

Interest Representation in Administrative Proceedings

Gordon Anthony *

Roberto Caranta (ed.), *Interest Representation in Administrative Proceedings* (University of Turin Press, Turin, 2008).

One of the central challenges facing public decision-makers at the national and supranational levels in Europe is how to maximise citizen participation in processes that lead to determinations with legal effects. In classic political and public law theory, the challenge has typically been analysed with reference to models of representative democracy (for instance, as relate to exercises of legislative power) or due process guarantees (as apply to those to be directly affected by administrative decisions). However, while such models may previously have provided a sufficient intellectual framework for critiquing levels of participation, the issue of citizen engagement is now regarded as markedly more complex. This is because power is no longer exercised solely by the State and its administrative bodies, but also by a range of other national, international and supranational actors who may not easily (or at all) be viewed through the prism of delegation theory. Of these actors, the most influential are the EU institutions, and it has become commonplace to doubt whether the exercise of public power at the European level can ever be attributed to the legitimating repository of “the public”. Traditional democratic discourse has thus reached its terminus, and something new is required.

It is the search for that revised framework that provides the starting point for this collection of essays. Each of the essays – there are 4 longer ones and 2 discussion pieces – originate from a seminar held in Torino in 2006, and they seek to explore “a different avenue for the legitimisation of public powers,

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namely participative democracy” (p 3). While there is, of course, already a large body of literature on the potentialities of, and the problems with, participative democracy, the book still makes a novel contribution to the extant debates. This is because the essays offer a rich mix of legal doctrine and political theory that is complemented by comparative case studies spanning the experience of national (France, Italy, US, UK) and supranational/international legal orders (EU and ECHR). The result is an important and informative collection that does much to further understandings of the topic at hand.

The opening essay, by Prof Roberto Caranta, provides an overview of the collection as well as some more general – and thought-provoking – comments on the wider question of participation. In positioning the collection around the theme of participative democracy, Caranta notes how representative models of democracy have long exhibited shortcomings at the national level and that there are, moreover, institutional realities that limit their applicability at the European level (p 2). This, in turn, is said to be one consequence of the sheer scale of States and the EU, and he suggests that the key to legitimating decision-making in Europe rests with realising the full promise of the subsidiarity principle. Much of the emphasis here is on the need to engage with and empower regional and local entities, and Caranta argues that, in the absence of such efforts, the EU will continue to “pay the price of being much more an Union of (nation) States than a Union of peoples” (p 7). While such arguments inevitably beg the question whether national governments would wish to be disempowered by a shift away from EU law’s historically State-centred origins, Prof Caranta makes clear that a new paradigm is needed if ideas of participation are to retain meaning within the modern polity. As he puts it: “Direct democracy and participation are possible within small scale entities (p 7) ... Involvement of civil society and stakeholders needs to become more systematic, consistent and deeper if European institutions want to bridge the gap that separates them from the people of Europe” (p 18).

The other essays and the comment pieces build upon these themes. Simona Rodriquez’s paper – ‘Representative Democracy vs Participatory Democracy’ – provides a highly engaging account of governance patterns in the EU and US; while Prof Carol Harlow’s corresponding comment piece cautions that the EU still has a distance to go before participation in its processes can be described as meaningful. Margherita Poto’s paper – rightly described in Prof Tony Prosser’s comment piece as “excellent” – then uses network theory and Habermas’ model of deliberative democracy to analyse ‘Participatory Rights in

the Independent Administrative System' in the EU and Italy. As with Prof Caranta, Poto concludes that "civil dialogue is a key factor in enhancing the European Union's democratic legitimacy" (p 214), and she too emphasises that the subsidiarity principle can provide the means to make that dialogue a reality. In the final paper – 'Protection of ECHR Rights in Administrative Proceedings' – Silvia Mirate shows how older concepts such as "due process" can retain a contemporary relevance in the modern polity, *viz* where courts are willing to adjudicate creatively on questions of participation (the larger part of the chapter considers the ECtHR's interpretation of Articles 6 & 8 ECHR).

There are two points that may be made about the book. The first concerns the format that was used throughout; that is, of linking the contributions of younger researchers to comment pieces written by more established scholars. For the reader this presents the book very much as a dialogue between its contributors and, read with Prof Caranta's editorial chapter, it gives the collection a much greater coherence than that of other collections. Of course, that is not to suggest that other collections should necessarily adopt a like format, as the "paper and response" approach was presumably one that was used at the earlier Torino seminar and then carried through to the final version. But what it is to say is that the editor and publisher have succeeded in retaining an interactive method that brings much to the final project. The book, in that sense, it is an exemplar of how seminar papers may be progressed to print.

The second point is more critical and concerns broader debates that the essays touch upon but with which they do not fully engage. Although criticisms of this kind can often be unfair – no book can address every tangential debate – one might wonder whether there was scope to make fuller references to emerging debates about global administrative law. Those debates also address questions of, among other things, representation and participation, and the corresponding literature takes it as read that traditional political and public law theory offers only limited perspectives on public power in the post-Westphalian order. Those familiar with the global administrative law debate will, moreover, know how the EU's experiences are sometimes used as a means to project what is or is not possible in global law, and it is this that might have allowed for greater cross-over between the debates. For instance, the present book's discussion of subsidiarity resonates with contributions to the global public law debate in which subsidiarity is discussed as a justiciable legal principle or as a correlate of cosmopolitanism's idea of "equivalence". Engagement with these –

and other – contributions would only have added to an already excellent collection.

That, however, is only a very minor criticism. Overall, this is a valuable collection that offers many insights into some the most vexed – and perennial – problems of the modern era. For that reason, it will surely become established as an important book in the field.