Citizen-Led Constitutional Change

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What is the question?

Constitutions and municipal charters determine the basic rules of government. As societies change, constitutions and charters need to be changed as well. Who should craft these changes? In particular, what is the right role for everyday people, given the global trend toward increasing public distrust of politics and politicians?

The usual answers

The most common pattern is for elected representatives (often, a multi-partisan committee advised by constitutional lawyers) to develop a package of proposals, which goes to the public to approve or reject.

There are three problems with this arrangement. First, when it comes to deciding "the rules of the game," elected representatives are perceived by the public as having unavoidable conflicts of interest. Second, this arrangement does a poor job of incorporating the diverse views of the public. Third, because of the low level of public trust, it takes a lot of political capital to conduct a successful campaign – often resulting in deferring action for years or even decades.

In recent years, several countries have experimented with a better alternative. The final decision is still made by popular vote, but the proposals are developed (or reviewed and finalized) by randomly selected samples of the public ("mini-publics") (See, *Forms of mini publics*).

Using a mini-public to develop the proposals solves the actual or perceived conflict of interest problem, increases public trust, and incorporates ideas from the public, drawing upon the diverse knowledge of citizens. It does so in a way that is representative, deliberative, and influential. However, two problems remain, regardless of whether proposals are developed by a group of elected representatives or a mini-public. The views of the rest of the public are still excluded from the process, and the range of proposal ideas can still be limited.

An alternative

In the near term, it is possible to retain the advantages of a mini-public and to overcome the three problems mentioned above, by using self-selected proposal teams to develop proposals in the first instance, and then using a mini-public to review those initial proposals and develop the final proposal (See, *Beyond Mini-Publics Alone*). Thinking more long term, the constitution or charter review process could also include a separate mini-public to assist in setting agenda and "policy juries" to make final decisions about adoption (Bouricius, 2013).

Here is a short summary of how these ideas could work at each stage of the process:

Setting agendas

The first stage is to decide - using whatever is the existing process in a particular jurisdiction - which articles of the constitution or charter need amending, or which issues require adding new articles, and to develop a well-crafted "remit" for proposal developers and reviewers (See, *Framing the Remit*).

Developing first proposals

Within the parameters of the agenda, a wide call should be issued encouraging self-selected "proposal teams," plus "multi-stakeholder teams," to prepare submissions for consideration by subsequent representative mini-publics. The idea of multi-stakeholder teams is to assemble opposing interests and civic organisations into common proposal teams to maximize the chances of finding common ground. By gathering proposals in the ancient spirit of Athenian democracy, *ho boulomenos* (from any who wish), while allowing genuinely representative mini-publics to review, reject and refine this raw material, the ability to examine a wide range of ideas is maximised. Since all these proposal teams know they are preparing a proposal that must pass the judgment of a representative mini-public, they have an incentive to seek common ground.

Reviewing first proposals, developing final resolutions

Demographically representative randomly selected bodies, known as "resolution assemblies," are charged with reviewing the first proposals, conferring with experts, deliberating, and crafting a final resolution to go before the voters as a constitutional or charter amendment. Special attention must be given to means of assuring staff impartiality and assuring that balanced information gets to the resolution assembly (See, *Hearing from Experts*).

Deciding

A popular referendum will probably be the preferred ratification method in most places. However, there are two problems with using a referendum - rational ignorance on the part of voters, and elite and media manipulation of public opinion. There is a tested strategy for reducing these problems – one-page explanatory notes written by mini-publics in the *Citizen Initiative Review* of ballot initiatives in the USA state of Oregon. Thinking longer term, both problems could be overcome by having a separate short duration mini public "ratification assembly" listen to pro and con arguments and then vote on final adoption of the proposal crafted by the resolution assembly.

Benefits

Compared to having elected representatives develop proposals, this alternative would:

- Increase public trust in the process, by reducing the perception of conflict of interest (concerns that "they are only suggesting this to help their side");
- Incorporate ideas from the public in a way that is representative, deliberative, independent from partisan party politics, and ultimately influential; and,
- Allow more learning and genuine deliberation by avoiding the problem of pre judging ideas, which is common within elected chambers based on party platforms or campaign promises.

Compared to having a single mini-public develop the proposals, this alternative would:

- Incorporate the views of citizens beyond the members of the mini-public; and
- Provide a more diverse range of ideas
- Eliminate the dilemma that the authors of a proposal can find it difficult to impartially evaluate their own work

Evidence from practice

Although the integrated model described here has not been tested, there have been a number of examples of mini-publics developing proposals for constitutional change (Reuchamps & Suiter, 2016). To cite just a few examples:

- In **Canada,** the provinces of *British Columbia* and Ontario have convened mini publics called "citizens assemblies" to develop proposals for changes in their electoral systems.
- **Ireland** has used mini-publics to develop proposed constitutional amendments on several issues, including the highly controversial topics of same sex marriage and abortion (See, *Integrating Citizen Deliberation in Ireland*).
- **Mongolia** has a law requiring a mini-public review of any amendment to the constitution.

In Australia, the city of Geelong convened a mini-public that developed recommendations for basic changes in its form of local government, and most of those recommendations have been adopted, some requiring legislative change (See, *Geelong*).

There have also been a number of examples from several countries (Spain, Italy, Iceland, and Brazil, for example) of citizens proposing legislation through digital platforms – either to the legislature, or to a popular referendum.

Requirements for success

This process has a number of requirements in order to be successful.

The **call for proposals** needs to be **clear and well-publicised.** It is important to have **staff available to answer questions** from proposal teams.

The resolution assembly needs **a sufficiently statistically representative sample** of the public. Therefore, the selection procedure should start from a random sample of the whole population, not a random sample of people who choose to volunteer. It may be appropriate to use a stratified sampling procedure along various demographic variables (such as age and gender), in order to enhance representativeness. Also, its **members** should be **well-compensated** for their time, in order to get adequate representation of people with modest incomes.

The resolution assembly needs **enough time and information** to perform their tasks effectively. This requires access to diverse sources of useful information (both documents and interaction with experts with a variety of views). Members of the resolution assembly should have the opportunity for **training in critical thinking** and how to overcome common human cognitive biases before they begin their work (See, *Critical Thinking*).

The resolution assembly also needs adequate **staff support** and **skilled facilitation** (See, *Importance of Facilitation*).

🔶 Addressing possible objections

Designing amendments to a constitution or a city charter is a very important task, and a very complex one. Why entrust it to ordinary people, some self-selected and others chosen entirely by chance?

When it comes to proposing changes in the basic rules of democracy, elected representatives have an unavoidable conflict of interest. Mini-publics – assisted by experts, but not directed by them – have developed credible proposals for constitutional change in multiple countries, as demonstrated in the "evidence from practice" section above. Expanding the range of inputs through such diversity can bring forth good ideas that would not arise among typical drafters.

Elected representatives are accountable to the people. How would these proposal teams and mini-publics be held accountable?

There is no need for them to be "held accountable." The final decision would not rest with the proposal teams or the resolution assemblies, but with a separate approval process (either a referendum or a statistically representative mini-public).

An open call for proposal teams could result in thousands of proposals. Your mini public will be overwhelmed by the task of reviewing them.

Reviewing a large number of proposals can indeed be challenging, but the process can be dramatically simplified with the assistance of competent staff.

You won't get many good proposals. Most people are too cynical to participate, and those who do will either be too opinionated (the advocates) or too ill-informed (the general public) to write anything worthwhile.

There have been many cases, worldwide, of credible proposals for legislation developed by citizens, from Australia to Iceland to Brazil.

In terms of developing proposals, well-funded advocacy groups will have an unfair advantage over anyone else. They have deep knowledge about their issues, and communications people who can produce fancy, "well packaged" proposals that would impress a bunch of everyday people, even if the ideas aren't good.

Advocacy groups do have deep knowledge about their issues, and that is an asset, but they don't have a monopoly on ideas for constitutional change. The problem of fancy

"packaging" can be overcome by requiring a standard format, with simple text and no graphics. Advocacy groups would know their proposals would need to be approved by a well-informed and impartial "jury," so they would be motivated to draft more balanced proposals than they would for a convention of elected representatives.

The staff would have a lot of power in this arrangement. What would prevent them from manipulating the mini-publics?

The impartiality of the staff would require scrupulous oversight and, as is the case with all mini-publics, transparency of the process should be paramount. It would be possible, for example, to include an oversight group of stakeholders to monitor the process. In a well designed process, the staff would not have a lot of power. They would not set agendas, develop proposals, or decide which proposals go to a public referendum. The mini-publics would have training in critical thinking, and access to a variety of information sources, including experts of their own choosing.

References

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- Min Reuchamps & Jane Suiter (eds). 2016. *Constitutional Deliberative Democracy* in Europe. ECPR Press.