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Fragments of equality in representative politics

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Abstract

Deploying a broadly interpretive approach, the article explores the extent to which, and the ways in which, equality is enacted in non-elective as well as elective representation. It argues that the fleeting and fragmentary equalities evident in non-elective representation are democratically significant, and that examining them can enhance understanding of the democratic promise and limits of different modes of representation.

Keywords: political equality; democratic representation; elections and representation; non-elective representation; representative democracy

Introduction

In his book *Equalities*, Douglas Rae comments that:

Equality is the simplest and most abstract of notions, yet the practices of the world are irredeemably concrete and complex. How, imaginably, could the former govern the latter? It cannot. We are always confronted with more than one practical meaning for equality and equality itself cannot provide a basis for choosing among them (Rae 1981: 150).

These words express well the orientation of this article, which makes no large scale normative claims about equality and representation. Rather, in a more interpretive vein I offer a selective account of some important, thicker and particular, ways in which ideas of equality are invoked and manifested, directly or indirectly, in the politics of representation. The key question addressed is: how is equality present, or not, in the wider realms of non-elective as well as more specifically elective representation? My response is: in fragmentary, partial, and sometimes unexpected ways. Why does this matter? On one level, if the argument is right, it may offer a corrective to strong emphases on high-level normative work which prioritises 'the simplest and most abstract' view of equality and its demands (though I do not mount that critique here). More directly, the article presses the point that the fleeting and fragmentary equalities evident in non-elective representation are democratically significant. It may be that their fragmentary character contributes to their democratic significance. In tracing some of these fragments, we may contribute to an understanding of the democratic promise and limits of representation in (at best) promoting equality and highlighting inequalities.

¹ The author would like to thank the editors of the special issue and the anonymous reviewers for their thoughtful comments and suggestions.

The article explores how political equality is or may be enacted in practices of electoral and (especially) non-electoral representation. It then focuses on the democratic legitimation of representative claims, and what roles notions of political equality play. It also discusses actors at the extreme margins of political representation. The suggested criteria of democratic legitimacy to apply to representative claims centre upon the actual acceptance of claims by appropriate constituencies under certain conditions (Saward 2010). For actors at the extreme margins – whose political role may exemplify Ranciere’s (1999) ‘part of no part’ – the emphasis may be more on achieving preconditions of acceptance via effective membership of a relevant political community, rather than on acceptance as such. More specifically, the paper will consider (1) the roots of the argument in the notion of the representative claim; (2) the preferred approach to the meaning and significance of the principle of political equality; (3) enactments of political equality in elective representation, non-elective representation, and the critical relationships of mutuality and tension between the two; (4) the limits and possibilities for theory to address inequalities in non-elective representation and at the extreme margins; and (5) the places of political equality in judgements of democratic legitimacy of representative claims.

The representative claim

The analysis is built upon the performative and constructivist definition of political representation as the contingent product of ‘representative claims’ and their acceptance. The representative claim is defined as ‘a claim to represent or to know what represents the interests of someone or something’ (see Saward 2010, 38). According to this perspective, representation exists primarily by virtue of its being done – practiced, performed, claimed – and accepted by appropriate constituencies. Representative roles and relations gain a presence in our politics because myriad actors make claims to speak for others (and for themselves). Representation is a performative product in two linked senses: it is performed in the theatrical sense (i.e. it is both done and shown to be done (Schechner 2002; Rai 2014)) and in the speech-act sense (it is a speech or other act which establishes, or contributes to establishing, a state of affairs) (Austin 1975; Butler 1997). The representative claim framework emphasises the situated or contextual dynamics of producing relations of representation. It stresses representation’s variability: it is a versatile phenomenon that can be formal and informal, electoral and non-electoral, national and trans-national, and manifest in multiple guises and spaces.²

Political equality

Equality is often taken to be the foundational principle of democracy (e.g. Dahl 1989; Beetham 1999). More broadly, as Judith Squires (2006, 472) comments, ‘[i]t has been suggested that political theorists tend to operate on an “egalitarian plateau” in which everyone accepts that citizens should be treated as equals’. Will Kymlicka (1990, 4), for example, cites Ronald Dworkin’s view that ‘every plausible political theory has the same ultimate value, which is equality’.

² Although the constitutive character of representation is prominent in recent accounts including those focused on judgement (Urbinati 2011), reflexivity (Disch 2011), and aesthetics (Ankersmit 2002), it has deeper roots in the account of Bourdieu (1991) and, according to Disch in particular, in Pitkin’s modern classic *The Concept of Representation* (1967). Arguably, it goes all the way back to Hobbes: ‘For it is the unity of the representer, not the unity of the represented, that maketh the person one.’

Suppose that a case can be made for equality's singular and foundational status, perhaps by folding many other claimant principles under it in some plausible way. We would still be faced with the knotty challenge of deciding what sort of equality pertains to theoretical or policy issues we address. This question is well-known in political theory of course: 'equality of what?' (Dworkin 2004), 'Which equalities matter?' (Phillips 1999), and so on. Consider the range of possibilities: Equal rights protection by courts? Equal votes? Formal equality? Numerical equality? Equal opportunities to stand for office? Equality of resources that underpin citizenship capacities? Equal (negative or positive) freedom? Equal respect? Equal access to deliberation? To decision-making? Equal opportunities, even if this means unequal resources? Or any one of a set of further possibilities, in combination with some of the above, in a certain order of priority?

Faced with such diversity, the observer might choose a particular interpretation of the principle, argue for its primary status, possibly incorporating some of the alternative meanings and nuances into the preferred approach. That, certainly, is one way of doing political theory – a process of abstraction, stipulation, deduction, and normative application. I do not wish to argue against such approaches – there are great theorists, not least for example Rawls (1972), in whose hands they have been brilliantly executed. A second approach is to do more 'grounded' theory, regarding the meanings of key principles as gaining clarity through the ways in which they are institutionalised and practiced in a variety of political contexts. Rather than an approach prioritising abstraction, stipulation and normative application, a grounded approach emphasises enactment, interpretation and interpretive modes of assessment.

The idea that principles, such as political equality, gain their specific meaning and force through *enactment* is central to this second approach. It holds that that the meaning of, and justifications for, the principles can only be worked out through interpretation of their enactment (invocation, institutionalisation) in practices of politics and governance (cf Lascoumbes and Legales 2007; Isin and Saward 2013). Practices put principles to work, and *in the process* give them texture and meaning. In this sense, the names of the principles ('equality', 'freedom', etc.) are understood as convenient placeholders for a bundle of actual and potential interpretations. Specific and detailed meanings are enacted through institutions and devices that might embody and bring the principles to life. This approach, which I have elsewhere termed 'reflexive proceduralist' (Saward 2003), stresses how principles, institutions and practices are in a sense turned *inward* towards each other, gaining vitality and meaning from each other, as ideas and as concrete political practices, without reference to some philosophical 'outside' which can justify and define the principles independent of practice.

Further, equality has competitors in the claims made for it as democracy's foundational principle. Whatever precise meaning is ascribed to it, it is far from alone in being critical to the institutionalisation and practice of democracy. Consider an open-ended range of claimants to the mantle as the (or a) master principle of democracy: inclusion, participation, accountability, freedom, rights, empowerment, representation, justice, citizenship, non-domination, transparency, deliberation, decentralisation, authorisation, autonomy, responsiveness, constitutionalism and the rule of law, and majority rule. A critical issue here – and one that deserves more space than I give to it – is the complex of ways in which the entries on this list implicate other entries. To evoke deliberation, for example, as democracy's foundational value will necessarily mean invoking (perhaps implicitly) values of transparency (or publicity), autonomy and participation. In representative politics equality need not be *named* as such to be invoked and enacted.

Different principles in the processes of enactment have an impact upon each other in the process of mutual clarification in particular contexts. For example, the ways in which freedom and rights may be invoked and institutionalised will condition, in varied ways, how political equality and its importance may be understood or defended. Insofar as there *are* external referents which contribute to the production of meanings, these may include *other* principles which have acknowledged resonances with the principle and traditions of democracy. A given set of democratic principles will be a dynamic rather than a static set because, in semiotic terms, the potential democratic principles and ‘democracy’ itself are both signifiers (of each other, in various ways) and signifieds. They operate within chains of signification (or meaning-generation) in which no privileged point of entry can be stipulated so as to dictate a final meaning or order of importance.

With political principles, any effort to pin down a single, superior meaning – such as equality of voting power for political equality – may be successful in or across contexts, but will never be able successfully to expunge other credible meanings (and with them alternative designs of devices and institutions which enact the principle). The content of principles is dynamic, and performatively produced.³

Enacting political equality in elective and non-elective representation

The principle of political equality can be, and is, enacted in a great variety of ways and institutions and in differing contexts. Formally equal voting in universal suffrage elections is a particularly distinctive, prominent and democratically important mode of enactment. In principle, equal votes create a vital measure of equality of treatment and equality of opportunity; voting rights symbolise an equal citizenship status regardless of social or economic status. The egalitarian credentials of this form of enacting political equality are underlined where elections are regular, generate strong publicity and good levels of public debate, and foster transparency of political actions and political actors. Stemming from the enactment of equality are other principles that are to a degree enacted through elections, including a measure of popular control, evidence of consent of the governed, and formal modes of authorisation and accountability (Dahl 1989; Beetham 1999).

In practice, of course, this formal equality translates into substantive equality only to a limited and variable degree across countries and other contexts, and may be especially problematic in voluntary voting regimes. Equal votes do not guarantee equal influence through the use of the vote, which clearly varies according to features of electoral systems. Equal votes certainly do not guarantee that larger and deeper socio-economic inequalities in society will be addressed effectively by elected political leaders, or that those larger inequalities will not impact upon who votes (Phillips 1999). Compulsory voting, effective organisation and facilitation of voting may enhance the egalitarian claims of elections. But even where good electoral practice lives up to the principle of equality to a strong degree, there are serious limits to what can be claimed about the quality or effectiveness of the forms of representation which the entrenchment of equal voting rights can produce in a given context. But whatever the extent of its translation into substantive equality, the profound symbolising of equal citizenship in the institution of equal voting rights is one among many potential enactments of political equality.

³ Cf Butler (1990: 24-5): ‘... the substantive effect of gender is performatively produced ... gender is always a doing, though not a doing by a subject who might be said to pre-exist the deed ... There is no gender identity behind the expressions of gender; that identity is performatively constituted by the very ‘expressions’ that are said to be its results’.

So political equality, both practically and symbolically, underpins the strength of representative claims that election winners can make. Election winners can claim to be occupants of public office by virtue of the fairness embodied (to varying degrees) in the institutional enactment of equality through free and fair elections. It is therefore perfectly reasonable for election winners to claim to be representatives on the basis of the enactment of political equality and the other core principles which accompany it, even where voting rates are low. High voting rates across regional, class, religious and other social categories will add force to such claims. In sum: more or less free and fair elections variably enact a set of democratically desirable principles, not least principles of equality that are inflected through, for example, inclusion (universal suffrage), fairness (equal votes) and choice (majority rule decides).

While imperfect electoral practice can prompt the question ‘*how much* democratic legitimacy can the elected reasonably claim?’, the idea that unelected political figures may act as democratic representatives *at all* is controversial, in contemporary political life and in contemporary democratic theory (Montanaro 2012; Rubenstein 2013; Saward 2010).⁴ Among other things non-elective representation, both in single instances and as a more systemic practice, appears to undermine the principle of political equality at the heart of modern ideas of democracy and democratic representation. If the idea is to be defensible, then arguably a minimum requirement would be that the principle of political equality must be manifest in certain ways, and to certain degrees, in the practices of non-elective representation. To simplify: in the partial or complete absence of the formal equality (of votes) enacted through reasonably functioning, free and fair, electoral procedures, what (if any) alternative modes of political equality does non-elective representation enact, and how might they support the view that such representation is reasonably called democratic?

Despite their equality-enabling properties, elections can serve to restrict the character and range of representative resources, perspectives and voices in democratically troubling ways. A number of theorists have, for example, criticised features of electoral and legislative representation, mostly on the grounds of unjust historical and contemporary exclusions (Phillips 1995; Williams 1998; Mansbridge 1999; Young 2000). The exclusions can be more or less formal, such as for black Americans before the voting rights legislation of the 1960s. They can be more informal and subtle – for example, class and age voting rates, ‘safe’ seats, or a distinct lack of descriptive representation. Such exclusions can sometimes be addressed through better electoral systems or mechanisms. But the representative limits of electoral institutions can *by their very nature* leave open the possibility for non-elective representative claims that can call on differing notions of interest and (not least) equality. These differing modes of operation may in some ways echo but in important other ways are distinct from electoral criteria.

A variety of non-elected actors claim to be representatives, and sometimes those claims have resonance because their makers can do things that elective claimants cannot do (or not readily). Why do citizen audiences sometimes listen to their claims? Often, it is because key principles that we understand as being core to elections can – in varied ways - be realised by

⁴ For the sake of clarity the discussion distinguishes in quite black-and-white terms between the elected and the unelected. In practice there are degrees and types of electedness. Some form of elections often operate for leadership of civil society organisations. Leading EU officials, such as the President of the Commission, for example, can claim forms of indirect election (via links to electoral processes) and therefore some degree of democratic legitimacy. There are shades of grey where there are hybrid forms of semi-elective representation.

unelected actors. If that is the case, then democrats supporting the equality-enabling properties of elections may rationally support similar properties of non-electoral claim-making. Consider, first, that unelected actors, being largely free from the more formal demands facing electoral candidates, can make representative claims which select quite *particular* aspects of the interests or characters of possible constituents. They have in principle greater scope to be *partial* in the content and targets of their representative claims. This process may involve alternative enactments of political equality by providing an outlet for neglected, or particularly intensely felt, preferences or grievances.

Second, unelected actors can also make their claims on the basis of temporary issues, pressures or events. In this way, they may capture (or, they have the potential to capture) the ways in which the contextual shape and impact of equalities and inequalities may *change* rapidly. Third, unelected actors are also not as bound in their claims or statements to specific political communities. Actors such as Oxfam or Greenpeace, for example, may make claims which traverse political boundaries with greater freedom than elected actors. In this way, they may extend the scope of the application of principles of political equality, for example by picking up and claiming to speak for inequalities which only become distinct or manifest when viewed from a transnational or transcommunal perspective. Finally, unelected actors have at least the comparative potential to open up new lines of representation of interests because they have to make their claims *explicit*. Since they cannot or do not rely on electoral institutions to justify their representative claims more implicitly, their success may depend strongly on open and clear appeals to their would-be constituencies. In this manner, they may prompt new levels of *awareness* of inequalities of interest which are dormant or potential in a given context. Examples of explicit, sometimes theatrical, claims may include the Australian Aboriginal Tent Embassy, Pussy Riot, Jose Bove, the UK's Fathers4Justice and a number of populist groups from the left and the right such as the English Defence League (of course, not all non-elective representative claims fit comfortably in the benign democratic category).

In electoral representation, political equality is primarily enacted, in principle at least, in formal, numerical terms. In non-elective representation, equality may be enacted through the offering of new claims responding to perceived **new inequalities** whose existence can be made **explicit**. It may also be enacted through more nuanced claims about inequalities demanding attention with regard to **particular** groups of people; more '**rapid response**' considerations of how issues of equality are affected by short-term or emergent issues; and may bring to political **visibility** claims about (in)equalities that do not surface in electoral politics. It may present to us additional ways of **identifying** our political selves and our interests. In short, non-elective representative claims carry the distinct potential to bring to the fore additional, diverse and new opportunities for a range of particular perceived inequalities to have enhanced political visibility. The politics involved may be messy, uncomfortable, and novel, and there will be different perspectives on whether a given claimant rightly invokes egalitarian norms.

Equality in non-electoral representative politics may, as this argument suggests, become manifest in fragments, more or less temporary or fleeting. It may manifest in its own name or in synonyms, and sometimes in claims featuring other principles (freedom, recognition, rights, and so on). And issues of fundamental equality of membership may be evident outside 'normal' politics of dispute over equality.

It would be a mistake, however to think that electoral + non-electoral representation = (potential for) complete representation of interests. There is no room to be sanguine about

opportunities for effective non-elective representation for diverse worlds of interests and perspectives, for groups and individuals, within and across any modern society. Advocates or spokespeople for a wide range of social interests may well be able to call attention to inequalities. But they cannot do so *equally*, with equal coverage or according to some independent ground of worth. Complex arrays of resources and opportunity will mean that some inequalities in society will be brought to the fore and others will not. Some will be brought more intensively to the fore, or more effectively, or more often. Different levels of education, for example, lead to different levels of confidence, articulacy, and media access.

The presence of equality or other desirable goods can most soberly be assessed by taking the view from the margins of society. At the margins, we can distinguish between those who possess a basic subjecthood in the relevant context, and those who do not. Subjecthood – a basic level of acknowledgement of membership of or belonging to the community – may be a prerequisite for *entering into* the protean unevenness of the pluralist world where non-elective representation of one's interests is even an option. In discussing his notion of the 'distribution of the sensible', Ranciere has commented that there is a form of distribution of parts and positions in society which is prior to taking part in government, namely 'the distribution that determines those who has a part in the community of citizens' (2004: 13). Perceptibility – visibility, audibility and so on – is foundational to recognition as part of the community. It concerns 'the visible and the invisible', 'speech and noise': 'Politics', among other things 'revolves around what is seen and what can be said about it' (2006, 13). In this context, some on or beyond the margins in terms of perceptibility play the 'part of no part' (Ranciere 1999).

Consider a specific, pressing example – the place of Aboriginal Australians. First, there is a fundamental question of the lack of basic constitutional recognition of Aboriginal and Torres Strait Islanders – an issue of existential importance for many indigenous Australians, fearful of their continued presence as a people. There are wider issues around what has been called 'the great silence' in Australia about indigenous peoples, and what Noel Pearson has called 'the cult of forgetfulness' (2014, loc205) regarding more than 200 years of history that has included genocide in Tasmania. Mary O'Dowd (2007) writes that '[t]he silence about Indigenous people in the national narrative is reflected in writings about the First Australians as being somehow outside "Australianness"'. The part of no part is expressed as an 'extreme minority status' (Pearson 2014: loc579) and an absence of recognised agency (Thill 2009). In terms of 'voice', there exists a series of exclusions in languages and wider communicative practices (Trudgen 2000; Thill 2009). Further, the presence of indigenous people in Australian public discourse can be framed in such a way that highly partial and unsympathetic constructions of Aboriginality are dominant (Macoun 2013). Modes of recognition of Aboriginal history and current indigenous circumstances and interests have run in complex ways through issues of native title and land rights, a national 'Apology' and ongoing debate around Constitutional recognition – I do not claim to have done justice to the topic in my brief comments here.

But there are considerable grounds to think of indigenous Australians as excluded in more extreme or fundamental ways – occasionally, perhaps, more nuanced today than in the past – than those encompassed in mainstream discussions of considerability or perceptibility in the realm of a potential politics of non-elective representation. There may be formal 'parts' – equal votes for formal offices, for example. There may be informal parts, which well-positioned elected and/or unelected representatives may act to point out inequalities in shifting fragments. There may in addition be fundamental questions of recognition of those who have (or have had) a part of no part, or a part reflecting especially pernicious forms of

compound political marginalisation (economic, cultural, linguistic, and so on). Thus one might argue that there are foundational questions of equality which even pluralist regimes open to a wide range of informal modes of representation cannot reach. There may be manifest parts of unequal parts; but there may also be no-parts which are not manifest, or still in the early stages of manifesting.

A politics of authenticity?

Informal politics – like non-elective representative politics – can be messy. Perhaps they do, as the discussion above has suggested, create more opportunities for more actors to claim representation, bring novel issues to the fore, and make new challenges in the name (among other things) of addressing social, cultural or economic inequalities. But insofar as they do these things, they do them in protean and unstable ways.

But could or should this uneven ground be levelled out? Should the protean informal be rendered into the stable formal, in the name of political equality? We could take some of the advantages of electoral arrangements – equal votes for legal citizens, tallied in strict ways, for example – and construct broadly parallel institutions to bring a more predictable and bounded sense of fairness and equality to informal politics. Where there are civil society discourses that require representation, we can create a Chamber of Discourses (Dryzek and Niemeyer 2008). Where unborn generations can be said to have interests, we can alter parliamentary structures to grant them formal representation by proxies (Dobson 1996). We can systematise the pluralistic world of interest group advocacy by granting vouchers (an equivalent to equal votes) to all citizens which they can use to bolster material support for particular groups (Schmitter 1994: 163). Or we can move the defence of vital but under-represented interests into state bureaucracies, for example in the form of an Environmental Defenders Office (Eckersley 2000). We can in such ways bring a sense of due authorisation to civil society representation or advocacy, by creating authorising and authoritative institutional procedures or structures. Though such reforms offer no panacea for major social and political inequalities, they do promise to provide platforms for weaker voices in the marketplace of public advocacy so often dominated by wealthy corporate interests.

The conception of political equality that underpins electoral politics – with its numerically measurable formality – affords opportunities to influence political agendas and to have an input into collective decision-making. Distilling equality into a metric enabling calculation can both facilitate and feed into a desire for *étatisation* – creating state-supported, formally rule-bound, entities that co-opt emergent, compelling or troubling claims for representation, define and regularise them, and channel them onto formal political agendas. Notwithstanding these attractions, however, there are good reasons – crucially, themselves associated with political equality - for being cautious in making this sort of move.

As we have seen, both the strength and the limits of equal opportunities to authorise representatives by formal votes, and indeed by incorporation into the state by setting up regulatory agencies for example, leaves scope for alternative (e.g. more diverse and particular) representative claims outside, or even in opposition to, those characteristic of electoral politics and governance. Often, such alternatives may trade in the notion of authenticity. By authenticity I mean a *sense of* a more genuine or honest expression of self and interest, facilitated today by the relatively unmediated political use of Twitter, Facebook and other platforms. It is not a question of such figures being their ‘authentic’ selves, however we might understand the term. It is rather a question of the presentation or sense of

authenticity which working from outside the compromises of state authorisation can foster. For example, we may or may not be getting the ‘real’ Russell Brand in his political presentations - on that issue I have nothing to say. But amid widespread cynicism about formal and electoral politics Brand’s apparent directness, truth-telling and outsider status creates a sense of authenticity, as opposed to the (supposedly) remote, compromised, unresponsive presentation of authorised government and governors. Spanish social activist Sister Teresa Forcades, and Pakistani education activist Malala Yusufzai, may be more substantial examples.

Arguably, the attractions of both a sense of authorisation (as the currency of elective claims) and a sense of authenticity (as the currency of non-elective claims) as underpinnings of representative claims depend in part on the presence of the other. I can claim formal or electoral authorisation as a would-be trump of claims that lack that formal approval; I may claim a bottom-up authenticity as a would-be trump of a form of authorisation that is largely elite-led, selective and reductive with respect to citizen interests. The potential strengths of each build on a relationship of inbuilt tension with the other. And indeed, successful hybrid claims may use one form of claim to propel towards the other; consider Spanish anti-austerity activist turned mayor of Barcelona Ada Colau, whose authenticity claim (‘I’m not particularly intelligent, I’m not powerful. I’m just a normal person and that’s what worries them most’ – BBC News, 19 February 2014) was a key element in her springboard to electoral-formal status.

A resonant sense of authorisation is a democratic good, but so is a resonant sense of authenticity. Each is reasonably associated with the enactment of fragments of political equality and further principles. The (constitutive?) tensions between the two arise from authorisation being particularly associated with electoral and state politics, and a hoped-for sense of authenticity from a more fluid and emergent non-electoral politics. The danger is that issues and actors whose claims are formalised or institutionalised thereby become removed from the bottom-up politics which may have helped to bring them to prominence as new or pressing inequalities in the first place. We must be wary of the impulse to ‘engineer democracy’ (Blaug 2002) from the top down, and so undermine this valuable sense of authenticity. In their study of faith-based non-electoral representation, Rachael Chapman and Vivien Lowndes (2014) argue that ‘non-electoral representation holds out the possibility of ‘more’, ‘different’ and even ‘better’ citizen involvement in network governance’, not least through considerable support for the claims to authenticity, or at least for the potential for non-elective representation to achieve levels of perceived authenticity. Or take for example Aboriginal representation in Australia; Sarah Maddison (2012: 83) notes how a series of national elective representative bodies ultimately failed because ‘their representative legitimacy was undermined from the outset both by the fact that they were created and funded by government and by their lack of sufficient connection to, or representation of, Aboriginal communities and organizations’⁵

To adapt the key point above: non-elective representative claims – claims originating largely outside the state, ‘bottom-up’, and targeting the conveying of a sense of authenticity - carry the distinct potential to enable new and diverse opportunities for a range of particular inequalities to have enhanced political visibility. Distinctive gains in terms of political equality are (complexly, unstably) associated with non-electoral representative claim-making.

⁵ Whether the establishment of such bodies has co-optive or empowering intent, they may be read as a representative response to the problem that Aboriginal people cannot form a critical electoral mass – a fact that, according to Evans and Hill (2012), may prompt a different institutional response.

Some of these gains at least resonate closely with a sense of authenticity of claims made from civil society rather than from within the state. Arguments that wider social or economic inequalities (impinging on political equality) ought to be addressed separately from the democratic process, potentially undercutting the complex egalitarian potential of non-electoral representation, are double-edged – more formal equality may undercut opportunities for informal assertions of inequalities that are more novel, diverse and particular, and also more ‘felt’ in the sense that they arise from citizen action. These arguments connect with wider tensions in democracy regarding the downsides of ‘fixing by formalising’. One can argue that if democratic *procedures* are insufficiently egalitarian, we should compensate by building compensatory *substance* into the relevant procedures. For example, if poverty or a lack of educational opportunities prevent citizens from participating in democratic procedures, then measures to equalise their political opportunities should be addressed independently as a matter of social justice, perhaps via constitutional rather than legislative means. Of course, justifications of aspects of welfare states have arisen from the egalitarian force of considerations like these, in many regions and countries. However, the gains and losses in terms of democracy and political equality need to be weighed carefully. As Fabienne Peter (2007) among others has pointed out, prioritising actions to address substantive social inequalities as separate from the democratic process – perhaps justified on the basis that addressing them is a precondition for realising the full participatory promise of such procedures – also diminishes the scope of democratic politics. The more issues or circumstances that are taken out of the purview of democratic procedures, even in the name of democratic equality, the narrower the range of issues subject to democratic debate and resolution.

This section has discussed the complex play of political equality in electoral and non-electoral modes of representation and their respective settings. It has also stretched to consideration of highly marginal actors who may not be politically present enough to be represented. It has focused on evident tendencies in the enactment of political equality in different modes of representation. Such tendencies may or may not support the idea that representative claims have democratic legitimacy. The extent of the presence of democratic legitimacy in a given context, I argue, depends on what the relevant constituencies of citizens and others actually *make* of the claims made for and about them under certain conditions. Accordingly I turn now to what can make representation democratically legitimate, and the part in that played by enactments of equality.

Political equality, representation and democratic legitimacy

Criteria of democratic legitimacy differ from criteria of moral or political legitimacy. The *democratic* answer to legitimate political outcomes is that they are chosen by the relevant constituency of people. Offering this answer does not for example imply the rightness of outcomes measured against some independent standard of social justice. Nor does it offer a philosophical defence of democracy or its justification; it is simply to point out the core feature of democracy understood as ‘rule by the people’. Language, of course, conveys cultural and historical values – many descriptions are ‘evaluative descriptions’ (Skinner 1988) – partisan democrats will be happy to embrace that conveyance where the word ‘democracy’ bears culturally positive value.

Democratic legitimation of representation concerns on-going *acceptance* of representative claims by specific appropriate constituencies under certain *conditions*.⁶ Democracy ultimately involves popular power or control, so in principle evident acceptance by the relevant constituency is the key, with no place for independent criteria of what might make for a ‘good’ representative, for example. A democrat, though, will have criteria which apply to the context in which actual acceptance is given or denied to a claimant. The conditions within which that acceptance is given or denied will need to be conducive to a sufficient degree to open and uncoerced choices by members of the appropriate constituency if democrats are to recognise its legitimising force. In practice we are dealing with a spectrum of possibilities here. A choice or acceptance may be uncoerced, but none are entirely unconstrained in some way. Following Simmons’ discussion of consent, acceptance must be given intentionally and voluntarily, and without threats of violence or undue burdens (Simmons 1976, 276-7). This will be the case for a specific or discrete representative claim. It will also apply more widely across society, with a concern for the extent to which conditions conducive to uncoerced and open acceptance acts are replicated across a diverse range of spaces, sectors and groups.

Within a democratic frame, this concern with the conditions within which acceptance is evident or denied can be broadened. The democrat should examine the extent to which there is: a plurality of sites, moments or opportunities for representative claim-making and reception (the extent of openness to many claims and their contestation); uncoerced equal access to subject-positional resources for claim-making in the given context; variation in the nature and bases of representative claims in the given context (the extent of openness to different sorts of claims, by different sorts of claimants); reflexivity, in the sense that claim-makers are responsive, and contestation is encouraged (cf Disch 2011); and evidence of extreme marginalisation which effectively excludes some groups from both formal and informal modes of representative politics.

A greater prospect of democratic legitimation of a system of representation is broadly associated with: more representative claims of more types and styles in a context of open contestation in a dense but open-ended network of claims. Lesser prospects of democratic legitimation of a system of representation would be associated with: the dominance of a particular source or type of representative claim, with few openings for new types of claim from marginalised interests, and little opportunity for contestation of claims.

As these comments make clear, democratic assessments of non-elective representative claims are a matter of degree. Actual acceptance or rejection of claims and the nature of the conditions in which this occurs are complex factors requiring close and conjoint attention. Low acceptance in open democratic conditions is revealing; high apparent acceptance in far less open conditions may also be revealing but we can be less certain in asserting that conclusion. The mapping of claims onto a matrix which factors in degrees of acceptance and openness of conditions will reveal the multiplicity and complexity of the judgements involved. As desirable as clear and simple yardsticks for assessing the democratic content or character of claims may be, a desire born of impatience rather than contextual understanding is one to set aside.

Where opportunities for open and uncoerced constituency assessment of representative claims are not available, a further reasonable, second-best, proxy judgement is to favour

⁶ For detailed discussion of the ‘appropriate constituency’ and other specific features of this account, see Saward (2010; 2014).

actors working to bring those conditions about, and who base their representative claims on the fact they are fostering openness, plurality, etc.⁷ Consider for example the political activism and advocacy of the late Nigerian writer Ken Saro-Wiwa, campaigning for recognition and rights of marginalised groups (and paying for it with his life). Or Aung San Suu Kyi and her allies in the anti-junta movement in Burma/Myanmar, pursuing a political agenda of democratisation and freedom. It is difficult, given the restrictive political conditions pertaining in their countries at the relevant times, to assess the extent of the support for their representative claims. But to the degree that they act to bring about more democracy and freedom, a democrat can reasonably make a proxy judgement – they support the conditions in which more transparently democratic representation might be evident or established.

Assessing the democratic character of non-elective representative claims may necessarily involve detailed and perhaps difficult interpretations of specific cases where the relevant acts of acceptance or denial are not immediately detectable (see Scott 2012). Political theorists will not necessarily welcome this fact, preferring the (very real) power of abstract principled argument. But close attention to context is essential; what may appear at one remove to be a polity that is open to new voices and claims, with a reasonable distribution of access to resources which may make such claims perceptible if not effective, may on closer inspection be riddled with class, caste, regional or other exclusions from civic and political participation. Assessing non-elective claims is not only importantly a matter of degree. It is also a matter of the perspective adopted by the assessor, above all his or her willingness to attend to the details of context.

With respect to normative criteria regarding the democratic legitimacy of representative claims, three main linked conclusions can be drawn:

1. Political equality, in whatever specific guise, is not necessarily the core principle at play in the legitimation of representative claims. Its enactment overlaps in complex ways with other principles linked to inclusion, freedom and so on.
2. Formal political equality in terms of equal voting rights in particular is especially crucial to the legitimation of elective representative claims. In this respect, the evident *acceptance* of representative claims is more readily established in the case of electoral claims. In a more or less free and fair election, for example, members of the electorate cast equal votes and the winner can credibly claim acceptance to a degree dependant on specific case circumstances such as take-up of voting rights.
3. By contrast, the *conditions* under which judgements are made - emphasising wider circumstances of plurality, access and variation in representation of interests - are distinctively important to cases of non-elective representation. While *procedurally* there are real challenges in meeting the first (and most significant) criteria – does the appropriate constituency accept the claims being made to represent it? – what we have seen is an initial indication that a vibrant and open non-elective representation can make a significant contribution to a system of democratic representation, not least through practices associated with political equality.

Conclusion

⁷ Plurality, equal access, variability and reflexivity are key democratic ingredients in fields or systems of representation. A number of commentators regard the promotion of similarly-conceived conditions as essential to the democratic or just character of representation (e.g. Hayward 2009, Garsten 2009).

Political equality is a protean or shifting presence in non-elective representation. Its enactment or presence in many instances of non-elective representation has a fragmentary quality. Insofar as it is enacted, it is often in the shape of other principles such as political visibility and political opportunity. The fragmentary and complex enactment of equalities in such contexts also requires that we observe it over time; for example, an increase in political visibility of previously marginalised political actors through the making of non-elective representative claims may not constitute a significant advance in political equality, but may create conditions in which hitherto unacknowledged political inequalities are highlighted, and pressure mounted for them to be addressed. Seen in this light, non-elective representation is, first, less a straightforward manifestation of equality than a complex set of routes through which inequalities may be revealed (or at least claimed), and demanded to be addressed, where otherwise these claims and demands would be absent, ineffective, or unheeded. And second, it is less an isolable enactment of equality than an enactment of shifting sets of principles resonant in varied ways with equality.

From a normative perspective stressing criteria of democratic legitimation, non-elective representation may make a material contribution to features such as diversity, plurality and opportunities, goods that are associated complexly with political equality though not reducible to it or neatly commensurable with it.

Political equality gains its meanings through practical enactment in politics and governance. In different contexts, it will be manifest and valued differently, for its own variations and its relations to other enacted principles. Elective representation's enactment of formal and numerical equality is distinct, and resonates well with the key criterion for the legitimation of representative claims – a clear means of acceptance or rejection of such claims. Non-elective representative claims fare less well in terms of formal means to glean their acceptance or rejection by the appropriate constituencies (voting is mostly not involved). But the diversity, plurality and variety of representative claims supported by a vital system of non-elective claim-making, and the opportunities they provide to highlight social and political inequalities (among many other things), resonate well with further elements of the legitimation of claims, notably those centred on the wider conditions that makes the acceptance of claims especially meaningful. The story of political equality and non-elective representation is not straightforward; but there are initial grounds to argue that non-elective representative claims stimulate features in political life closely associated with democratically legitimate representation, some of which resonate distinctively with the principle and aspiration of political equality.

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