

Appointments to boards and committees via lottery, a pathway to fairness and diversity

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- *Public appointments for committees or boards can be controversial due to cronyism or pandering to demands of noisy or powerful interest groups. One relatively unexplored method for selecting committee or board members is random selection which has advantages beyond interrupting cronyism. This paper canvasses the strengths and weaknesses of an unusual selection method and makes a case for the use of a lottery as a robust process that will lend legitimacy and credibility to committee or board governance.*

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Introduction

Committees and boards of public and private sector organizations have different functions although they share many attributes and suffer similar criticisms. Boards endorse management policy and are meant to distance themselves from management while avoiding divisive or selfish agendas. Committees can perform a similar function. It is important for both that they owe no favours that might compromise their activities. Competence and integrity are paramount. If boards and committees are to eliminate bad practices or corruption and genuinely supervise the governance of an institution or organization, and offer advice on

its public affairs, then the selection of their members must be robust.

This paper considers the source of some criticism: the method of selection (or appointment). Boards of public or not-for-profit institutions will be considered here for example, boards for public broadcasters, universities, non-government organizations or philanthropic trusts, as well as committees that make recommendations to a public entity such as a health service consumer advisory council or a community advisory committee to a catchment authority. The sweep is broad but the selection methods are often similar, and similarly flawed.

Appointment to many of these boards and committees is by a government minister or via executive selection, using the all-too-familiar *tap on the shoulder* method. A recent survey completed in New Zealand among 165 board aspirants indicated that shoulder tapping was

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the most prevalent method of board appointment—58% were shoulder tapped by a friend or board colleague and 35% were indirectly recruited through a referral (Hawarden, 2008).

Shoulder tapping can undermine the credibility of a decision-making group if its aim is to assemble people who are a microcosm (or a descriptive representation) of a wider constituency. If the aim is to assemble the *best and the brightest*, the same issue of legitimacy holds if the wider constituency believes that many who are equally qualified are passed over in favour of those known to organizers.

If the wider constituency is cynical about perceived favouritism, the committee or board organizers have their own concerns. Selectors are wary of those who are unknown and this provides justification for shoulder tapping. After all, the *unknown* may be fearfully unqualified or even unbalanced! But even if there is a pool of candidates that *are* known and credentialed, who should be tapped on the shoulder?

The problem

Rarely are the selection criteria or even the selection processes chartered with any specificity for boards and committees. *Merit* is usually cited as the ultimate determinant, but what that means is left open to debate. It is difficult then to defend the selection method against cronyism, even if it is only a matter of public perception. For example, the Board of Directors of the Australian Broadcasting Corporation has at various times been accused of being politically stacked and unresponsive to public concerns of not adhering to its mandate (Senate Committee, 2001).

In the absence of tangible criteria to adjudicate merit, all that is left is subjective appeal on grounds known only to the selectors. Fairness and transparency do not figure in such cases, which hopefully are on the decline.

There is usually a recruitment gatekeeper or selection committee (and the selection method for either can also be less than

transparent). These gatekeepers act as agents of the existing panel or appointing body, ascertaining candidates' suitability for short-listed nomination. While a biography of appropriately meritorious endeavour is a prerequisite, there is inevitably the additional requirement for *teamwork* or *cooperation* with other board members. But this may be a euphemism for *thinking like us* or even *being like us*, reproducing the existing norms ahead of common sense.

There are problems associated with a lack of diversity in the thinking of board members. One problem is uncontested groupthink (Irving, 1972) which leads to blind spots in a committee's analysis and an inability to evaluate opportunities and their associated risks in a balanced manner. Lack of diversity can also lead a board to be intrinsically conservative. There is enormous inertia in past policies and decisions. Change is difficult to contemplate when everyone agrees that the present situation is working well. In John Kenneth Galbraith's words 'faced with the choice between changing one's mind and proving that there is no need to do so, almost everyone gets busy on the proof' (Galbraith, 2001).

The primary task of a university senate, for example, is specifically to protect the interests of the institution as laid out in its regulations, which are as unshakable as a foundation stone. There is unwillingness to modify rules that took considerable influence and rhetoric to enact, and which have been interpreted in decisions about individual cases (University of Sydney, 1989). In contrast, a diverse group, even a group that combines the smart and the not-so-smart will lead to better decision making through expanded information and probing questions and therefore more creative options (Surowiecki, 2004).

Existing conservatism with selection is perpetuated by a recruitment process that is also designed to protect the interests of the *status quo*. Selection committees are often nominated, if not made up, by the very boards to which they will deliver new members. Unless constitutionally mandated, gender imbalance prevails.

Boards tend to attract people for whom the personal prestige of board membership appears at least as important as service to the enterprise. This is not necessarily a problem in itself, as people with strong leadership ability should be encouraged to apply themselves in different situations. But eligible nominees can be squeezed out if they are strongly motivated by altruism and/or remain outside established elite networks.

If one aspires to gain nomination to a board armed with innovative ideas for change, even incremental change, one had best keep quiet about it. Candidates will not necessarily reach the short list if their intentions are broadcast to rock the mother ship. Of course, an election process might lead to a very different outcome because organizational members could well respond to a campaign for change or adherence to ideological factions.

Applicants to public board and committee positions may believe misguidedly that the selection process is designed for *fairness*. This means that each applicant is offered the same fundamental chance at an appointment as the next. But this trust is rarely matched by the reality of the process, which carries inherent biases. Some recruitment charters prescribe that boards or committees be broadly representative of the population (e.g. staff, consumers, citizens) they serve. This may be defined using demographic dimensions (e.g. locality, gender), or simply based on a vague expression of diversity and distribution. Rarely is the selection process structured to guarantee such fairness and representativeness.

A different kind of selection method

Consider the idea of using random selection in the board or committee recruitment process, at least for some of its members. For example, a health service advisory panel could invite people randomly from the community to sit for a fixed term or a board could use a lottery amongst all eligible women to ensure gender

balance. A university senate or council could randomly select its graduate and postgraduate student representative; an academic board could randomly select its academics (Carson, 2006).

Using random selection to recruit boards and committees transmits a clear message that the organization cares about egalitarianism and inclusiveness. These are guaranteed when the recruitment process is structured to draw a representative sample—either from its entire constituency or from those with the necessary skills.

We should be clear what we mean here. By representative, we do not mean that individuals come as delegates of particular interest groups from the organization or population being represented. Random selection does not categorize along associative or ideological lines. Every individual in the selection pool has an equal chance of being drawn. Random selection results in *descriptive representation*, which means that the distribution of all attributes, including gender, is represented probabilistically in the draw result.

Generally there would be two methods of implementing a random selection process.

First, a lottery could be run over an entire community. In the absence of conscription, those who *won* would then be invited to voluntarily apply. The draw would have to be large enough to gain applicants, and a further randomized sub-draw might be required to select the nominee from the applicants. This method would apply to boards or committees that require broad public representation.

Running such a recruitment lottery with fanfare might generate community or constituency interest and excitement. After all, everybody would have a chance to win a place at the table. Perhaps promotion would be required to inform people about the privilege of appointment and the positive value of their participation.

The second method would allow individuals to nominate to a pool of candidates, who would then be selected randomly. This method would be appropriate where applicants need to possess specific skills and make a larger

commitment of time and effort. For ad hoc committees of short duration, a standing pool of candidates would be ideal. This might also involve a screening process to assess that appropriate skills are present, prior to random selection. This assessment could be done by independent assessors beyond the organization or institution.

This method is easier to organize, as randomly selected individuals from a subset of the whole community would definitely be ready to accept appointment. However, the challenge would be to gain a pool of candidates that is significantly larger than the size of the panel. Promotion would still be required to gain commitments. With a more transparent and open process, more people may be interested.

Individuals or committees in charge of selecting board members have a risky task, especially if they have weak criteria to guide them and pressure by special interests and friendships. Random selection would free them of the precariousness of their task; they would simply need to organize the draws in a public and accountable manner.

Random selection already works

Random selection is a method used in various countries for allocating jobs (in Ireland), school entry (the UK and the US), national service (in Australia, in the past), housing (UK, US and Greece) and immigrant visas (the US).¹ The term *lottery* is often used in the media to describe the random selection event.

An unlikely parallel can be found in university medical schools (for example, in The Netherlands) which must select a small intake cohort from many talented candidates. Research used by the Drenth Commission in The Netherlands to review the lottery system showed that neither the highest grades nor the best performance in a pre-selection interview

guarantees a successful schooling and career (Goudappel, 1999). Once prospective students have been identified there is no predictable difference between them. Selection by lottery proved to be the fairest method.

Random selection has been used in many situations in Australia and elsewhere where a descriptively representative group is required to take decisions. The use of juries in the law courts is probably the most familiar example. Depending on the court (i.e. criminal or civil) and jurisdiction in Australia, 4–12 members of the public are empanelled for a trial. Citizens are selected randomly from the electoral roll to populate a pool for a specified period (e.g. 3 years), and are subsequently drawn randomly for trials from that.

The obligation in law to serve on juries has the force of conscription, although the means for exemption on reasonable grounds is provided. This is the only example which currently approaches government-mandated participation after random selection in Australia.

Juries inevitably are required to make judgements about the credibility of witnesses and the veracity of evidence. Importantly, they need to interpret the law which is often quite abstract in the context of the case. This interpretation may require the subjective application of values and ethics drawn from the community. Thus, the jury is the microcosm that connects the diversity of community perspectives to the decision-making process.

Occasionally, judges in the Federal, Family and state and territory Supreme Courts are accused of misbehaviour or incapacity. For each investigation in Victoria, three judges are randomly selected from a standing panel of seven to report directly to the Attorney General. This design is intended to help allay the prospect of assigning judges who are more sympathetic to the accused (The Age, 2005).

Recently, the idea of juries has been applied to problem solving in policy matters, especially at the local and regional levels in Australia, UK, Canada and USA. Such a citizens' jury makes recommendations to a municipal council about an infrastructure development project

¹Details of these methods and more can be found at Conall Boyle's website <http://www.conallboyle.com/>

or envisions a framework for capital spending for the upcoming decade. These citizens are randomly selected from the community to represent its demographic range and diversity of perspectives. Unlike juries in court trials, citizens' juries benefit from expert, neutral facilitation which helps them in their deliberation.

This shift towards participatory methods for decision-making in the public interest has been occurring for the better part of two decades. In addition to citizens' juries, a plethora of process formats has been invented to engage randomly selected citizens, for example new Democracy's imminent Citizens' Parliament.²

A deliberative poll surveys a random selection of citizens about an issue, then invites a random subset of them for a couple of days of dialogue and open learning about various perspectives on the issue. When polled at the end of the process, there is inevitably a change in their preferences which shows a deeper understanding of the issues (Fishkin, 2006). This demonstrates that ordinary adults are capable of learning and coming to a more generous understanding of complex and contentious issues without coercion, and can be randomly drawn for this purpose.

Consensus conferences have been used first in Denmark, then in several countries including Australia to deliberate on divisive issues of public concern such as immigration policy or the cultivation of genetically modified foods. Participants are randomly selected from the population and are engaged in intense dialogue and deliberation with each other and informed through presentations by a broad selection of experts, stakeholders and interest groups. The ability of citizens, with the help of neutral facilitation, to grapple with these complex issues at both detailed and abstract levels is inspirational. The recommendations emanating from such processes invariably gain broad approval because it is informed not only technically, but by diverse community values (Gastil and Levine, 2005).

In the UK, the National Lottery funds community projects. There are nine regional committees that make the funding decisions. Each of these committees selects 2 of their 10 members from the public through a process that begins with selection by lottery from the public; they literally invite the public to match their electoral roll numbers to the winning ball sequence of a weekly prize draw! Winners are sent letters of invitation and subsequent applicants are then put through a conventional selection process. Successful appointees serve for three years and receive an annual honorarium of £500. The Law Society in the UK and officials at National Lottery are encouraging other government agencies to select board and committee members from the public by lot (The Guardian, 2002).

An interesting example in the private sector is an ethical, cooperative lending society called Shared Interest³, also in the UK. It is governed by a Board of Directors as required by financial governance regulation. But there is also a Council that represents the membership of 8400 investors who can question the board and independently address the members. Six of the nine members of the Council are randomly selected from the membership—three males and three females. Because members are committed to the ethical and just mission of the organization, they have had no problem convincing members to take up the invitations to serve.

The Internet may not be owned by anybody in particular, but it is still managed by a coordinated group of experts around the world. The Internet Engineering Task Force (IETF) randomly selects the nominating committee, which then selects its leadership. Candidates come from the volunteers of various working groups that devise standards and protocols. Their eligibility is determined solely on their maintenance of a high meeting attendance rate. This randomized selection mechanism is engineered with the precision and detail you would expect of Internet

²See <http://www.citizensparliament.org.au>

³<http://www.shared-interest.org.uk>

geekdom, and is in itself an Internet standard. Randomly selected nominating committees are also engaged at lower levels in the Internet governance structure.

It is highly desirable that the random selection of the voting be done in an unimpeachable fashion so that no reasonable charges of bias or favouritism can be brought. This is as much for the protection of the selection administrator from suspicion of bias as it is for the protection of the IETF (RFC Archive, 2004).

Benefits of random selection

For a public or non-profit organization, random selection of at least *some* board or committee members can be useful and offers several benefits.

It guarantees that there is no bias in the selection on dimensions such as gender, ethnicity, locality or age. It is important to realize that random selection does not guarantee that exactly half of the immediate draw will be females, for example. Rather, it is over the long term that there is an equal probability for the gender balance to match that of the population from which the selection is randomly drawn. This is beneficial in situations where demographic imbalances have persisted historically, to the detriment of the organization.

Organizations that value diversity and creativity would benefit by random selection of its leadership, which would explicitly promote fresh ideas and new perspectives, with the flow-on potential of innovation.

Random selection completely sidesteps the problems associated with cronyism, especially where values and beliefs of incumbents do not match those of the population or enterprise being represented by the board or committee. Therefore, all the rhetorical and political efforts required to overcome the systemic and pervasive barriers that protect the *old boys* become unnecessary.

By being open and transparent, there is no threat of collusion or distortion in the selection process when randomization is applied. Affiliations play no part in the selection process. The process is less threatening and overtly political because schmoozing and influence peddling are unwanted and unnecessary. There is less cynicism about participation.

Random selection is especially appropriate for organizations that have an explicitly democratic and just mission, such as some NGOs. Board members see each other more as equals, which engenders a deliberative spirit that benefits both the individuals and the organization. If the board members are drawn randomly from organizational subscribers, there is less *distance* between them. The lack of competition to gain board membership leaves no scars between colleagues as nobody has had to press for dominance.

Shifting perspectives

The benefits appear to make appointments by lottery an attractive institution. But like a brochure showing the warm beaches of Tahiti, getting there is the real challenge. There are two trying legs to the journey. First, how do we impress existing organizations that the method of board or committee selection should be changed, especially when the decision-making authority rests in the governing structure that is asked to divest its self-sustaining authority? Second, how do we impress marginalized participants in the public service community, such as women, to set their normally competitive endeavours aside and simply accede to the arbitrariness of random selection in the interest of the community at large?

In an organization dominated by old thinking, the existing board will hardly be amenable to a wholesale restructure of the rules for selection that threatens their dominance. Ultimately, change will only occur through grassroots or organizational activism. Serious problems with prevailing governance have to be obvious to everyone who is affected by the board or committee. There should be sufficient anger for the demand of change. The general

public malaise about politics and the low road taken by too many leaders may compel people to demand structural change over merely changing a few faces. The opportunity to present a revolutionary option would have to be taken courageously.

Getting more women onto boards by strength of affiliation or appeal may only serve to perpetuate a system that privileges the power elite, including men who view female nomination as merely tokenistic. The prevailing flow of power remains unchanged. Rather than an incremental change, it may never come to pass that a sufficient number of women gain membership to a particular board so that tangible change in leadership culture can occur. The introduction of random selection 'short-circuits' the predominating flow of power.

Most organizations represent communities of people like staff, customers and citizens. The task of most governing boards or committees entails following and enforcing prescribed rules, such as articles of association or operating procedures. The board or committee members take decisions as if they are interpreting a legal contract with their community members. Often, board members see themselves as the *high court* of their organizations privileging a paternalistic ethic of justice.

On the other hand, most boards and committees have an often unwritten responsibility to administer the needs of their communities, which can take up the bulk of their effort. For some organizations this empathetic *ethic of care* (Gilligan, 1982) is central to their mission. Since women tend more easily to a leadership style that embraces an ethical framework of care rather than justice, any scheme which statistically guarantees inclusion of women should be more appropriate.

If it is diversity that is sought, then random selection delivers exactly that. Random selection is not designed to replace Party 1 with Party 2, or Interest Group A with Interest Group B. People in the selection pool are not delegates of particular genders, factions, minorities or other categories. They are just people who bring their own perspectives and identities of all of them. They are all denoted

equally as inputs to a mechanized and non-judgemental selection process that privileges no categories. The appointed panel is a microcosm of the community's diversity.

In short, this paper offers a solution that addresses the problem of how to win the game by changing the game completely. Though the solution may seem radical it takes us back to Classical Greece. Ancient Athenians routinely used this method, albeit excluding women, foreigners and slaves. However, for their time they were extraordinarily inclusive and fair. As Manin (1997, p. 9) asks, why do we *not* practise random selection and yet still call ourselves democrats?

Biographical notes

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