

Digital Government and Democratic Legitimacy

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INTRODUCTION AND CONTEXT

The current flush of worldwide interest in digital government coincides with considerable anxiety, even discontent, with the performance of predigital democratic governments, including democratic governments in what seem to be highly functional societies. Primary causes for this malaise involve an interlocking set of complex phenomena. These include globalization, the marketization or privatization of ever-larger aspects of our social and economic life, challenges to the vitality of national political identities that are supportive of democracy, a pervasive sense that government is increasingly driven by special interests rather than a genuinely public interest, and the alienation of the ordinary citizen from governments that seem increasingly remote and indifferent (Castells, 1997). Although few still tout the Internet and universal interconnection as promising by themselves to cure all political ills, the fact is that hopes for digital government run high across the developed world. This enthusiasm seems linked to a yearning for improvements not just in government efficiency, but also in democratic legitimacy. It is the potential linkage between digital government and democratic legitimacy that this article will explore. My thesis is twofold: first, that digital government has enormous potential for enhancing democratic legitimacy, but second, it can realize that potential only if implemented with democratic principles in mind and if designed to fulfill multiple models of democratic legitimacy.¹

BACKGROUND CONCEPTS AND DEBATES

Discussions of this topic necessarily start with two matters of definition. The easier of these to address is the distinction that must be drawn between the phenomenon of digital government and the movement for “digital,” “cyber-,” or “electronic” democracy. “Digital government” is most widely used to refer to the use of digital information and communications technologies (ICTs) for the delivery of government services, as well for functions of government management and procurement. “Electronic democracy” refers to the design and deployment of digital

ICTs to enhance democratic political practice. Although these goals and functions overlap, in ways about to be discussed, the distinction between them is significant. On the digital government side, for example, there exist significant Web applications that enhance government efficiency, but have virtually nothing to do with policy making or public accountability. By contrast, electronic democracy initiatives may well include online campaigns to facilitate grassroots community organizing among the citizenry or interaction among organizations of civil society—activities that do not involve government actors at all.

The second, and much harder issue, is, “What does ‘democratic legitimacy’ mean?” At the most general level, political “legitimacy” presumably refers to the moral entitlement of any governmental entity to wield political power. Allan Buchanan (2002) has argued that, for a democracy, political legitimacy must rest upon processes that help assure, in public policy making, equal consideration for the interests of all persons subject to the government’s putative authority. This approach offers an objective standard by which to assess the legitimacy of democratic rule, but does not take explicit account of the subjective experience of those who live in a putatively democratic regime. Even though democracy is a system of collective self-determination, its legitimacy cannot be entirely divorced from the opportunities democracy provides for the experience of individual self-determination as well. Constitutional theorist Robert Post has written: “[W]e could not plausibly characterize as democratic a society in which ‘the people’ were given the power to determine the nature of their government, but in which the individuals who made up ‘the people’ did not experience themselves as free to choose their own political fate” (Post, 1995, p. 7). That is why a full account of democratic legitimacy must embrace a second criterion: the degree to which the system supports the experience of individual citizens as autonomous actors free to participate meaningfully in acts of collective self-determination.

With these criteria in mind, there are three models of democratic legitimation widely known in the postindustrial West. The boundaries between these models are porous; a democratic system can easily incorporate elements of all three. But each of them rests on a different account of how citizens and institutions combine to afford democratic legitimacy. The accounts differ especially in the relative

importance they ascribe to individual citizens versus government officials in arriving at decisions of public policy.

The most familiar model of democratic legitimacy rests on the election of public officials to make and enforce the laws. For virtually all observers, elections are the sine qua non of modern democracy in any sizable community. In the election-centered model,² the experience of autonomous citizenship is focused on the selection of candidates and the electoral choice among them. When it comes to actually deciding the content of public policy, elected representatives are centrally important, but individual citizens only indirectly so. The system's claim to legitimacy thus rests on twin pillars. One is the hope that autonomous electoral participation will afford citizens a sufficient experience of self-determination to warrant their allegiance to the outcome. The second is the presumption that the accountability of representatives to the people who elect them will yield the equal consideration for the interests of all persons that provides democratic government with its moral foundation.

An alternative account of democratic legitimacy is typically called "direct" democracy (Cronin, 1999).³ The practices that actualize the ideal of direct democracy are generally thought to come in two forms: One is "assembly democracy," typified by the town meeting, in which every adult citizen residing within the relevant jurisdiction is entitled to attend the meeting, help shape the agenda, and vote on public measures. More common, for obvious reasons of scale, are practices that, like candidate elections, are dependent on voting: the referendum and the initiative. In any case, direct democracy locates the moral entitlement of democratic government to rule in the capacity of citizens to determine for themselves the content of the laws that constrain their freedom. Because citizens experiencing these mechanisms are more likely than in candidate elections to "experience themselves as free to choose their own political fate," direct democracy has obvious appeal as a model of democratic legitimacy. On the other hand, it is difficult to see, however, how direct democracy promotes the equal consideration of the interests of all persons, which is thus a weakness of this model (Hamilton, 1996-1997).

A third model of democratic legitimacy has come to be called deliberative democracy. Under this model, democratic legitimacy is rooted in the position, as articulated by James Bohman and William Rehg, that "legitimate law-making issues from the public deliberation of citizens" (Bohman & Rehg, 1997, p. ix). "Deliberation," in theories of deliberative democracy, is a special form of rational communication operating in formal arenas and under specified norms (which, pursuant to deliberation, may become further specified). Mere political talk, although it

may create a richer environment for deliberation, is not deliberation (Noveck, 2005).

According to virtually all theorists of this model, deliberation should ideally meet five criteria. The first is that the relevant deliberations must be open to all, and all who participate must be able to do so free of coercion. Second, each participant must be treated as an equal. Everyone can speak. Everyone has a voice in shaping the agenda. Everyone can raise questions, debate, and vote on outcomes. The third condition is rationality. Everyone who deliberates agrees to advance positions either by appealing to the common interest or by making arguments of a sort that all participants could accept. The fourth is reflexivity. Anyone can raise questions to the group about whether foundational norms are being respected. It is encouraged for speakers to reflect on their own biases. Finally, the reasons for ultimate decision must be public. They must be open to the scrutiny of all, in order that they can again become the subject of yet further deliberation (Cohen, 1997).

Deliberative democracy contributes to the equal consideration aspect of legitimacy in two critical ways. First, while the procedures of election-centered or direct democracy take the individual citizen and his or her preferences as given, it is accepted—even intended—that the processes of deliberative democracy will transform the perspective of the individuals who participate. In the words of Arthur Applbaum (2002), "A usable definition of deliberative democracy refers to processes and institutions that aim at changing motivations, and consequently outcomes, for the better" (p. 24). Thus, although also directly participatory in nature, deliberative democracy rests on ideas of self and identity distinctly different from those associated with initiative and referenda processes. Second, and relatedly, while the deliberative model resembles election-centered models in promising equal regard for the interests of all, such equal regard is achieved not in the accountability of decision makers to the governed, but in the very process of citizen deliberation. That is the fundamental accountability in deliberative democracy does not run from the governor to the governed, but from each citizen to every other. It is the phenomenon of mutual regard among citizens, with consequent impacts on each citizen's sense of self and collective political identity, that is the key instrument under deliberative democracy for assuring the equal consideration of all persons' interests.

There is yet a fourth possible account of democratic legitimacy, which I will call the managerial model. Some theorists argue that democracy ought to be judged not by values of process, such as equal consideration, but rather by the substantive results that people care about, such as the promotion of economic prosperity, individual and

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