northland is not to proceed demonstrates that the LGC acknowledged the citizens' preference for the status quo and noted their willingness to be part of the 'solution'. In doing so, the LGC acknowledged the spirit of co-operation, evident in the discussions, the mutual giving and receiving of reasons, and the respect accorded to one another. By giving people the opportunity to air their concerns, and even offer plaudits, the decision finally arrived at will not only be robust but like any deliberative decision is able to be revisited if need be, as no doubt it will be as the LGC and Northland councils deliberate further. This view was supported by Don McKinnon, former Secretary-General of the Commonwealth of Nations, in a television interview. He said that more and more *parts* of countries are indicating a desire to have the opportunity to choose for their region. In his opinion our government 'is out of sync.'⁶⁰

According to David Held, 'the principle of inclusiveness and subsidiarity points to the necessity of both the decentralisation and the centralisation of political power.'⁶¹ Firstly, it is realistic in the light of the complexity of modern life. As the LGC and Councils work through the issues seeking shared solutions, they will

⁶⁰ Don McKinnon, *360 Interview* (TV1: 5 May, 2015).

⁶¹ David Held, *Global Covenant* (Cambridge: Polity, 2004): 100.
See also Helena Catt, *Democracy in Practice*. (London: Routledge, 1999): 137-8.

benefit from the 'wisdom' of the communities.⁶² Secondly, localism provides a base for involvement in politics. The issue is a 'manageable size' for the individual citizen who has work and family responsibilities.⁶³ Thirdly, this involvement in a local issue develops social capital, that is, the trust, mutual assistance and reciprocity that helps to connect us one to another.⁶⁴ For the regional decision to be robust all responses deserve consideration. What is good for one may be good for another but not necessarily for every 'other'. Accommodations may need to be made. John Hibbing and Elizabeth Theiss-Morse argue that American voters are more interested in the process of governance than they are in the policies.⁶⁵ This could well be true of New Zealand voters too.⁶⁶ Citizens need to feel that their contribution to the debate will make a difference, that their preferences will be adequately acknowledged.

⁶² Colin, James, ed., "Making Big Decisions for the Future," in *Affording Our Future Conference* (Victoria University, 2012).

⁶³ LGNZ Submission: 39: Diminishing Saliency, p.12.

⁶⁴ Farr, James. 2004. "Social Capital: a Conceptual History," *Political Theory* 32, no.1:6-33: p.8-11.

⁶⁵ Hibbing, John R., and Elizabeth Theiss-Moore, *Stealth Democracy: Americans' Beliefs about how Government Should Work* (Cambridge: Cambridge University Press, 2002): 36-9.

⁶⁶ See also Catt, Helena, "Participation and Citizenship," in *New Zealand Government and Politics*, ed. Raymond Miller (Auckland: Oxford University Press, 2006): 564-567; and, Eaquib, Shamubeel, *Growing Apart: Regional Prosperity in NZ*. (Wellington: Tom Rennie, 2014): 82-83. LGNZ, "The 2013 Elections - What are the Lessons?" (2013).

Postscript: The Hundertwasser Decision

In 1993, the mayor of Whangarei, Stan Semenoff, invited the Austrian artist-architect, Friedensreich Hundertwasser, to design an art centre for the city. He chose the former Northland Harbour Board building owned by Northland Regional Council as its site. As the NRC did not wish to sell the building, the Arts Centre did not go ahead. In 2000, Hundertwasser died and so seemingly did the possibility of the Hundertwasser Art Centre.

In 2008, with Semenoff back as mayor, the WDC bought the Harbour Board building in the Town Basin and the plan to build the Arts Centre was revived. In 2012 a contract was signed with the Hundertwasser Non-Profit Foundation for the WDC to build the Art Centre and to display in it authentic Hundertwasser work and contemporary Maori artwork.¹ The Hundertwasser Non-Profit Foundation acknowledges this project as the last authentic Hundertwasser building, provided it is built on the building he selected. This project was costed, consented, agreed and included in the Long Term Council Plan. The cost to the council was to be \$8 million including earthquake strengthening for the building.

¹ In 2008, Councilor Sutherland and the chief executive, Mark Simpson, went to Vienna to win the support of the Foundation. The Foundation not only retrieved Hundertwasser's archived original drawings and architectural concept but also persuaded Heinz Springmann, an architect on many of Hundertwasser's projects, to draw up the plans.

The project was controversial. Times had changed; the global financial crisis had affected Whangarei like everywhere else and there was a new council. Ratepayers were concerned about the cost and some people did not like the appearance of the proposed building which would be sited among the colonial-styled buildings of the Town Basin. Debate was vigorous and as costings were challenged ratepayers became concerned that other more urgent needs may get side-tracked.²

Throughout this period a model of the proposed building was on view in the library. There were in effect three options: to build the Hundertwasser, build something more modest or demolish the old Harbour Board building. In 2014, WDC commissioned a phone survey to assess ratepayers' preferences.³ In the weighted results 53% of residents opposed the HAC project whereas 28% supported it. The primary reason for opposing the project was cost with 81% saying "rate payer money should be spent on other priorities." WDC voted not to fund the building project.

Following this the council asked for further proposals to make the Town Basin location iconic. Four proposals were selected for further consideration including a revised proposal for the Arts Centre (renamed Hundertwasser Wairau Maori Art

²A useful article from the *Listener*: <http://www.listener.co.nz/current-affairs/social-issues-current-affairs/battle-lines/>

³ The survey was commissioned from Versus Research. The survey only polled land lines which were provided by WDC because mobile phone data was not available. There was criticism of the process as only 78% of Whangarei households have landlines – mostly in the older demographics. However, the results were weighted accordingly.

Centre - HWMAC) by a newly formed trust called Prosper Northland. The proposal was backed by a new feasibility study which affirmed the original Deloitte's study. Under the new proposal, Prosper Northland commit to finding all funding except for the earthquake strengthening.⁴ A public meeting to present the HWMAC proposal was attended by over 1000 supporters.

At an extraordinary Council meeting, 12 November, 2014, a motion was passed that a binding referendum should be held in March, 2015. It would include the three options: HWMAC, the Harbourside Marine Museum and demolition of the old building.⁵ The referendum results returned a majority vote for the Hundertwasser building.⁶ The HWMAC received 51% of the vote, with the demolition option receiving 29% and 20% voted for the Harbourside option. Voter turnout was 49%, which is comparable to voter turnout (48%) at the last local body election in Whangarei.

It has been 20 years since Hundertwasser agreed to design a building for Whangarei. Since then the original mayor has been voted out of office, and back in, and Hundertwasser had died, aged 71. Fifteen years after the initial conversation, the WDC bought the Harbour Board building from the NRC and re-

⁴ The Council will pay \$2.8m to have the old Harbour Board building earthquake strengthened.

⁵ A fourth option was withdrawn in favour of the HWMAC.

⁶ Referendum results were published on 5 June 2015.

activated the HAC proposal. Four years later, WDC signed the contract with the Hundertwasser Foundation. The next three years were fraught with opposition, changes of heart, new proposals, and always a concern about the costs. But in 2015 the decision was made and the funding finalised with the burden on rate-payers substantially reduced.⁷ Whangarei would have its iconic building, the Hundertwasser Wairau Maori Art Centre. The combined effort of deliberative and instrumental decision-making reached a conclusion.

Like the LGC proposal the progress has been slow but little by little the process became firmer, the preferences became clearer. Citizens had ample time to think the situation through, and although at decision time not everyone was delighted, the feeling around Whangarei was that the decision had been properly made and reasonable people could reasonably be expected to accept it. And it seems they do.

'When we dream alone it is only a dream;

but when we dream together, it is the beginning of a new reality.'

Friedensreich Hundertwasser.

⁷ To date, January, 2016, the funding stream is disappointing.

Chapter 4: Reflections on the Case Studies

As stated in the introduction, this thesis ‘considers the two models of democracy, representative and deliberative, with particular reference to how adequately they acknowledge the preferences of citizens.’ Having read the theory and considered the case studies, my conclusion is that we need both the instrumental and the intrinsic qualities that the two models, together, offer. The significant question is not which model does the better job of acknowledging preferences because they both do in their different ways. The significant question is whether the voters are adequately informed about the options offered them. As Bronwyn Hayward pointed out on *Q&A* both of the main political parties have a different solution due to their differing models of political economy and policy. Labour’s solution is via the state and National’s is via private enterprise but they need not be mutually exclusive. The issue is not which is ‘right’; the issue is how much information has been adequately explained to the electorate and how much deliberation has taken place so that the decision taken will be robust and carry into the future. Through deliberation, and willingness, a joint solution might be found.¹ For citizens to make informed choices, all options, supported by reasons, need to be available for consideration. That was an important difference between the two models as

¹ Dr Bronwyn Hayward, Canterbury University, in panel discussion, *Q&A*, 10 March, 2015.

shown in the case studies. The adversarial style of campaigning concentrates on winning points rather than informed debate.

In a by-election scenario the voters make their choices on scant information; a by-election is not a platform for policy development but rather a review of past practices. This is partly due to time constraints but also because at the general election, in this case six months earlier, the parties contesting the by-election had already put their policies before the public. The citizens of New Zealand had made their collective decision and this by-election was not going to overturn that result. The National Party would remain in power. However, the proportionality of parliament could change, and it did.² At a by-election the governing party highlights their achievements and, possibly, future plans. The opposition parties point out the Government's sins of omission. This is not to imply that the by-election was not important. It was, and like other by-elections it offered an insight into how the public viewed the current political arrangements. Nevertheless, it did not have the personal immediacy of the second case study. In Case Study 2, which with other Northlanders included the electorate's citizens, there was a marked desire for information, and the quality of that information was factual and well-presented. There was, of course, more time to read and deliberate; and it was very clear that the decision could make a difference to how the region would be governed in the future, how the citizen herself might be affected.

² National, lost a MP and NZF gained a MP.

In the course of writing this thesis my own view has shifted. Initially my inquiry was whether citizens' preferences were acknowledged in an effective manner and, if so, which model was better able to demonstrate that the people's preferences are acknowledged adequately. Now, my view is more nuanced. Each model adequately acknowledged the preferences in the situation of the relevant case study. However, in considering the by-election and thinking back six months to the general election, I am less convinced that the instrumental procedure is able to adequately acknowledge complex choices. The issue before the constituents of the Northland electorate, at by-election time, was relatively straightforward. The will-formation process of individual citizens had taken place. Now it was a matter of electing another person to represent them. The situation of a general election where citizens are offered multiple choices is another matter. The nation needs both models of democracy if the people's preferences are to be adequately acknowledged by representatives who are accountable and if the state is to be governed efficiently in the interests of all.

The instrumental view, alone, does not adequately deliver a solution to a moral disagreement. A simple majority decision leaves many citizens not in agreement with the outcome – possibly as many as 49%.³ Nor does the instrumental outcome indicate those aspects of the issue that appealed to the majority, nor what it was

³ There are arguments for and against majority rule. New Zealand uses the majority rule. The important issue is, as Bernard Manin says, the adequacy of the discussion/deliberation that precedes the vote. Manin (1987):189-192. See also Gerry Stoker (2006): 73. He is not so sure.

particularly that failed to persuade the minority. Deliberative democracy is able to tackle this task by engaging all those who are affected by the decision to participate in forming the solution which all reasonable people can reasonably accept. On the other hand, the arguments about the complexity of decision-making in a deliberative environment cannot be ignored. Deliberative democracy is slow. I came to the conclusion that it was not an either/or situation but one of accountability, of how well the local MP acknowledges the preferences of his constituents. Now, my focus is two-fold: how we can better support the will-formation of citizens so that when we, as a nation, make a decision for the nation it is indeed a decision by the nation in the interests of all; and secondly when such decisions are made, the government of the day is held to account, that the preferences of citizens are adequately acknowledged by their representatives. My reading coupled with the evidence of the case-studies suggests to me that representative democracy as a system of governance has much to offer but its potential for the 21st century has been limited by its history; that now it is not so much the tyranny of the masses that is the concern but the hegemony of the elites.

Case Study 1 is an excellent example of the instrumentalism of representative democracy. In a few short weeks a new member of parliament was selected in a fair by-election for the Northland electorate. This efficiency is important. If a representative democracy is to provide equal opportunity for all citizens to register their preferences, the electorate must have a representative in the parliament because this is where the decisions are made; not to have a

representative would mean that approximately 65,000 citizens would be significantly dis-enfranchised. The smooth administration of the by-election ensured that all citizens entitled to vote were able to do so and were once again represented in the parliament.

By-elections are focused on the local. The emphasis is predominantly on what is best for the electorate. This signals a limitation of the instrumental process itself. In a general election there is the added dimension of the nation; accordingly, voters may vote less parochially and, even if they don't, their preferences need not be as apparent. In any election, each political party aims to persuade voters that their *policies* will be the best for the voter. In a by-election local *issues* can, and did in this case, loom larger. One of the Opposition's themes in the Northland by-election was neglect over many years. Opposition candidates argued that the Government had not treated the region equally with the rest of New Zealand. The point was emphasised when the Government lost the seat to the NZ First candidate, Winston Peters.

Clearly this issue had been 'buried' in the instrumental outcome over many general elections.⁴ Such an eventuality is a worry. It suggests that the practice of elections, at which time constituents can reward or punish their representative, is

⁴ The change to MMP, including the important party vote, weakened the clout of the electorate in general electorate campaigns. National had won the seat prior to 1996 as well as under MMP.

in some way flawed.⁵ It also suggests that, even in an egalitarian democracy like New Zealand, the core principles of democracy are not adequately honoured in practice, in other words accountability is not given priority. This issue has been more apparent since the introduction of MMP which has down-graded the importance of winning, and representing, an electorate.⁶ The region is no longer the only focus of its representative; the party vote is more influential in the final result so the campaign tends to focus on policies that will have wide appeal and garner 'party' votes from the supporters of other parties. However, by-elections are able to give specific messages and such messages may resonate further afield – as seen this year. Early in November, 2015, the Government approved the development of the Opotiki Port. All the necessary planning and consents had been waiting for the formal approval from Government for some time. The theme of 'neglect of the regions' had gained attention.⁷

The single-mindedness of a by-election is in contrast to general elections when political parties put out bundles of policies that they hope will cover the preferences of a wide range of interests.⁸ This lack of specifics makes it difficult for

⁵ My opinion is that MMP as it is presently practised does not adequately reflect preferences; STV would but it is a more complicated voting system. <http://www.stv.govt.nz/stv/electing.htm>

⁶ Under FPP the 1978 and 1981 elections delivered unstable government. The opposition parties won the majority of the votes but not the majority of the electorate seats and thus lost the election. <http://www.elections.org.nz/events/past-events/general-elections-1890-1993>.

⁷ Brian Easton, "Regional Development Policy?" *Pundit* 17 March, 2015: accessed 20 March, 2015.

⁸ Helena Catt and Peter Northcote (2006)

voters to indicate what their preferences actually are. It is one of the reasons given for the fall-off of participation in elections.⁹ Voters do not feel their preferences are taken seriously. From the party's point of view it is important to reach all possible supporters and win their votes. Thus the party combines a range of policy options. This scattergram approach may win the seat for the party but it does not indicate to the party which of its policies are the most popular with voters; nor does it inform the voters how the party ranks the policies.

This aspect of the by-election suggests to me that citizens relish the single-minded opportunity to make their local needs widely known. Regions such as Northland have few opportunities to be in the spotlight. From the perspective of a political party, the aim to win the majority of the votes is better served by concentrating on the centres of population. In New Zealand this is now the cities, predominately Auckland. For the rest of the population the issues may well seem remote, and the usefulness of casting a vote debatable.¹⁰

⁹ Richard Mulgan, *Politics in New Zealand*, 3rd ed. (Auckland: Auckland University Press, 2004): 272-274. See also: John E. Roemer, "Why does the Republican Party win half the votes?" in *Political Representation*, ed., Ian Shapiro, Susan C. Stokes, Elisabeth Jean Wood, and Alexander S. Kirshner (New York: Cambridge University Press, 2009): 305, 310-321.

¹⁰ The population of New Zealand is approximately 4.6m.; the population of Auckland is 1.5m+. Wellington, Christchurch and Hamilton account for around 1m.; the remaining cities together have a population of less than 1m. that leaves around 1m living in all rural areas. www.tradingeconomics.com. From a political party's perspective it makes sense to concentrate on the issues that confront Auckland first and then the cities. To be a democratic state implies acceptance of the notion of egalitarianism.

The simplicity of by-elections has appeal. They do, of course, cost money, but the benefit may be a surer indication of citizens' preferences.¹¹

Representative democracy has retained its 'power' because it is efficient. Many citizens, even those politically aware, do not have the leisure to go to meetings, read pamphlets, tune-in to radio and TV, engage in on-air or online conversations or get involved with party policy development. For many, the social media is the modern way to express their preferences – or dis-satisfaction. This, however, is not necessarily informed debate. A democratic election of one person, one vote, is a quick and easy way to give authority to a government – imperfect though that authority may be. Case Study 1 exhibits the instrumental strength of representative democracy.

Case Study 2 is an example of the deliberative model. It took approximately 18 months to reach an outcome. During that time an increasing number of citizens were included in the 'conversation.'¹² The image that comes to mind is that of a pebble thrown into a still pond and the ripples that emanate from that action. The 'pebble' was the LGC's *Draft Proposal for the Re-organisation of Local Government*

¹¹ Although the by-election presented an opportunity for citizens to voice their dissatisfaction, the voter turnout was lower than for the General Election six months earlier being 66% compared to 77.65%. Voter fatigue could account for this.

¹² The use of the word 'conversation' in a context of disagreement is a recent development. Increasingly power brokers of diverse sorts are appreciating that individuals react less favourably to being told what to think, how to act. They may not demonstrate the give and take of 'conversation' however.

in Northland. In its *Draft Proposal*, the LGC stated that Northland was at the crossroads.¹³ The implication was that the only solution was to have one voice with which to speak to government. In the beginning, the concentric circles were close to the pebble and included those with a specific interest in the proposal, both for and against. Slowly the circles widened to include more and more citizens until all who would be affected by the decision were able to receive information and participate in deliberative forums. The fact that the proposal has not gone ahead demonstrates one of the strengths of this type of decision-making.

There was a need for local government to pull together better than it had done in the past. Yet, the singularity of local government tended to work against co-operation; the parochialism of constituents focused attention on the local. The LGC's proposal which was couched in rather dogmatic terms was an ice-breaker. Discussion, not only between councils but also between interest groups within the region, suggested that there were ways of working together that would enable each council to maintain its singularity. Citizens had an opportunity to assess what they valued about the present structure and appreciate the bigger picture. The LGC in its turn recognised the value of the exercise which had brought about some of the changes in local governance that they sought.

¹³ Draft Proposal, 27.

The exercise was slow and it did only address one issue. These ‘facts’ can be regarded negatively or positively. The negatives are obvious. It took 18 months to reach a solution for one ‘problem.’ Government decision-making at this pace would be unworkable. On the other hand, the process showed the intrinsic values of democracy at their most effective. The region has a population of 151,692.¹⁴ Everyone was entitled to participate in a transparent way, to contribute to the will-formation of the region. The outcome does more than just adopt a solution. It has endorsed the principles of equality and liberty in an inclusive way and the solution is the more robust because of this.

This was by definition a local problem and it needed a local solution. It has been suggested that there should be more such decisions, not just by the LGC and not just for Northland. Indeed the proposed amalgamations of local bodies in the regions of Wellington and the Hawke’s Bay have not gone ahead giving further evidence that citizens want to be involved in decision-making that affects them. In a *Northern Advocate* article the new approach to regional economic development is commended.¹⁵ Economic Development Agencies in New Zealand (EDANZ) maintains that each region has its own character while having similarities with other regions. There is scope for separate initiatives as well as co-operative

¹⁴ 2013 New Zealand Census

¹⁵ Christine Allen, “Economic networks are in the spotlight” in *Northern Advocate*, November 11, 2015.

ventures. Another instance of this sort of thinking was outlined by Oliver Hartwich of the New Zealand Institute (NZI) in an interview on Q&A.¹⁶ He advocates special economic zones around cities in which local government takes the initiative on how to use development money. This interview is based on the paper Hartwich delivered to LGNZ in 2013 which contributes to the debate about which level of government should be doing what. The issue of funding allocation challenges local government in its responsibility to meet its statutory obligations. In the OECD, sub-central spending accounts for about 30% of all government spending.¹⁷ At 11%, the figure for New Zealand is not even half this international average; central government controls 89% of all public spending.¹⁸ This statistic questions the degree that New Zealand is governed *for all* New Zealanders, *by all* New Zealanders. Another example of local decision-making of a different sort is that of the Hastings District Council. The council has voted to protect its extensive food industry by being GM free. This might be a unilateral decision from a national point of view but the citizens of the Hastings District Council, producers and

¹⁶ Q&A, October 17, 2015. See Oliver Hartwich, "A Global Perspective on Localism" in *Local Government New Zealand Annual Conference* (Hamilton, NZ: NZI and LGNZ, 2013).

¹⁷ <http://www.oecd-ilibrary.org/sites/factbook-2014-86-en/index>.

¹⁸ <http://www.lgnz.co.nz/home/nzs-local-government/new-section-page/>

consumers, see it as a local initiative to maintain the reputation of their considerable international food industry that their livelihoods depend on.¹⁹

A significant and comprehensive local/regional development initiative is that of Tūhoe. The Tūhoe Claims Settlement of 2014 is significant for two reasons. Firstly, it included the Te Urewera Act which turned Te Urewera National Park into a legal entity.²⁰ It will be managed by Tūhoe (initially in partnership with the Department of Conservation) with its focus the reflection of customary values and law.²¹ The park is already the focus of Maori economic development in the rohe. Secondly, the settlement established the Service Management Plan (SMP) which ‘may well prove to be a kind of watershed moment in New Zealand social history, and indeed, in welfare in particular.’²² Tūhoe has established a ‘local’ health system for its people and has its first clinic in Taneatua – two more are planned. A community of learning is proposed among the 15 schools in the rohe which will reflect the language, culture and way of life of Tūhoe. The last initiative is welfare and the

¹⁹ Hastings District Council has voted to remain free of genetically modified organisms. Auckland, Whangarei and Far North councils are all considering similar rules. <http://www.stuff.co.nz/dominion-post/news/71974729/Major-economic-opportunity-as-Hastings-District-Council-goes-GM-free>

²⁰ Te Urewera Act demonstrates a new bi-cultural way of articulating the importance of national park lands for multiple reasons ranging from science to cultural.

²¹ The National Park Act is mono-cultural. The Te Urewera legal entity is bi-cultural. Tuhoes have stood out for their independence since not signing the Treaty of Waitangi in 1840.

²² <http://maorilawreview.co.nz/2014/10/tuhoe-crown-settlement-a-transforming-dawn-the-service-management-plan/> accessed November, 2015. The SMP was entered into for the purpose of developing, implementing, and expanding a plan for the transformation of the social circumstances of the people of Ngāi Tūhoe. It is between the Ministries of Education, Social Development, and Business, Innovation and Employment.

reduction of dependency which is under negotiation with the government agencies involved. The Treaty Settlement has enabled practical steps to be put in place so that Tūhoe are able to manage their affairs within ‘their core area of interest with the maximum autonomy possible in the circumstances.’²³ The aim is to be self-sufficient within two generations or 40 years.²⁴ Tūhoe’s determination to manage the iwi’s own affairs demonstrates the human need for self-mastery.²⁵ It recognises how important the particulars of the local environment and culture are in the provision of a satisfying, productive life for an individual citizen or a collectivity, such as an iwi. The Tūhoe Settlement was achieved by transparent deliberation that required respectful dialogue. It took years to arrive at the solution to a difficult clash of beliefs. The outcome supports the view that such deliberation results in robust decisions.

The process used by the LGC in Northland is one which could be used to gain citizens’ support for significant issues that affect their region. Our centralised system of government assumes that all regions are the same. On practically every level this is not the case. Geographically the variety is enormous. It is one of the

²³ Ibid.

²⁴ Here ‘self-sufficient’ means having all Tūhoe in work, no longer anyone on a benefit.

²⁵ See: Habermas, Cohen, and Rawls in *Deliberative Democracy* (1997). Also Jeff Spinner-Halev, “Multiculturalism and its Critics,” in *The Oxford Handbook of Political Theory*, eds., John Dryzek, Bonnie Honig, and Anne Phillips (Oxford: Oxford University Press, 2006): 546-563.

attractions for tourists. Climate differences are described on TV every day. The day's weather may deliver snow in the south and sun in the north, or floods in the west and droughts in the east. Population density, land use, average income, ethnicity and so on and so on differ throughout the country. For a small country Aotearoa New Zealand has great variety. Managing such diversity can be seen as either a benefit or a cost. Or such diversity can be taken as a neutral 'given' which provides challenges, challenges which will differ from region to region. The first challenge is to put in place mechanisms that can capitalise on such diversity and engender an acceptance of the value of deliberation.

The process used by the LGC in Northland is suitable to be used nationally on matters of moral disagreement. Each region would initiate the conversation with its citizens on the common topic. Such conversations would, ideally, be organised and promoted by the LGNZ or a commission, such as the Human Rights Commission, charged with the responsibility.²⁶ Should the occasion, and topic, arise it would be possible, maybe even desirable, to include non-governmental organisations, unions, professional bodies, gangs, churches, iwi, youth, sports clubs, women's refuge, and especially the unemployed. It is important that New Zealand canvasses the opinions of *all* its citizens. To just get responses from the

²⁶ A Commission for National Conversations, perhaps? The 'Conversations' initially could be on fairly general topics that citizens are concerned about (superannuation? local housing provision?) and graduate to more weighty matters like the Constitutional Conversation that originated from the 2008 Confidence and Supply Agreement between the Māori Party and National Government. <http://mccawlewis.co.nz/articles/article/31/the-constitution-conversation-he-kaupapa-nui-te-kaupapa-ture>

engaged, educated, and elderly is not sufficient even if they are the most willing to comply.

Central to the arguments for democracy are the basic concepts of equality and individual liberty and what these concepts entail. There are of course many ways to define 'equality' and 'liberty' and the definition chosen influences the type of democracy that is regarded as justifiable. The two case studies bear this out.²⁷

Initially representative government was limited to a few male property owners. Their objective was to ensure the security of the state so that they would have the liberty to live the life of their choice. The franchise was determined by a citizen's status and that in turn presupposed a certain set of interests. If you didn't have the status, you didn't have the vote. Now with universal franchise that simple concept of government is flawed. Equalising the franchise presupposes each individual's equal right to take part. And if there is an equal right to take part, it follows there is an equal right that each person's preference deserves equal respect and is as valid as anyone else's preference. However, there are impediments to achieving this sort of equality, even when desiring it: lack of education, poverty, lack of confidence; in other words social and economic

²⁷ Case Study 1: numerical instrumental equality; case Study 2: the intrinsic values of democracy.

inequalities which diminish an individual's autonomy.²⁸ The hallmark of a democratic government is how adequately it works to reduce such impediments.

To return to New Zealand's diversity and the challenge it presents is to return to the challenge ensuring that individual citizens have an equal opportunity to participate in the decisions that affect their lives. Therefore one size, one solution will not be appropriate for all regions. Centralised decision-making may be seen as cost-effective but it is not necessarily democratic, it doesn't necessarily adequately acknowledge the preferences of the citizens as the angst of voters showed. What the LGC's *Draft Proposal* has demonstrated is that, with transparency and the opportunity to participate, respectfully, so that no-one is making decisions for someone else, it is possible to find a solution that reasonable people can accept. Thus, when the citizens had communicated their decision, it was possible for the LGC to endorse it with confidence.

In effect, Northland was making three decisions almost simultaneously. There was the short sharp burst of the by-election in March 2014; around that time, there was the deliberation on the *Draft Proposal*; and bubbling in the wings was the issue of the HWMAC. A year on, all have been decided but two have not been forgotten. The Northland councils are continuing to communicate and co-operate

²⁸ Robert A. Dahl, *Democracy and Its Critics* (New Haven, US: Yale University Press, 1989): 100-101; See also: Gerald Gaus, "The Place of Autonomy within Liberalism," in *Autonomy and the Challenges to Liberalism* (2005): 272-306; *Justice and Democracy* edited by Keith Dowding, Robert E. Goodwin, and Carole Pateman (Cambridge: Cambridge University Press 2004): 187-191.

and Prosper Northland has opened an office in the CBD which provides information and is a focus for fund-raising.²⁹ The result of the by-election is a vague memory and the new local political arrangement has been subsumed by national politics. This is what one would expect. The other two decisions though obviously no longer centre-stage have contributed to a sense of place and demonstrated the intrinsic qualities of democracy.

In Conclusion

New Zealand's main mechanism to decide political matters is the majoritarian election. This is a very blunt instrument when used on its own. There are, however, occasions when such a mechanism is all that is required as in situations such as the by-election and the Hundertwasser referendum. The deliberation in each case had taken place well before the day of decision, and there was at that point only one issue to be decided at the polling booth. The critical issue is the quality of the deliberation beforehand. It is possible to argue that the same can be said for general elections. Certainly there is opportunity for deliberation before a general election. Information is available from which citizens are able to form their opinions. The problem is that the decision to be made is complex; in effect there are many decisions to be made - and all reduced into one tick which makes the

²⁹ The funding stream is not progressing as fast as hoped.

election a bit like a lucky dip. That does not adequately acknowledge the citizens' preferences.

The process of Case Study 2 gave citizens opportunity to discuss with others, reconsider, verify the various issues involved in the proposal. Although there was a majoritarian final decision option if necessary, in Northland it was not required. Citizens had communicated their individual and collective preferences to the Commissioners, in writing and in person. The weight of submissions against the *Draft Proposal* convinced the LGC not to proceed. Instead there would be continued dialogue between the LGC and the local councils.

Thus the two case studies in their different ways for their different circumstances adequately acknowledged the preferences of Northland citizens.

I am left with the thought that all preferences 'are equal but some are more equal than others' – George Orwell, *Animal Farm*.

Chapter 5: Looking Towards the Future

The Real Utopias Project has, since 1992, published scholarly papers that reflect on the contemporary state of democracy. Some are critical, some are ‘fanciful’. The aim of the exercise, as Erik Olin Wright states in the initial introduction, is not to propose A PLAN but to take stock, to acknowledge that because some institution has been functioning for 200 years, it may not remain cogent for the present. He reminds us that although representative government has been with us for over 200 years, it is a man-made artefact that can be re-shaped if need be.¹ It is in this spirit that I evaluate the case studies as an indication of how the core principles of democracy are acknowledged in New Zealand and offer some thoughts for consideration that would enable New Zealand to move towards a more democratic future.

The by-election showed a level of disquiet that is concerning; the unease was as much with the system of re-presenting citizens’ preferences as with the Government of the day. As the case study decision-making exercises took place almost simultaneously, connections and comparisons can be made. It was an opportunity to consider how well political theory works in practice. Both undertakings demonstrated the core democratic principles of equality and liberty;

¹Erik Olin Wright, ed. *Associations and Democracy*, vol. 1, Real Utopias Project (London: Verso, 1995): Preface.

every citizen in the region and/or the electorate was entitled to participate if they wished to do so. However, one appeared more inclusive than the other because there was more opportunity for an extensive exchange of views; in each case the result affected everyone irrespective of their preferences.

This difference in perceived inclusiveness is due to the procedure or process involved, and its 'solution'.² The 'winner' of the short, sharp by-election went to Wellington to join other representatives who together govern from afar.³ The 'answer' to the LGC's *Draft Proposal* remained in the region to be administered by local citizens. My unease is that the procedure that sent a representative of and for the electorate to parliament,⁴ to make decisions on behalf of the constituents, is not supported by the sort of deliberative process that the LGC and the region shared; that the representative does not have the benefit of wide-ranging deliberation that would inform him of his constituents' preferences.

In this concluding chapter, I acknowledge that our political arrangements have stood the test of time remarkably well and until recently have been regarded as 'fit for purpose.' Recently, however, some slippage has occurred that suggests that the New Zealand political landscape might benefit from a review so that we forge

² 'Procedure' and 'process' do not refer to the same practice yet they are often used interchangeably. A 'procedure' is the particular way of going about the accomplishment of something – a set behaviour. A 'process' is a course of action moving progressively forward towards completion.

³ The expression 'out of sight, out of mind' comes to mind – with all parties susceptible.

⁴ In this case the electorate did select a local person; it is not however a requirement.

a stronger democracy that more effectively demonstrates democracy's core principles of equality and liberty. As is appropriate for this thesis topic, I consider how we might put more deliberative democracy into our present representative practices.

The theory of representative democracy was developed for a, broadly speaking, homogeneous group – adult male property-owners. It was not unreasonable to believe that a one-off decision on an issue would represent a majority opinion. Today with large plural polities this belief is hard to sustain. Today, the equality and liberty espoused by representative democracy entitles all adult citizens, male and female, to express a preference. The situation is further complicated by the introduction of political parties; the representative of the constituents is also the representative of the party. In addition, the constituents in a plural society have diverse values, preferences and aspirations. To expect a one-off decision to meet all these demands is not reasonable. The historical situation in the Northland electorate suggests that representative democracy is unable to adequately acknowledge the range of preferences in an electorate that is socially and economically very mixed.

Deliberative democracy, on the other hand, does offer citizens the opportunity to share their preferences with others, to work out a 'decision' that accommodates a variety of preferences. The theory of deliberative democracy does not include representatives and political parties. In theory every citizen expresses her own views on the preferences under discussion. In large polities this will not work. We

need representatives and we have political parties but in my view we also need more transparent decision-making. The principle of each citizen being entitled to contribute to the formation of the solution is possible. The deliberation on the *Draft Proposal* verifies this.

Not all citizens will take the opportunity to vote or deliberate every time but as citizens are offered more opportunities to be specific about their preferences involvement in the public sphere is likely to grow. The practice of democracy will better match the theory.

Two issues have occurred more than once during my investigation: the need for balanced information rigorously reported and the acknowledgement of citizens' preferences by politicians. The first is necessary if citizens are to make informed decisions; the second, if the core democratic principles of equality and liberty are to be appropriately recognised.

The renewed interest in more local decision-making is seen as a possible way of achieving both.⁵ The result of the *Draft Proposal* can be judged, with two quite different interpretations, as *people preferring what they know*. The negative view is that people don't like change; the more positive assessment is that 'keeping things local' allows citizens a more hands-on approach to those aspects of life that

⁵<http://www.waitomo.govt.nz/Documents/Documents/LGNZ-blue-skies-thinkpiece-Dec-2015>. Research from the Productivity Commission, due early in 2016, will also be relevant.

affect them, and more opportunity to influence decisions.⁶ The reciprocal offering and receiving of information and opinion is likely to lead to a more robust solution.

The two models of democracy complement each other. It is the balance we need to address. Citizens need both models for appropriate and effective decision-making and governance – if the democratic principles of equality and liberty are to be borne out in practice so that justice is served.

The issue is one of accountability. A lack of deliberation both in the public sphere and through parliamentary processes diminishes the depth of democracy. The consequence of this omission is that the acknowledgement of citizens' preferences is not adequately realised. The significant fact is that the process by which a decision is arrived at, to be legitimate, needs to be transparent - as do the reasons for the decision. To say that our representatives are there to protect the interests of citizens is not enough. To say that the representatives can be disciplined once every three years is not enough. For democracy to be of the people and for the people, it has to be demonstrated that the people's preferences have been acknowledged *and are reflected* in the decisions made on their behalf. An election success made on a bundle of policies is not enough. It is deliberation in public that

⁶ As already noted, local government in Northland is not the only region to prefer to remain local.

ensures not only transparency but also the respectful exchange of ideas in the search for a solution that reasonable people in a plural society can accept. This requires 'doing politics' using both models of democracy together.⁷ In this way New Zealand would develop what Gutmann and Thompson call 'a public philosophy' which incorporates those moral principles that reasonable citizens can agree on as well as the principles that protect basic rights and support the conception of procedural justice.

Whether it is because the political scene no longer seems to have relevance for many, or whether it is, as Hibbing and Theiss-Moore believe, because citizens are no longer impressed by their politicians, the fact is that there is a growing discontent with doing politics the traditional way.⁸ A 'new voice' is demonstrating an interest in values and issues rather than party politics.⁹

In our present political arrangements, I think representative and deliberative democracy appeal to two broad sorts of person: those who 'like' efficiency and

⁷ See Gutmann and Thompson (2004): 90-94.

⁸ Richard Harma, "The Declining State of New Zealand Newspapers." <http://politik.co.nz/469>. According to the media industry website, "StopPress," *Stuff* averaged 1,733,000 visitors per month to its site while the *NZ Herald* received 1,315,000 visits: accessed 20 December, 2015.

⁹ Allen, Danielle, and Jennifer S. Light, ed., *From Voice to Influence* (Chicago: Chicago University Press 2015): Preface. Political parties also use blogs, posts, on-line petitions but are more likely to attract the converted.

those who 'like' people. They are not mutually exclusive roles. Just as people can be efficient and still enjoy the variety and vagaries of other people, and share their concerns, so can politics. Political arrangements need to be both efficient and in the common interest.

These qualities can operate together. To involve the community has been shown to be effective and the practice is gaining acceptance, as already indicated. The social capital that spins off such endeavours benefits the community at large both by the solution arrived at and the community spirit fostered.¹⁰ Such a process captures the capacity and energy of citizens in a way that is not possible by a centralised approach.¹¹

I have indicated earlier in the thesis that it is the balance between the two approaches to democracy that needs to be addressed. We all need a national government which deals with the 'big things' such as international relationships, the monitoring of our legislative regime, how we use and distribute water. We need to have conversations about such matters, and many others, so that the government of the day is mindful of the citizens' preferences going into the future.

¹⁰ James Farr, "Social Capital: a Conceptual History," *Political Theory* 32, no. 1, (2004): 6-33.

¹¹ Jim Sinner, *Redefining Local Governance*, notes accompanying workshop held at Massey University, Albany, July, 2014.

These conversations are opportunities for citizens to deliberate and determine what they judge to be in the common interest.

As individual citizens we live our lives on a smaller scale. The way our local community solves its problems, in accordance with the law, affects all citizens, in one way or another. As we seek to find solutions that all reasonable people can accept, we learn more about the strengths and fears of our community. The intrinsic qualities of democracy come to the fore. People are treated with respect; there is reciprocity and transparency and with this comes commitment to the place. The core democratic principles of equality and liberty are together delivering justice to the community, and thus to Aotearoa New Zealand.

The elusiveness of preferences is always going to be with us but by using both models of democracy judiciously we can ensure that citizens' preferences are adequately recognized. In that way equality and liberty become the foundation of life in Aotearoa New Zealand.

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