

RATIONALITY IN POLITICS

by *Bruce B. Wavell*

Abstract. This essay examines current decision-making procedures in politics, especially those employed in parliamentary procedure, with a view to determining the extent to which they contribute to the making of rational political decisions. It concludes that political decision-making procedures are, on the whole, inferior to court-trial procedures, and proceeds to exploit this conclusion by describing a new method of political decision-making based on the concept of a political jury. This method, it is claimed, is more likely than present methods to produce sound legislation.

The degree of success that can be expected in solving problems involving a conflict between private interest, the public good, and the claims of the environment obviously depends to a considerable extent on how rational the decision-making procedures are that are employed in their solution. I argue in this paper that this degree of success will be limited by our present legislative procedures because they are inherently biased in favor of private interest.

In the first section I show that the decision-making procedures that are used in everyday life, in the law, and in the legislative branch of government are alike in being a stage of a problem-solving procedure and in being based on a common form of reasoning called "deliberation." In the next two sections, the deliberative procedures that are employed in the law and in legislation are examined in turn, with a view to determining how well they contribute to the rational solution of problems. The conclusion I come to in these sections is that parliamentary procedure is less rational than is court trial procedure. In view of this conclusion I suggest, in the final section, a new method of political decision-making based on the concept of a political jury. This

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method, I argue, is more likely to produce rationally sound legislation than is the present method.

DECISION-MAKING PROCEDURES

Decision-making procedures, as I am using the term, are a phase of problem-solving procedures. When a putative solution to a problem has been found by whoever is deputed to solve it, a decision must be made on whether or not to implement this solution, usually by an authorized decision-making body. The procedures that are used in making such decisions are what I am calling "decision-making procedures."

Here is a commonsense, widely used problem-solving procedure:

Given: Problem Situation

- Procedure:*
1. Identify problem
 2. State solution objective
 3. State facts, constraints and assumptions
 4. Generate rough solutions
 5. Evaluate solutions and select best
 6. Convert this into detailed solution
 - a) Analyze steps 1, 3 and 4
 - b) Synthesize detailed solution
 7. Evaluate detailed solution
 - a) If acceptable, go to step 8
 - b) If unacceptable go back to steps 3, 4, 5 or 6
 8. Decide whether or not to implement solution
 - a) If positive, go to step 9
 - b) If negative, refer back to step 7 or take no further action
 9. Implement solution

This procedure, or something very like it, underlies both the informal attempts by individuals to solve their everyday practical problems and the more formal attempts by the police and courts to deal with crime, as well as the attempts by legislatures to deal with the sorts of problems with which this *Zygon* issue is concerned.

The decision-making phase of this procedure is step 8. In the case of everyday, informal problem-solving this step is usually a fairly simple one. The problem-solver, if he is satisfied with his evaluation in step 7 of the procedure, may decide to implement his solution without further ado. But he may have found by the time he has completed step 7 that the time, trouble, and other costs of implementing the solution are greater than the advantage to be gained from solving the problem. If this is so, he may decide to leave the problem unsolved. What is important for us to notice about this decision is that it involves *deliberation*—that is, a weighing of the pros and cons of two options and a choice between them.

In the legal case, steps 1 through 7 are the responsibility of the police and their attorneys. When a crime is committed there is an obvious problem situation and an equally obvious solution objective, namely, the identification and arrest of the criminal. When the police think they have found the criminal and their attorneys have assured themselves that they have a satisfactory case (step 7), they bring the accused to trial. A court trial, as we shall see in the next section, is a *deliberative decision-making procedure* which concludes with the jury's verdict and the judge's sentence, if the accused is found guilty.

In the legislative case, steps 1 through 7 are assigned to standing committees. It is their responsibility to determine whether proposed solutions to problems that are presented to them in the form of bills are acceptable or unacceptable (step 7) and, if they are unacceptable, to rewrite or amend them to make them acceptable, if this is possible. If it is not possible to do this, they may pass the proposed solutions on to the legislative body with an adverse report or, alternatively, they may table or ignore them. The procedure that is used by a legislative body in approving and rejecting bills is, we are told by General Robert in his *Rules of Order*, a deliberative one; a legislative body is a *deliberative assembly*.¹

For the effective solving of problems all steps of the problem-solving procedure must be carried out well because errors can enter at each step. The right problem must be identified, the appropriate solution objective determined, all of the relevant facts, constraints, and assumptions taken into account, all of the plausible solutions discovered and evaluated correctly, the best of these solutions selected and worked out in realistic detail, and this, in turn, correctly evaluated. But, the most important step is step 8 for if this is not well done the other seven steps might just as well have not been done. This step involves a review of all the preceding steps and the decision to accept or reject the proposed solution in light of all the relevant considerations, whether or not these have been taken adequately into account in the preceding steps.

In view of its importance and in view of the space available to me, I propose to confine my remarks to step 8 of the problem-solving procedure. We have seen in the individual, legal, and legislative cases that the decision-making procedure is based on a type of reasoning called deliberation. Unfortunately, only a small amount of research has been done on this type of reasoning. Thomas Bayes, an eighteenth century English mathematician, provided a mathematical model of deliberation, and F. P. Ramsey, Richard Jeffrey, and some statisticians have extended his researches during the last fifty years, but our scientific grasp of this mode of reasoning is still pitifully inadequate.² Nevertheless, every educated person deliberates and is forced to do so to solve

his day-to-day problems. I shall, therefore, assume that we all have an intuitive understanding of deliberation, even though we cannot explicate it in a logically perspicuous manner.

COURT TRIAL PROCEDURE

The concepts and procedures of the law are in part determined by the special purposes that are served by the judicial process. But, to a large extent they formalize and make more explicit concepts and procedures that are employed informally and tacitly in everyday life. This is obviously true of the legal contract which is merely a formalized and explicit promise. It is also true of the adversary court-trial procedure which is, broadly speaking, a formal and explicit version of the commonsense, everyday decision-making procedure called deliberation.

We do not ordinarily think of the judge, the prosecuting and defending attorneys, and the jury as constituting a deliberative body which is following a procedure that is designed to ensure that the requirements of rational due process are satisfied, but such is indeed the case. A court trial procedure is, in fact, a *staged deliberation* in which responsibility for the different constituents of the deliberative procedure is assigned to legally appointed persons: the responsibility for presenting the pros and cons of the deliberation to the prosecuting and defending attorneys respectively, the responsibility for ensuring that due process of law—which is the legal equivalent of rational process—is followed to the judge, and the responsibility for determining the facts from the evidence presented, for assigning due weights to them, for weighing the pros against the cons, and for arriving at a verdict to the jury. The deliberative procedure of trial by jury is employed in the law because it is the best way, in practice, of ensuring that justice is done, that is, that right judgments are made.

The deliberative procedure employed in a court trial differs from the deliberative procedures used to determine what to do in everyday life and what motions to accept and reject in legislative assemblies, because its aim is to determine the truth or falsity of a proposition, namely, whether the accused is guilty of a crime rather than to determine whether a certain action ought to be performed. But the difference is more apparent than real; the procedures are formally almost identical.

Let us examine the court procedure briefly. To prove the guilt of the accused, if he is guilty, it would be necessary and sufficient to prove: (a) that the accused actually performed the action he is accused of performing and (b) that actions of this kind constitute violations of the law. The responsibility for determining the truth or falsity of (b) is assigned to the judge while that of determining the truth or falsity of (a) is assigned to the jury. To help the jury to carry out this duty the

considerations for and against proposition (a) are presented by the prosecuting and defending attorneys respectively. During this process the judge and jury have assigned roles to play. The former decides whether exhibits, statements by witnesses, and so on, when objected to by either of the attorneys, may be admitted into evidence; the latter has to determine the force or cogency of each piece of admitted evidence and to weigh all the pros and cons "in the balance." The verdict (etymologically "true saying") is supposed to be given if and only if the net "weight of evidence" is so decisively in favor of the truth of proposition (a) that the jurors are left "without any reasonable doubt" on the matter.

The virtues of trial by jury derive not only from the fact that it embodies rational due process in a thorough-going fashion (for example, by making provision for the judge to rule out evidence that does not conform to the rules of evidence as inadmissible, for the cross-examination of witnesses, and for the selection of the jury in such a way as to exclude prejudiced and/or biased jurors) but also because it embodies the principle of specialization which has proved so successful in the sciences. As the different components of deliberation are assigned to different functionaries, each of these functionaries is able to give his full attention to this component and, in the course of time, to develop a professional expertise in one aspect of the trial process. Needless to say, this has the effect of making trial deliberations much more sophisticated than the informal deliberations we employ in everyday life. It is true that juries do not consist of expert jurors—the legal process might be improved if they did—but at least the jury has one job to do, complicated though it is, and this contributes to the excellence of the procedure.

In making these favorable observations on the procedure of trial by jury I am not blind to the fact that, like any other procedure, it can be abused; it is, in fact, being abused daily by such practices as plea bargaining, but this does not detract from the value of the procedure itself. Nor am I unaware of the fact that the procedure is not perfect. George Bernard Shaw once said that the theory of the law is to set two liars to expose each other in the hope that the truth will eventually emerge. Shaw was, of course, grossly distorting the legal process but there was, nevertheless, a grain of truth in his remark. The jury is expected to sort out the facts from two accounts that are, often, biased in opposite directions, and not necessarily to the same extent. This undoubtedly makes its job rather difficult, especially as its members are not lawyers, and the difficulty increases if the trial is a long one and concerned with highly technical matters. It might for this reason be helpful if the jury had its own attorney to help it to do its job, with the power to cross-examine witnesses and even put the prosecuting

and defending attorneys in the witness box, both in order to uncover suppressed evidence and to correct the opposite biases.

Against the view that the court trial procedure is an embodiment of rational due process designed to arrive at the truth, it might be objected that this view does not fully account for the right of the accused to be faced with his accusers and to be judged by his peers. If the sole purpose of the court trial is to arrive at the truth, then might this purpose sometimes be achieved equally effectively without the presence of the accused and without a jury?

There are two things that need to be said in reply to this objection. First, the constitutional right to be faced by one's accusers has a rational basis. The accused is in possession of information that no one else possesses with the same degree of certainty—namely, information as to whether he did commit the crime of which he is accused. His input into the deliberation is therefore necessary. If all of us, in science fiction fashion, were to have a microtelevision camera embedded in our foreheads so that everything we do is forever recorded and can be checked by others in case we are accused of committing a crime, then I doubt very much whether the constitutional right in question would be needed. One would then have a right, of course, not to have one's recordings tampered with.

Second, we still employ juries in trial proceedings in spite of the occasional miscarriages of justice for which they are responsible, because we still have to rely on commonsense, intuitive reasoning for the kinds of decisions that courts must make. If we were able to get computers to deliberate at least as well as human beings can, I doubt very much whether juries would be used any more. But the fact is that we do not know how to program a computer to deliberate in a satisfactory manner because we do not have a scientific understanding of deliberation.

PARLIAMENTARY PROCEDURE

I cited earlier General Robert's statement that a legislative body, when it makes and votes on motions, functions as a deliberative assembly—that is, engages in a form of group deliberation. This form of deliberation obviously has been developed from the form of deliberation an individual employs in everyday life by the adoption of procedures to ensure that all members of the group are able to participate in it on a fair and equal footing. It does this by giving each participant an equal opportunity to make motions, to present pros and cons in the ensuing debate, and to vote to pass or defeat motions.

I propose to show in this section that, while parliamentary procedure has many features that help legislatures to make right decisions, it is on the whole less conducive to producing right decisions than is

the court trial procedure. Not only does it lack some of the procedural refinements that are present in the court trial procedure, but the principles of representation and voting on which it is based almost guarantee that the ratio of "yeas" to "nays" will be very different from the ratio of the weights of the arguments for and against motions. This implies that many motions are passed that ought rationally to be defeated and others are defeated that ought rationally to be passed.

Let us begin then by reviewing some of the positive features of parliamentary procedure. First, every rational decision-making procedure must have rules to determine whether steps in the procedure are "in order" and someone, who is authorized to use them, to rule an illegitimate step "out of order." We saw that in the trial procedure the judge has the power to do this. In parliamentary procedure it is the chairman who has this power. He may rule a motion out of order, for example, if it contravenes the order of precedence for motions or, in the case for several specific motions such as a motion to appeal or divide the assembly, if it is made when another member has the floor. Amendments are in or out of order depending on whether the motions they are put forward to amend may or may not be amended. Similarly, the action of proceeding with the debate is out of order altogether for some motions and out of order for others only if they require a second but fail to find one. Voting is another action which is subject to criteria of legitimacy or validity: a vote, even a unanimous vote, is invalid (null and void) if the motion that is voted on conflicts with the laws of the nation, state, or the assembly's constitution or bylaws.

Second, every rational decision-making procedure must also employ criteria for determining whether decisions are sound. In the case of the court trial procedure this criterion is that the verdict be "guilty" if and only if the jury unanimously judges the net weight of arguments for the verdict to be sufficiently greater than the net weight of arguments against it, so that no reasonable doubt of how the verdict should go remains in the jurists' minds. In parliamentary procedure the soundness criteria are provided by the voting rules. For most motions and amendments the soundness criterion is that the motion or amendment be passed by a simple majority vote, ignoring abstentions, at a legal meeting when a quorum is present. For a more limited group of "procedural motions"—for example, to suspend or modify a rule of order previously adopted, to prevent the introduction of a question for consideration, to close, curtail or extend the limits of debate, and to limit the freedom of nominations or voting—the criterion is that the motion or amendment be passed by a two-thirds majority.

Third, every decision-making procedure must take into account the preceding steps of the problem-solving procedure of which it is a part.

In the court trial procedure this is done by the prosecuting counsel in presenting his case with the aid of witnesses. He is required to prove this case in painstaking detail and his witnesses are subject to cross-examination by the defending attorney. In parliamentary procedure the preceding steps are reported on by the chairman or a representative of the standing committee which handled them, and he may be questioned about them by members of the assembly from the floor.

We can see from these observations that parliamentary procedure does conform, to some extent, to rational due process. I propose now to look at the other side of the picture by examining in more detail the procedures for debating, voting, political representation, and reporting from committee.

With regard to the debating procedure we note that, although the procedure specifies which motions may be introduced during the debate and the order in which motions on the floor are to be debated and voted upon, it is in other respects much less formal than trial procedure. The chairman is not empowered to rule evidence out of order because parliamentary procedure has no rules of evidence, no opportunity is provided for the cross-questioning of speakers (although subsequent speakers can question statements made by earlier speakers), and, of course, no one is under oath. No attempt is made to ensure that the pros and cons are presented in such a way that their rational weights can be assessed correctly by other members of the assembly; rather, free play is given to a speaker to persuade his fellow members to adopt his opinion irrespective of its true merits. Nor does the procedure include any provision to counteract the influence of crowd psychology in swaying the opinions of members of the assembly—which, incidentally, is one respect in which parliamentary deliberation is inferior to individual deliberation. These observations give the impression that parliamentary debate procedure is designed not so much to elicit the pros and cons of motions in a way that is conducive to the making of right decisions as to elicit them in a way that will lead most expeditiously to an expression of the *will* of the assembly irrespective of whether this will is right or wrong.

This impression is considerably strengthened when we turn to examine the procedure for voting. It is obvious that the *simple majority vote* procedure is designed to enable the members of an assembly to make joint decisions in a way which is expeditious, gives an equal share of responsibility for the decision to each member, and employs the lowest ratio of yeas to nays that will make the decision binding on the whole assembly. It is not obvious that the simple majority vote has any relation at all to the rational requirement that these decisions be sound, which is that the reasons for them decisively outweigh the reasons against them. The ratio of the number of votes for and

against a decision bears only a hazy relation to the ratio of the weights of the reasons for and against it, and the simple majority vote criterion corresponds, at best, to the weakest possible interpretation of "decisively outweighs." The *two-thirds majority* vote procedure might seem to be more in conformity to rational due process; but, if it is, this is more by accident than by design. General Robert in his *Rules of Order* states that it is employed to protect assemblies against themselves, and he provides the following explanation: "As a safeguard against hasty or repeated change of previous action, for example, the parliamentary requirements for changing action previously taken are greater than those for adopting it in the first place. From this principle have grown the special requirements for such motions as to Repeal, to Rescind and to Reconsider."³

The dubious rationality of the simple and two-thirds majority voting procedures becomes even more obvious when we examine the system of political representation. The interests of different sections of the country are well represented in a proportionate manner in Congress, but no one is deputed to represent the public good or, to mention the other desideratum we are concerned with in this *Zygon* issue, the future of the environment. The procedure relies on a pious hope that the members of Congress will be sufficiently public-spirited and foresighted to give these unrepresented claims their proper weight when they vote. I think it is obvious that the probability of the claims of private interest, public good, and the environment being given their due weights with sufficient precision to justify the making of decisions with a one vote margin is extremely small. At this point parliamentary procedure becomes downright foolish.

This foolishness is compounded by the provision whereby the debating and voting are done by the same people, since this combination of functions can easily produce a conflict of interest. The debater is an advocate who urges a case, whereas the voter's sole concern should be to determine the facts, assign due weights to them, weigh the pros and cons dispassionately, and arrive at a just solution. It is clear, I believe, that in this respect parliamentary procedure is actually inferior to individual deliberation because an individual deliberator does not publicly take sides and so can more readily weigh the pros and cons without bias.

Finally, I will add some remarks about the committee report, which usually precedes the debate. The first seven steps of the problem-solving procedure are deputed, I said earlier, to a standing committee. That is as it should be because these steps require careful, time-consuming research and so are better done by a committee in advance of the debate. But it is essential that the results of the standing committee's research, together with the reasoning that led them to these

results, be made fully known to the legislative assembly, so that the members of the assembly can vote intelligently on the motion. Unhappily, this requirement is easy to evade by an inefficient or unscrupulous standing-committee chairman, even though the members can address questions to him.

AN IMMODEST PROPOSAL

By this time you may have asked yourself whether I am not exaggerating the importance of procedures. Even if parliamentary procedure is not as rational as court trial procedure does this really matter? To what extent, in practice, does a procedure limit the scope for prejudice, bias, vested interests, and other sources of error to produce wrong decisions?

Scientists know very well that there are good and bad experimental procedures. The good ones do not guarantee success but they make it much more probable; the bad ones, barring fortunate accidents, guarantee failure. The same thing is true of deliberative procedures: the good ones reduce the chances that bias, prejudice, vested interests, ignorance, and stupidity will affect the outcome of deliberations, whereas the bad ones do not. In the case of a trial deliberation, the separation of the functions of presenting the evidence, judging its admissibility, and weighing it actually *forces* the deliberation to conform more completely to the requirements of rational due process, and so does help the court to arrive at right decisions. In an individual deliberation, on the other hand, since the deliberator has complete control over whether he follows the deliberative procedure faithfully, he is not constrained by the procedure in any way: it cannot therefore "help" him to make right decisions in spite of any biases or prejudices he may have. Parliamentary deliberation has the advantage over individual deliberation in that many minds are brought to bear on problems, but it lacks the procedural discipline to exploit this advantage, with the consequence that its decisions may sometimes be less satisfactory than individual ones.

If parliamentary procedure is on the whole less rational than the court trial procedure, why have we been content for so long with this state of affairs? I can think of several possible answers to this question but I suspect that the most plausible one is this: until recently we assumed that it was more important to have just trials than to have right legislation. Trials were known to deal in many cases with matters of life and death whereas legislation was thought to have less vital significance. If this assumption was true at one time—and I personally doubt that it was ever true—it is certainly not true today, at least not of all legislation. Some of the legislation that has been enacted in recent years by the Congress has been every bit as important as any court

trial. We have only to remind ourselves of the legislation which introduced the draft for the Vietnam war to be assured that this is so.

This suggests that something ought to be done to improve parliamentary procedure, and so I will conclude this paper with some brief, tentative proposals for remodelling the procedure along the lines of the court procedure.

There are two basic principles for the new parliamentary procedure I am proposing. The first is that representation should be representation of kinds of reasons and not representation of groups of individuals. If the interests of geographical sections of the country are relevant to a bill, then these interests must of course be represented in the debate because they will provide pros and cons, but they should be represented directly, not indirectly through the representation of people. Moreover, interests of this kind will not be the only interests that need representation: the public good may be another, the future of the environment a third, and there may be many others.

The second principle is that the procedure used must, like the court procedure, make it more likely that all of the relevant reasons for and against a bill will be presented in the most effective way, that they will be given their due degrees of importance, that the pros and cons will be weighed against each other impartially, and that the decision to pass or reject the motion will be made *only on the merits of the arguments presented* and not on extraneous factors.

With regard to mechanics I propose, first, that all decisions on motions be made by a *political jury* that is chosen on the basis of competence and lack of bias, not necessarily from the members of the assembly, because it might not be possible to find members who are in a position to take a disinterested view of the motion to be debated. This means that the members of the assembly would no longer have voting powers. The size of the jury, its method of selection, the question of whether its decision would have to be unanimous for a motion to pass, and other similar details, are matters I shall not discuss.

Second, the present open debate would be replaced by a more formal, specialized form of debate in which the pros and cons are presented by *designated expert advocates*. This means that all possibly relevant pros and cons must be presented by experts, among whom I include the elected representatives of the interests of different sections of the nation, and that no one take part in the debate who is not a designated advocate of some class of pros and cons.

Third, the committee system would remain as it is at present but some of its procedures would be formalized to reduce the chances of error, and the committee chairman's report to the assembly would be subject to cross-examination. These changes are obviously derived from trial procedure and their purpose is to provide a way of arriving at decisions that are more likely to be right.

Applied to Congress, they could be implemented in some such way as the following. The present parliamentary procedure would be followed for less important bills, but the stricter procedure I have just described would be followed for more important ones. Naturally, this implies a need for a criterion for distinguishing "important" from "unimportant" bills, but I shall not offer one here. Senators and congressmen would be elected as at present, but the electorate would have to bear in mind, while casting their votes, that the candidates for whom they vote would have to spend part of their time in Congress as advocates without votes, that is, senators as advocates for their states' interests and congressmen as advocates for their districts' interests. It would be permitted to select advocates to represent any of the interests that are affected by strict bills from outside Congress, for example, from the administration, the consumer lobby, industry, ecological organizations, the army, and special interest organizations. This would force the lobbying groups into the open and would put an end to their present back-door methods.

Naturally, the implementation of this stricter procedure would require the creation of special machinery for such processes as the selection of political jurors, the designation of advocates, and the identification of bills requiring the strict procedure. Since it would be essential to keep to a minimum the opportunity to subvert the procedure by financial and other forms of manipulation, criteria would have to be drawn up for carrying out the preceding actions, and the actions would have to be done in public, "in the sunshine."

To conclude, I recognize that these proposals are utopian so far as Congress is concerned because to get them adopted would require a major constitutional amendment. But parliamentary procedure is used at all levels of society from Congress down to college faculty and local Parent-Teacher Association meetings. It is not utopian to hope that these proposals can be worked out more fully and tested by some of these lower-level assemblies. If they should prove successful here, who knows? Perhaps at some time in the distant future Congress may find itself obliged to adopt them.

NOTES

1. General H. M. Robert, *Robert's Rules of Order Newly Revised* (Glenview, Ill.: Scott, Foresman & Co., 1970), p. xxvii.

2. See R. C. Jeffrey, *The Logic of Decision* (New York: McGraw-Hill Book Co., 1965) for an account of Bayes' and Ramsey's work on deliberation as well as Jeffrey's own contributions to the subject.

3. General H. M. Robert, *Robert's Rules of Order Revised*, 75th anniversary ed. (Glenview, Ill.: Scott, Foresman & Co., 1951), p. 5.