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Peter Mclaverty and Darren Halpin

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## **Deliberative Drift: The Emergence of Deliberation in the Policy Process**

PETER MCLAVERTY AND DARREN HALPIN

**ABSTRACT.** This article explores the issue of what we call “deliberative drift”: the emergence of deliberation in a non-deliberative setting. The literature on deliberative democracy has tended to focus upon practices taking place in specifically deliberative settings. We ask whether deliberation cannot logically occur elsewhere in the policy process, or, more specifically, can politics based on bargaining and aggregation be transformed (or drift) toward deliberative practice? In pondering this question, Habermas’s argument that a communicative rationality underpins deliberation is useful, as it demarcates deliberative from other practices by a willingness of participants to cast aside fixed preferences. While procedures and institutional designs are inflexible, the orientations or rationalities of individuals may be much more malleable. We explore one empirical case in which what started as negotiating and instrumental processes *drifted* toward a deliberative practice. We speculate that the rationalities that participants bring to their interaction, and the ways in which those rationalities change with the development of trust between participants, are as important in determining whether deliberation occurs as is the setting within which the interaction takes place.

**Keywords:** • Deliberation • Democracy • Bargaining • Communicative rationality • Trust

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### **Introduction: Deliberation Happens Over There?**

The starting point for this article is the contention that deliberation is a different, separate, and unique way of doing politics. In current political theory and scholarly debate, there are arguments that bargaining and negotiation are different ways of conducting politics from deliberation (Bohman and Rehg, 1997; Elster, 1998b; Gambetta, 1998). Of course, the view that deliberation is a unique way of doing politics was not always held in the past. In Ancient Athens, for example, deliberation was regarded as a central part of politics (Barker, 1958: 188–93, 382–3). Manin (1987)

has argued that legitimate laws are based on deliberation by the people and writers such as Edmund Burke (2002) in the 18th century, John Stuart Mill (1951) in the 19th century, and John Dewey (1927) in the early 20th century all saw deliberation as an essential component of democratic politics.<sup>1</sup> However, public policy today, and the politics associated with it, takes place in a number of settings besides parliaments and assemblies, and often involves a number of players other than elected representatives or the people directly. The public policy process can involve representatives of groups in society coming together, sometimes along with elected politicians or public officials, and attempting to reach agreement. The interactions between group representatives can be based on bargaining or negotiation and, where this is the case, some writers argue a very different form of politics is undertaken than would be the case if participants interacted, and attempted to reach agreement, through deliberation (compare Deitelhoff and Müller, 2005; Elster, 1991, 1998b; Gambetta, 1998). But in what ways can deliberation be seen as a distinct or exceptional form of politics?

Perhaps the basis of this exceptionalism is to be found in the theoretical approach, like that of Habermas (1984, 1989), that separates out differing rationalities informing decision making. Bargaining and negotiation can be seen as associated with instrumental or strategic rationality in Habermas's terms, while deliberation can be seen as based on communicative rationality. This distinction could lead us to investigate how the different rationalities work out during interactions between people and to consider whether, *during the interactions*, people's rationalities might undergo change, and the impact of this change on the decision reached. That bargaining and deliberation operate according to differing rationalities (instrumental or strategic and communicative, respectively) could direct us to look at the way individuals, who initially engage in bargaining, come to adopt a deliberative approach. Yet, a number of writers have argued that, for scholars interested in political deliberation, the focus of attention should be on the design of institutions which are likely to promote deliberation between participants (Elster, 1989, 1998b; Fung and Wright, 2003; Smith, 2003; Warren, 2007). As such, they look for and plan for deliberation away from the less normatively valuable processes where the representatives of groups come together to try to reach agreement. The risk of this position is that it ossifies deliberative approaches to politics, on the one hand, and aggregative approaches and approaches to politics based on trying to reconcile the positions of representatives of different groups, on the other. It treats them as separate and distinctive endeavors and makes them contingent on initial design: one must plan for deliberation and design events accordingly. This has implications for the way in which deliberation can be studied empirically. The issue arises as to whether the way to study deliberation is by evaluating what happens in deliberative settings or whether a broader study of "political" settings and contexts is necessary.

One way to get purchase on this crucial point is by asking how we know when we have achieved deliberation. Two related aspects are salient. As Parkinson reliably summarizes, deliberative democracy is said to require a set of "procedural conditions," key among which are "inclusiveness" and a willingness by participants to "set aside pre-formed preferences" and to "be persuaded" (2003: 180–1). Elster (1998a: 8) sees the core of deliberation as "decision making by means of arguments offered *by* and *to* participants who are committed to the values of rationality and impartiality." These definitions accurately reflect the theoretical connection

between institutional design *and* rationality often evident in the literature on deliberative democracy. This point is worth elaborating upon and we do so below. It is worth noting here, however, that there can be a difference between deliberation *per se* and deliberative democracy. While deliberative democracy involves inclusiveness, to be in line with the democratic principle of political equality, deliberation can take place in groups and settings that are not inclusive. Deliberative democracy necessarily involves deliberation, but deliberation does not necessarily produce deliberative democracy.

In this article, we are concerned about the conditions in which deliberation between individuals might occur and not with the conditions for the achievement of deliberative democracy. We seek to contribute to this discussion through theoretical innovation which is phrased around case study detail. Initially, the article upholds a distinction between deliberation and negotiation, sustained by the conceptual distinction between strategic and communicative rationalities. This provides conceptual tools to discuss productively the relationship between what have hitherto been approached as empirically (not just analytically) different models. In so doing, we argue that (1) what may start out as negotiation may “drift” toward deliberation (and vice versa) and (2) that the willingness of participants to engage in deliberation (versus negotiation) may emerge *in situ*. We also argue that for deliberation to emerge or be sustained, it requires a certain milieu: at its core it requires a willingness on behalf of participants to step away from predetermined interests. Consistent with our view on the potential for deliberative drift, we argue that this willingness may emerge. This clearly has implications for the study of deliberation. If deliberation does not just occur in deliberative settings, the sites in which one should conduct empirical research into deliberation become more numerous. This has further implications for how we study public policy; it suggests investigating deliberation is part and parcel of studying orthodox politics.

This article does not pretend to offer a recipe for catalyzing deliberative drift. Instead, based on a case study, it suggests that rationality, and not institutional design alone, is crucial. This is an intuitively logical argument, especially as we know that trust often emerges from familiarity and patterns of positive reciprocity over time: as trust is built up, the conditions for deliberation are more likely to emerge. It is logical, therefore, that the emergence of trust can “transform” negotiation around fixed positions to deliberation: a drift can emerge. We would contend that interpersonal trust, which is a necessary but not sufficient condition for the development of deliberation between individuals, is not something that can be planned with any degree of certainty. The relationship between institutional design and interpersonal trust, we would argue, is uncertain. We recognize that in their analysis of specific deliberative institutional mechanisms, such as a citizens’ jury, deliberative democrats are often trying to establish the conditions in which deliberation can flourish. Some argue that deliberation is directly contingent on the institutional setting in which interaction takes place; however, we want to suggest that whether deliberation occurs is perhaps more dependent on the way in which participants approach the event and whether trust is developed between the participants during the interaction.

The point being made is brought into even sharper relief when one admits that most participants in political decision making do so as a “representative” of a type (we come back to definitions later).<sup>2</sup> As such, in most political scenarios, the willingness of participants to “set aside pre-formed preferences” and to “be

persuaded" (Parkinson, 2003: 180–1) has to be generated and cannot be made a condition of entry. This is not to reject out of hand the role of the institutional milieu. As the case study makes clear, the individuals participating as representatives have to manage competing demands on how they act. Pressure from external parties (including those that nominated participants as representatives) is clearly one important force that shapes the actions of participants. But as is evident in the case study, "representatives" may not yield to such calls, and there is ample room for representatives to redefine their role, and, potentially, to drift into deliberation. Implicit in our approach is the argument that, just as it is possible for participants to drift into deliberation, it is also possible that they may drift back into negotiation. Deliberation is embedded in representation.

### **Deliberation as Process, Procedural Thresholds, and Institutional Design**

There are a number of mechanisms which are established specifically and directly to promote deliberative politics. A number of those mechanisms have been used by local governments, central governments, and other public bodies in an effort to include a deliberative element in the policy process (Smith, 2005). Such mechanisms are not based on ideas of direct representation. For example, citizens' juries are set up to enable a group of "ordinary" citizens to engage in a process of deliberation in respect of a specific issue. The members of citizens' juries are appointed as individuals or, at least in the British case, have no background of activism in the subject or topic area under discussion. Their task is to listen to evidence from expert witnesses, to question the evidence of the witnesses, read literature which they are given, deliberate among themselves on the basis of the information they have, and reach a decision. While citizens' juries in Britain are not required to reach a consensual decision, they are expected to strive to reach the "best" decision, based on the available evidence and arguments (Coote and Lenaghan, 1997).

There has been a tendency to define deliberation as happening in deliberative experiments, as though institutional design automatically guarantees deliberation (Fishkin, 1995) or to see deliberation as enshrined in the institutions of government (Bessette, 1994). But what if individuals in "non-deliberative" (for example, bargaining) forums and institutional set-ups drifted into deliberation? Alternatively, what if the institutional setting was not *the* defining variable of deliberation?

In terms of exploring this potentiality, we face the relationship between representation and deliberation. While deliberative experiments such as citizens' juries in Britain are designed explicitly *not* to involve those representing specific interests or social/identity groups (although in a quota method of selection, people may be included because they come from a certain social group), most other venues of politics or decision making are imbued with such characteristics. That is, most other venues involve discussion among representatives. One could be easily drawn into counterpoising representation with deliberation simply because institutional design is taken as the defining feature of whether deliberation is possible or likely. However, this is not so clearly evident.

Mansbridge (1992: 36) sees representation and deliberation as compatible: "Deliberation involves changing preferences ... After absorbing new insights and information and after experiencing new ways of feeling, citizens and representatives may be expected to change their minds about what ought to be

done.” This shows that Mansbridge does not limit deliberation to citizens only, but accepts that deliberation can take place among representatives. This is a key point that we accept in our argument. However, we argue that deliberation among representatives is contingent and by no means inevitable and we try to explore these conceptual ideas empirically. Deliberation as we have defined it is clearly only possible when each participant is willing to put set positions aside and be persuaded by the arguments of others. As such, some may say that deliberation is possible only when a representative has autonomy to step away from the position of the “principal” or group he or she represents. Smith (2003: 77–9), for example, argues that if deliberative democracy is to be of continuing interest to environmentalists, the issue of institutional design has to be clearly addressed by deliberative democrats. For Smith, institutional design is the key issue facing deliberative democrats. Smith (2003: 118–20) does, however, accept that even where representatives of groups are brought together in deliberative settings, achieving deliberation may not be straightforward, as representatives may be loath to change their positions, as they would have to defend any change of position to members of the group who have not been involved in the deliberation. Moreover, if each group has reached its individual position as a result of internal deliberation, this may make deliberation within the representative body more difficult. As such, deliberation may be seen as undermining the importance of the internal deliberation of each group.

Of course, representation is itself a concept with many dimensions. However, here the conceptual contrast between delegate and trustee (what Pitkin [1967] calls “mandate” and “independence”) forms of representation may be useful in understanding the relationship between representation and deliberation. The former implies that the individual representative is given strict instructions and *must* return to the principal if he or she wishes to change position. The latter means the individual representative is able to change positions as he or she sees fit. In the delegate model, the representative is given no autonomy; in the trustee model, he or she is given complete autonomy. The implications for deliberation are clear. It would by definition be impossible for a delegate to “step away” from fixed positions and put himself or herself in the other’s shoes. The trustee, on the other hand, may do so easily. In practice, representation may sit somewhere in between, but managing the expectations of the principal is part and parcel, so we argue, of the potential for bargaining to drift into deliberation and vice versa.

In empirical cases, the distinction between representatives as delegates and representatives as trustees is not nearly as clear as it is in theory. It is a very rare case indeed that a delegate must go back to principals on every matter – they may seek general guidance and proceed. Second, there is no reason why a delegate may not step away from such a mode and act as though a trustee. The key limiting factor is the degree to which the delegate can do so with impunity (although, again, representatives may be willing to rebel). The monitoring by the principals of the delegate’s actions is crucial, as is their ability to remove the delegate. The overriding point here is that in most political scenarios representatives are delegates-trustees of a sort, and that their level of autonomy will differ according to a number of objective conditions and subjective judgments of the representatives themselves. Furthermore, that individuals may be appointed delegates and operate as trustees is not unlikely, and this shift is again related to possibilities for deliberation.

This could sound as though we are arguing that if one has trustee representation, then one has ipso facto deliberation. This is clearly not the case. If it were, then deliberation would be almost everywhere. What we say is that where, in practice, representatives err toward a more trustee and less delegate model of operation then deliberation is possible. But we must see the status of the representative (on a continuum of delegate to trustee) as malleable and constantly open to redefinition. It can be redefined by (1) the representative's actions (acting with or without mandate), which are (2) moderated by the principal's actions (monitoring and recalling). Defining representatives as either delegates or trustees is a useful heuristic device, but it is unlikely that any practical scenario would comply completely with either account.

### **Deliberative Drift? The Theoretical Argument**

In trying to understand the difference between deliberative and non-deliberative politics, we think that Habermas's distinction between instrumental or strategic rationality and communicative rationality is important. According to Habermas (1984: 82–101, 258–88), people use instrumental and strategic rationality when they approach communication with the aim of defeating all opposing views and an unwillingness to listen to and reflect upon the points of view of others. Instrumental and strategic rationality are also applied when an individual, or a group, has set objectives and sees communication with others as a way of achieving those prior objectives. Communicative rationality, on the other hand, for Habermas, involves entering into communication with an open mind and a willingness to listen to the arguments of others and be swayed by the force of their arguments.

However, we argue that virtually all human activity has an element of instrumentality attached to it. It is almost impossible for people to remove their own interests completely. We, therefore, have difficulty accepting Habermas's distinction between instrumental strategic rationality and communicative rationality. We accept that the distinction has heuristic and theoretical worth. In practice, we argue that complete communicative rationality is very unlikely to be achieved, though we do accept that action can be influenced by communicative rationality to a greater or lesser extent.<sup>3</sup> Clearly, people can enter into discussions or communication with varying degrees of willingness to listen to others' arguments and to be swayed by the strongest argument. If people enter communication with a totally instrumental approach and are unwilling to consider the arguments of others, we accept that communicative rationality will not be developed. However, we also suggest that if people enter communication with some willingness to consider others' arguments, communicative rationality can increase as a result of communication with others over time. As such, it would seem realistic to anticipate that deliberation might emerge from interactions that started as limited to negotiation and bargaining; in other words, that communicative rationalities can emerge from what started out as more strategic orientations.

Jon Elster (1989) has argued that there is a distinction between activity that takes place in what he terms a "forum" and activity that takes place in the marketplace. For Elster (1998b), having to operate within a forum in which you are expected to discuss issues, and deliberate with others, pushes you to act in a certain way, whatever your initial motives: institutional design is central to deliberation. In a forum based on deliberation, Elster argues, you are more likely to be successful

if you address your points to the public interest and avoid making threats than if you put forward purely self-interested demands or threaten others with dreadful consequences if they do not meet your demands. As Elster (1998b: 104) puts it:

The main argument I have tried to make is that a *deliberative setting* can shape outcomes independently of the motives of the participants. Because there are powerful norms against naked appeals to interest or prejudice, speakers have to justify their proposals by the public interest. Because there are powerful norms against the use of threats, they have to disguise them as warnings. Moreover – and this is the key point from the behavioral point of view – the proposals will be *modified as well as disguised*.

We accept that there is some force to Elster's argument. However, we do not think it is entirely backed up by evidence. Can it be said that in all cases, or even as a general rule, debates in most legislatures or local governments lead representatives to act in the way Elster outlines? Indeed, Elster (1998b: 111) himself has argued that holding representative assemblies in public "makes it less likely that speakers will change their mind as a result of reasoned objections." Shapiro (2003: 48) makes a crucial point when he argues that:

It is doubtful ... that government can ever really insist that people deliberate. Government can try to structure things so as to make deliberation more or less likely, but ultimately deliberation depends on individual commitment. By its terms, deliberation requires solicitous goodwill, creative ingenuity, and a desire to get the best answer. These cannot be mandated.

We accept that having to argue your case in a forum conforming to deliberative design does impose restrictions on how you can do that, but we do not accept that the mere existence of a deliberative setting will necessarily promote deliberation among participants. A more likely account of the reasons why deliberation takes place is one provided by that around reciprocity and trust.

We want to suggest that while there is no guarantee that establishing a deliberative forum will produce deliberation among participants, there is also no necessity that the politics of group representation will necessarily result in bargaining. We would suggest that the rationalities adopted by the participants will be crucial. A number of writers argue that the politics of group representation need not be the politics of aggregation, bargaining, and negotiation, or at least it need not be only that. McFarland (1993), for example, has argued that a form of elite deliberation (he uses the term "cooperative pluralism") can be developed without specific deliberative events. In his study of work between senior management in a coal company and an environmental interest group, the role of repeated interactions in generating trust and more mutual understanding is emphasized. He notes the way both sides shifted positions upon making new understandings (albeit that the respective constituencies revolted against the "enlightened" consensus of the leaders involved directly in discussion). The work of Edward Weber (1998), on US environmental regulation, argues that the usual forms of pluralism used in the public policy process, with their emphasis on group bargaining, are antithetical to deliberation. However, he also argues that pluralism can promote deliberation, in the right circumstances. Based around what he calls "pluralism by the rules," Weber (1998: 105) argues that deliberation can result if all potential stakeholders who can undermine decisions are involved in the process, if there



is a real commitment from political leaders, and if all participants are playing by the same rules and show the same willingness to engage in deliberation.

We also argue that for deliberation to emerge or be sustained, trust between participants is crucial. We know that interpersonal trust often emerges from familiarity and patterns of positive reciprocity over time (Cohen, 1999: 220–2). It follows that if trust between participants grows, the conditions for the emergence of deliberation can also emerge. Further, it is logical that the growth of trust can “transform” negotiations around fixed positions to deliberation. In other words, deliberative drift can occur.<sup>4</sup>

### **The Case Study: Native Vegetation Management in New South Wales**

Having outlined our theoretical position, we now assess an empirical case which enables us to develop our analysis. The case of drift we identify emerged, quite opportunistically, as part of a larger study of interest group politics in Australia. We did not set out to discover drift, but that is what we found. While we only consider one case, and fully recognize that too much weight should not be placed on a single example, we nevertheless argue that the findings of the case are sufficiently suggestive in support of our approach.

Native vegetation management is an issue of immense national importance in Australia. It gathered political attention as figures revealed that the clearing of native vegetation has proceeded at unacceptable rates (Benson and Howell, 1990). These revelations prompted some Australian states to introduce programs and legislation (Dore et al., 1999). Given that most of the native vegetation in Australia is on privately owned land used for agricultural purposes, any attempt to pursue native vegetation management necessarily involves altering the way farmers manage their land. It is an issue about which there was broad acceptance that consultation with farmers would prompt some landowners to pre-empt regulation or legislation by clearing land. Consultation as a first step would be counterproductive.

The New South Wales (NSW) government’s approach to this issue commenced with imposition of the administrative regulation SEPP-46 in 1995, which halted all clearing and then laid down processes by which a new policy consensus could be crafted. Subsequently, a series of consultative phases were placed within the policy process, including establishing the Native Vegetation Conservation Act (1997), to recreate a policy consensus (Table 1 below summarizes the phases). The feature of the approach of central interest to this article is the use of Regional Vegetation Committees (RVCs) to draw up Regional Vegetation Management Plans (RVMPs). The committees were composed of local stakeholder groups and state officials. Before the release of the Native Vegetation Conservation Bill, “Interim Amendment No. 2” was made to SEPP-46 allowing for the preparation and implementation of interim regional plans by regional committees in lieu of the compatible legislation going to parliament. The first pilot RVMP was commenced by the Mid-Lachlan Regional Vegetation Committee. It became the focal point for the conflict over native vegetation management. This will also be the focal point for our case study. We focus here on activities in the period between 1995 and 1999. We focus principally, but not exclusively, on the involvement of the NSW Farmers’ Association (NSWFA) and its nominated farmer representatives involved in the first committee formed under the Act. The action of the committee highlights the development of deliberative drift.

TABLE 1. *Summary of Events*

Phase	Events
Phase One: Imposition and regulation (SEPP-46)	<p>“State Environmental Planning Policy No.46- Protection and Management of Native Vegetation (SEPP-46)” was gazetted in NSW without consultation (August 10, 1995).</p> <p>Under this regulation, clearing of native vegetation could only be carried out through submitting a development application.</p>
Phase Two: Consultation and re-establishing stability	<p>The Native Vegetation Forum* was established in November 1995 as an attempt to re-establish a measure of stability after the imposition of SEPP-46.</p> <p>It reported to government in 1996 on a unanimous basis.</p>
Phases Three and Four: Legislation	<p>The minister accepted the Native Vegetation Forum’s recommendations.</p> <p>The draft Native Vegetation Management Bill and subsequently the White Paper outlining the proposed Native Vegetation Conservation Act were released.</p> <p>The “Native Vegetation Conservation Act, December 1997” came into force in NSW on January 1, 1998.</p> <p>The central element of the legislation was a tiered system of planning with a development consent framework. Regions within the state that developed approved Regional Vegetation Management Plans were exempt from consent requirements (except in areas of high conservation value).</p> <p>A Native Vegetation Advisory Council (NVAC) replaced the NSW Vegetation Forum. The make-up of the NVAC was similar to that of the RVMP committees.</p>

\*The composition of the NSW Vegetation Forum was representatives of relevant state agencies and departments, local government, environmental groups, farm organizations, and three representatives from Catchment Management Committees.

Source: Halpin (2004).

### Mid-Lachlan RVC

The first pilot RVMP under SEPP-46 Amendment No. 2 commenced in the Mid-Lachlan region of NSW. The Mid-Lachlan Regional Vegetation Committee formed in July 1997. The composition of the Mid-Lachlan RVC reflected what was ultimately embodied in the new legislation.<sup>5</sup> After developing some draft aims, goals, and objectives, and subjecting these to a public consultation process (regional information roadshows), the group proceeded to draw up the RVMP. After regular meetings, by late 1998, the Mid-Lachlan RVC had produced a draft RVMP under the Act (by then in effect).

The RVC’s composition sent a clear message that it was to be an inclusive institution, involving major stakeholders. Its design was carefully crafted to ensure the major interests (indeed specific interest group organizations) had an input into who was to sit (and hence “to represent” them) on such a committee. The committee was initially formed as a pilot project under funding from the Land and Water Resources Research and Development Corporation until the amendment to the regulation was gazetted. The project agreement that established funding

for the RVC did not specify decision-making processes, but it did establish funds for a project officer to get the process running and to service the committee. The amendment to regulation SEPP-46 allowing the committee to go ahead did not specify decision-making processes either, but focused on composition and processes of nomination: ensuring relevant stakeholder representation and ensuring state agencies had a seat at the table. However, it clearly was *not* designed as a deliberative institution nor were any such expectations associated with it by advocates or critics. Moreover, as becomes clear, the assumptions of key interest groups were that it would serve to bargain interests between key stakeholders, albeit closer to the coalface. The final legislation *did* specify that decisions were to be made by consensus, however, where this was not possible, then they should be made by majority vote (plan [NVC Act 1997 (No. 133) (NSW), Schedule 3 (1)(12)]). The commitment to consensus, where this proved possible, did not represent a commitment to deliberation or any other particular mode of interaction between participants. This formulation leaves it open as to how “representatives” acted in the committees; although, the Mid-Lachlan RVC had already established its own pattern of operation. Importantly, it renders institutional design neutral with respect to its impact on catalyzing bargaining or deliberation, or both. So did they get what they expected?

*Assumptions of Interest Groups about the RVC: Representation and Bargaining*

The NSWFA, the organization responsible for putting forward farm participants for the committees, viewed these RVCs as likely to reproduce the centralized interest group process, albeit with a local flavor. They clearly expected robust bargaining and, more importantly, that their nominees would follow the line of the Farmers’ Association.

This planning mechanism, utilizing locally based committees, reflected the “distributed intelligence” model that the NSWFA had woven into the outcomes of the initial report of the original Vegetation Forum. In promoting “distributed intelligence,” the Farmers’ Association was willing to concede the need for a set of management parameters enshrined in legislation. Yet it did so on the understanding that the legislation would establish space within which its members could outline local management parameters through regional plans devised by farmer-dominated committees. This understanding was well placed, given that “landholders and catchment management groups” formulated the Native Grasslands Management Plans on which this proposition was based (Dick, 1996: 9). The Farmers’ Association suggested that the process used to develop Specified Native Grasslands Management Plans, at that point adopted in five areas of NSW, be extended as a model for all native vegetation management.<sup>6</sup> Farmers dominated these grassland groups, while environmentalists were not represented.

The original objection of the NSWFA to the decentralized approach as prescribed in the final legislation (and earlier regulation) was based on the absence of a farmer majority on the committees: it clearly assumed the committees would operate on a standard one-person-one-vote model of decision making. It had every reason to make this assumption based on the past work with Native Grassland Management Plans (see above). This rationale is evident in the NSWFA’s reaction to the final legislation, when it became clear that they would not have a farmer majority on committees. At this point it threatened to remove members from the

committees, withdrew from the state-wide Vegetation Forum (and its replacement Advisory Council), and publicly opposed the Act.

Central interest groups tend to interact with one another in a bargaining mode of politics, each pursuing a set of pre-existing interests. This is the basis upon which the centralized-interest-group-mediated processes (such as those through the Vegetation Forum) occurred, and it is this set of expectations that framed the NSWFA's suggestion, guided by its notion of "distributed intelligence," of creating local committees.

Apart from the rules governing the decision-making processes of the committees, the NSWFA also relied on those it appointed to the committees pursuing the same position as the Farmers' Association leadership (establishing *continuity and agreement*) and complying with leaders' requests to abandon participation should the need arise (establishing *compliance*). These are both aspects of bargaining, and not deliberation. The value of their nominations to such RVCs was that they would get the best possible bargain for farmers, as defined and over time prescribed by the Farmers' Association. Interviews established that the president of the NSWFA was directly involved (along with state departmental officers) in selecting and inviting delegates onto the committee.

The experiences and actions of participants on the Mid-Lachlan RVC establish that the NSWFA's assumptions about the method of decision making and the actions of their appointees were incorrect. They establish a drift toward deliberation within an environment that expected hard bargaining and an institutional design that was ambiguous with respect to engendering deliberation.

Interviews were conducted with several farm and non-farm members of the RVC and with representatives of two governmental departments who also sat on the committee. All committee members were contacted. There were around a dozen interviews in total conducted with seven interviewees in all. Two farmer representatives, two representatives of a landowners' organization, two government representatives, and a representative from the environment movement were interviewed. Interviews were undertaken during 1997 and early 1998. The interviews were conducted away from committee meetings, and the authors were not able to attend or observe meetings directly. In hindsight, participant observation may have revealed quite a deal about the micro-processes that enable "drift" to occur, however, this style of research was not possible on this occasion.

### *Experiences of Mid-Lachlan Participants: From Bargaining to Deliberation?*

The experiences of committee members illustrate that decision making departed significantly from the "representative" model practiced at the centralized interest group level. All the members of the committee interviewed, which included farmers, environmentalists, and staff of government agencies, observed that the process of decision making was consensual and one in which "people started to understand each other more" (Committee Member Interview, 1998). Indeed, understanding one another was an important precursor to setting goals and objectives and, through this, interests were transformed. For example, one participant noted "we weren't as fixed in our views as when we first started."

Importantly, a farmer made the point that:

if you took something like we have now [the draft plan] you would lose a lot in that you wouldn't really understand the changes in points of view.

Similarly, from a state agency participant:

In my experience, the Mid-Lachlan has been quite a journey for everyone involved in learning other people's perspectives, an immense amount of learning has gone on.

But, as one might expect, it was not always that way. Participants revealed that it took a number of meetings for environmentalists to agree that farmers were capable of some form of self-regulation. Such an agreement was crucial in creating any space for drifting away from representative bargaining around fixed positions. There is also evidence that sustaining this drift required innovative procedures, ones that were developed on the run and not designed a priori. One participant described how the group developed the rule that when an individual could not find a consensus with the other members (there was a fundamental difference) they would leave the meeting until the balance of the members had reached agreement. This is significant, the group *did not* revert to counting votes as the Act prescribed in such situations. A commitment to deliberate rather than bargain was established.

As it happened, the NSWFA's central concern over the lack of a farmer majority on the committees turned out to matter very little. The experience of members of this committee suggests this was never a decisive factor in determining outcomes. Decisions of the Mid-Lachlan RVC were made on a consensus basis rather than by a majority vote. As such, the number of representatives from any one constituency did not change the ultimate outcome of the committee. The most crucial feature of nominees was their willingness to listen and change their positions.

It was to a more local constituency that the committee members saw themselves accountable. One NSWFA-nominated participant set up his own ad hoc consultative committee from which he gained advice and reported progress. If to anybody, it was to this group that he professed accountability, rather than the state's farmers as a whole or the NSWFA in particular (Committee Member Interview, 1998). While not explicitly by design, this committee adopted a deliberative style of decision making. It did not commence as such (early mistrust was reported), but drift developed as familiarity with each other emerged.

Interestingly, there was evidence that the NSWFA did not support their delegates on the committee. Surprisingly, one landholder representative (appointed by the NSWFA) reported that he had received no formal input or support from the Farmers' Association. They received no briefing papers on what issues to raise in the committees and had not been asked by the Farmers' Association leadership for their comments regarding the progress made by the committee. What they did receive was pressure to illustrate the Act as flawed, a position the Farmers' Association adopted and reiterated publicly.

One interpretation, with significant empirical support, is that its lack of genuine support for its members on the Mid-Lachlan RVC reflected the Farmers' Association's view that it wanted to illustrate the Act's flawed nature. It wanted the Mid-Lachlan RVC to fail. Presumably, the Farmers' Association then would have ample evidence to call for the Act's abandonment. At this point, one could be fairly certain that the NSWFA would *withdraw* from the process, including *pulling members out* of the committee process. This is attested to by the NSWFA's reporting of the experiences of the Mid-Lachlan RVC.

The way the rest of the state's farmers perceived the Act's implementation would be central in determining its acceptance. Consequently, the Farmers' Association had to ensure the reporting of the Mid-Lachlan RVC's experiences reflected its concerns. A report of the committee's progress was made to the March 1998 meeting of the NSWFA General Council. It was reported in the press as follows:

Moves to develop a pilot native vegetation management plan in the Mid-Lachlan region are being hindered by "professional obstructionists", NSW Farmers' Association president, Ian Donges, claims ... the Association might consider pulling farmer representatives out of the exercise. (Dick, 1998: 5)

Another general council member of the NSWFA described the Mid-Lachlan RVC as "a war of attrition."

In response to the NSWFA's reportage, the entire Mid-Lachlan RVC took the unprecedented step of writing a letter to *The Land* newspaper<sup>7</sup> to set the record straight about its progress. It pointed out that the committee was functioning well and that, despite the NSWFA's claims that it would take more than 18 months for plans to be completed, it would deliver a plan within nine months of its commencement (*The Land*, 1998: 18). The letter publicly confirmed that the experiences of the nominees on the committee were different to those foreshadowed by the Farmers' Association. It also showed that a gap had emerged between the position of the Farmers' Association and its nominees on the local committee. This is itself evidence of the transformative effect of the RVC process. That members of the Mid-Lachlan RVC would comply with leadership directions to withdraw from the process was also proven incorrect. The threat by the Farmers' Association to "pull farmer representatives out" of the RVC process proved to be a hollow one (Dick, 1998: 5). Having lost the compliance of its appointees, the NSWFA leadership has been unable to exercise the option of withdrawing support for the implementation of the Act as a way of expressing its opposition.

The long leash that NSWFA members on the Mid-Lachlan RVC were allowed gave them ample opportunity to step outside the bargaining mode of operation and deliberate actively to find a local consensus, even when this risked the larger statewide agenda of the NSWFA which they were supposed to represent. The evidence, admittedly only of one case study, suggests that as trust developed among members of this committee it allowed grassroots members of conflicting constituencies to reach an understanding and deliver a draft plan at a decentralized level.

### **Discussion: Deliberative Design or Deliberative Drift?**

The events that unfolded in the Mid-Lachlan RVC highlight a number of issues of practical and theoretical significance that are worthy of discussion. The most significant for our present purposes is that it established that the Mid-Lachlan RVC operated in a way that was unexpected by the interest groups that sponsored its existence. It did not reproduce the bargaining politics of the centralized interest group process – a more deliberative decision-making style emerged. What is remarkable about the Mid-Lachlan RVC is that what started off as a "bargaining" exercise conceived of in very straightforward interest terms, with each interest group being allocated seats, drifted toward a more deliberative exercise.

Some may argue that the Act's encouragement of consensus-seeking is proof positive that institutional design delivered deliberation in this case. But a rush to

this conclusion should be resisted. First, the Mid-Lachlan RVC was established as a pilot project under the SEPP-46 regulation. Neither made reference to consensus-based decision making. Second, many other committees established under the Act (which, recall, did specify consensus) are in many cases reported as having reverted to divisive public meetings and other bargaining forums (Elix, 2005). It is thus doubly interesting that the Mid-Lachlan RVC managed to make good on consensus-seeking deliberation in the absence of any explicit institutional design. Finally, the NSWFA continued to criticize the Act for its absence of a farming majority, even after it was established. This, along with its public criticism of the Mid-Lachlan RVC, makes clear that despite the Act's preference for consensus-style decision making, the Farmers' Association expected bargaining and voting.

What is notable about the Mid-Lachlan RVC is that while not specifically designed (or expected) to do so, it operated in a way that bears remarkable resemblance to deliberative forms of association. We are not suggesting that the case is an example of pure or ideal deliberation. The case represents what happened in practice when the participant group representatives decided to move beyond fixed initial positions and to try to reach a consensus. We also fully recognize that deliberation does not necessarily involve consensus (Dryzek, 2002; Gutmann and Thompson, 1996). We argue that the case represents the development of important elements of deliberation. Moreover, if we can accept that deliberation may emerge outside of special deliberatively designed institutions, then it is this *style* of deliberation that is most likely to be witnessed in policy practice.

All the members of the committee interviewed observed that the process of decision making developed into a consensual one, albeit after initial mistrust between farmers and environmentalists. This is surprising given that the committee's participants were appointed by interest group organizations (although the exact role of individuals was ambiguous) and the process existed within the larger regulatory framework set firstly by SEPP-46 and then by the NVC Act. These are all factors that are inconsistent with the theoretical preconditions for deliberative exercises to function. Indeed, this one case suggests that there may not be a direct conflict between deliberative-style decision-making institutions and coercive state power. The outcomes of the Mid-Lachlan RVC were in large part accelerated by the existence of threats of state power (via regulation). The sense that state regulation was immanent, according to farmer participants, meant that they saw the process as an important measure to formulate local solutions that were workable. These were preferable to "top-down" solutions. It was also in part encouraged by the realization that insufficient "hard" science was available to debate over. As such, participants said they recognized the need to complement what science was available with ecological principles and the local knowledge of landholders. Fact finding and pooling knowledge seemed to serve as a trust-building exercise – the group did not fall into trading blows over each other's science.

The evidence from subsequent committees does, however, show that deliberative drift in the Mid-Lachlan RVC limited the potential for similar drift elsewhere (Elix, 2005); this also serves to highlight the importance of rationality among participants, rather than institutional design, in delivering deliberation. The NSWFA became much more engaged in subsequent committee activity: placing delegates on a shorter leash and ensuring mechanisms of compliance were in place. The nominees were scrutinized much more than in the Mid-Lachlan RVC to

ensure they represented the aggregated views of the state's farmers. The NSWFA tried to ensure their representatives acted more like delegates than trustees.

At least one study has been conducted on the experiences of other NVCs in NSW (Elix, 2005). The study found remarkable variation in the *modus operandi* and the outcome. Elix (2005: 322) remarks, "Some of the RVC meetings were private. Some were conducted in public with audiences of up to 100 people. Some of the Committees produced draft Regional Vegetation Plans; some did not." She observed that some worked by consensus, others voted, and others produced majority and minority reports. That the same institutional design produced such variable forms of decision making adds weight to our argument that the rationality of participants matters most in determining how forums operate.

### Conclusion

Clearly, the question of how to catalyze deliberative "drift" would benefit from a more thorough comparative analysis. The "deliberative case" outlined does suggest, however, that people's approach to decision making can change once they are involved in a "political" forum. People may enter the forum with a largely instrumental approach, and as the representatives of certain groups, but as they gain trust in other participants, reciprocity can lead the participants to adopt a more communicative rationality. Elix (2005: 390) says as much in her conclusions:

The experiences of RVC members would reinforce the fact that, while the intervention of outsiders with skills and experience might be important to the resolution of impasse, the power and influence of group members themselves is likely to have a far greater impact on the outcomes. Once group members have reached a state of impasse, to a large extent, it is their decision as to whether they extract themselves from that situation. Their capacity to extract themselves may be dependent upon such nebulous factors as the participants' view of the process, or their willingness to act for the greater good of their community, as well as their perceived interests at the time.

The case study material illustrates that deliberation does not always require deliberative design. Indeed, the orientation of the participants was the key to the change from bargaining to deliberation. That other groups failed highlights the importance of the type of involvement for deliberation to occur. Shifting individual rationalities, based upon growing levels of trust, seem to us the surest base for generating deliberation. Institutional design is no doubt crucial, yet not on its own sufficient.

The case study findings question the argument advanced by Elster (1989) that it is constraints imposed by institutional design that makes deliberation likely. Participants are not free to behave as they wish in deliberative settings and they would suggest from the case study that the lack of prescription as to how the participants should interact and reach their decisions was the very reason that moves away from bargaining and toward deliberation occurred. It seems to have been the freedom to work out their own procedures that encouraged participants to listen carefully to each other's arguments and to strive to reach a consensus. We accept that specifically designing institutions for deliberation between participants can produce deliberation. But we also argue, based on the case study, that



it is possible for participants, if given the freedom, to produce deliberation in settings that were not established specifically to achieve it.

The case study suggests that communicative rationality can increase during interaction between participants. The development of interpersonal trust would seem to be an important element of moves among participants toward communicative rationality. From the case, trust between participants would seem to have grown over time and did not exist from the start. We accept that the relationship between interpersonal trust and communicative rationality among interacting individuals is complex. While it is likely that participants entering their interaction with a high degree of communicative rationality are likely to trust one another, we would suggest that it is possible for interpersonal trust to be a catalyst for the development of communicative rationality. We would conclude that more work is needed to try to clarify the relationship between interpersonal trust and communicative rationality.

The argument about deliberative drift also raises crucial issues about the relationship between deliberation and representation. The Mid-Lachlan farmer nominees were given a choice as to how they acted, that is, which form of representation they enacted. They were expected by their principal, the NSWFA leadership, to follow the line to demonstrate that the planning process was unworkable. Yet, they eschewed the delegate or mandate model and pursued a more trustee or independence model and engaged in deliberation.

Parkinson (2003) suggests deliberatively generated outcomes are ultimately judged by a test of representative legitimacy. This itself implies the concept of drift. Representatives begin in a context that expects bargaining and outcomes are “read” in a similar context. This is no different in deliberative institutions: as Parkinson notes, their legitimacy is typically interpreted through a representative lens. What happens in between is largely open to “drift.” We found a case in which drift occurred. Elix (2005) found many that did not. If nothing else, this work suggests the study of deliberation ought to expect drift rather than find it exceptional. This approach means that the study of deliberation in public policy need not be constrained to deliberative institutions, but should also include “orthodox” policymaking.

### Notes

1. An overview of the history of deliberative democracy can be found in Bohman and Rehg (1997).
2. Although we accept that some acts of participation, such as voting for members of a parliament, do involve individuals acting as own-account actors, as such they are not representatives.
3. This approach means that we can accept the argument of Mansbridge (2003: 176, 182–3) that self-interest is not necessarily incompatible with deliberation.
4. Our consideration of the relationship between institutional design and deliberation connects to a broader debate in the democratic literature on the relationships between political institutions and culture. Robert Dahl (1989), for example, has argued that democracy is more likely to become embedded in societies where individuals are predisposed to act democratically and where a culture of democratic norms and values grows within the society.
5. It consisted of four representatives of rural interests (at least two nominated by the NSWFA). There were required to be two representatives of conservation interests nominated by the Nature Conservation Council of NSW and aboriginal interests

- nominated by the NSW Aboriginal Land Council. In addition to a scientific expert, there was one representative for each of the following: the Catchment Management Committee or Catchment Management Trust, a land-care group, local government, the Department of Land and Water Conservation, the National Parks and Wildlife Service, and the Department of Agriculture. All nondepartmental representatives had to be from within the area to be covered by the plan (NVC Act 1997 (No. 133) (NSW), S.51(7)(1)).
6. In January 1996, amendment (No. 1) was made to SEPP-46 allowing regional plans to be drawn up for five specified areas of native grassland. The following month the plans from the five regions were presented to the NSW Native Vegetation Forum. The minister approved the Specified Native Grasslands Management Plans, removing the need for an application for clearing unless it breached the guidelines set down in the plans (Dick, 1996: 9).
  7. *The Land* is the highest circulation rural affairs newspaper in NSW.

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### Biographical Notes

PETER MCLAVERTY is Reader in Public Policy at The Robert Gordon University, Aberdeen. His research interests are the theory and practice of democracy, public participation, and political ethics. ADDRESS: Department of Public Policy, The Robert Gordon University, Garthdee Road, Aberdeen, AB10 7QE, Scotland, UK [email: p.mclaverty@rgu.ac.uk].

DARREN HALPIN is Reader in Public Policy at The Robert Gordon University, Aberdeen. His research focuses on the role of interest groups in policymaking and related issues of representation and democracy. ADDRESS: Department of Public Policy, The Robert Gordon University, Garthdee Road, Aberdeen, AB10 7QE, Scotland, UK [email: d.r.halpin@rgu.ac.uk].