
Mandates, Promises and Surprises

The Hon. Dr. Geoff Gallop

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In my talk today I'm going to argue that the claim made by a government that it has a mandate is just that but no more and that it is only as good as that government's capacity to back it up in the face of conflict. In saying this I'm not saying that a mandate isn't important but rather that it needs to be situated in relation to other claims by other participants in the political process whether parliamentarians, agents of accountability or citizens generally.

Let me begin, however, by reminding us all about the nature of politics. It's all about power (the capacity to do things) and influence (the capacity to influence those with power). It takes us into all social institutions, starting you might say with the family and going right through to the state. It invites a discussion of the sources of conflict and consensus and it leads one to ask: Who are the winners and who are the losers?

In our system of democracy the rules that govern the pursuit and exercise of power and influence are underpinned by two principles - firstly the accountability of government to the people and, secondly, the obligation of governments to act in the public interest. In order to provide for the first there are "free, fair and regular" elections and for the second a set of agencies, most notably the courts, with sufficient independence to ensure the public interest is honoured.

To make all of this work on a day-to-day basis there are both "laws", most notably the Constitution as it is interpreted by the judges and "conventions" which are, as AV. Dicey wrote in 1883:

The other set of rules consist of conventions, understandings, habits, or practices that - though they may regulate the conduct of several members of the sovereign power, the Ministry, or other officials - are not really laws, since they are not enforced by the courts. This portion of constitutional law may, for the sake of distinction, be termed the "conventions of the constitution", or constitutional morality.

Much has been said and written about the laws and conventions that apply in Australian politics and it is not my intention to go over those discussions today, except to say that I don't believe it helps to look upon a mandate as a constitutional convention, as some may wish to do. Like conventions claimed mandates are unenforced in law but unlike conventions our system could work without them. Put it this way - our conventions help us in the sometimes messy business of determining who shall govern but not so when it comes to how government is to work, most significantly but not only in relation to the Parliament.

What, then, is a mandate?

According to Wikipedia it is "the concept of a government having a legitimate mandate to govern via the fair winning of a democratic election". They go on:

New governments who attempt to introduce policies that they did not make public during an election campaign are said to not have a legitimate mandate to implement such policies.

It takes us into that sometimes crystal-clear and sometimes murky territory of what a party said - and didn't say - in an election period.

What's going on here is clear - the election of a government is said to give a special status to the promises it gave during that campaign. Indeed the election is seen as the key to accountability, as having sorted out through the process who is to govern and what they are expected to do. It's peaceful, it's fair and it's effective as a way to manage with an eye to the future.

However, a number of complications soon follow. Firstly, in the Commonwealth and five of the States there are two Houses of Parliament and not just one. Those elected to the Upper Houses, often representing a narrow range of interests and ideas claim a right at least to be consulted but also to say "no" in the event of fundamental disagreement. Secondly, there's no guarantee that the governing party itself will have a majority in the Lower House. Negotiation over promises given - and not given- inevitably follow.

One should also note that all of this necessary consultation and negotiation will be taking place after an election in which some issues will have been canvassed more comprehensively than others and from which lots of different conclusions may be drawn from the voting patterns displayed. Indeed the government may have won on a seats basis but not on a two-party preferred basis. Add to that the possibility of different voting patterns in the two Houses of Parliament.

Given these circumstances political parties who win government often find that in order to survive they have to compromise on some commitments and in certain situations ditch some altogether. They have to make a calculation of what is and what isn't acceptable given what they had previously committed to. There's no "science" here, it's all an "art" and it involves political judgement.

The same logic applies in the event of "changed circumstances" or "events" that weren't anticipated. It may be, for example, that an issue emerges about which no thought had been given - or commitments given - during an election campaign. We wouldn't say a government responds on the basis of a mandate, except in the most general of senses that it was elected to govern. It may, however, be an issue of such significance (and controversy) that a government determines that a new and early election is required to mandate its response. In this case the government would have to convince the Governor or Governor-General that it was a wise course to follow. Again it's all in that province we call "political judgement".

"Changed circumstances" is a trickier one to deal with, particularly as it relates to budgetary policy and promises relating to revenue and expenditure. No government can predict economic futures with the precision required when election commitments are being drawn up - but still they promise "no new taxes" or "no increase in taxation" or "no cuts to health and education", the big ticket items for government today. When times become better than expected - as they did earlier this century when China really took off - it's not a problem but in a world of continuing uncertainty promises can be fraught with danger.

One wonders, then, what it can mean to say you have a mandate when the politics says otherwise. The point is a government still has to deal with the circumstances as they present

themselves - and that may mean a hung parliament, an unruly Upper House or a declining revenue lease.

All of this being said there is still a point to mandate as a guide - albeit imperfect - to what it means by trustworthy government. Parties that campaign to win through obfuscation of purpose (often called "spin") and bad faith in respect of promises given (often called "lies") can rightly be criticised. Explaining in some detail what is intended and making promises to which one is really committed is part of the transparency required to give meaning to democratic accountability. It's that "trust factor" about which so much has been said in recent days.

Another aspect of the trust factor relates to the very system itself and the expectations we have - and should have - about its working. In our system it's not just "the numbers" that matter but also "the principles". Our system is designed such that the majority party can form government but not that it can do all that it pleases. There is the Constitution of the Commonwealth and a whole host of laws, state and federal - which provide a framework within which politicians have to work. Following the public interests and acting lawfully are not just optional extras to governing on behalf of the majority but rather legal obligations for better elected and non-elected officials. Following due process, avoiding conflicts of interest, ensuring freedom of political communication are just some of the many we may mention. They give life to a system that may otherwise ossify on behalf of narrow and vested interests.

This takes us back to the beginning and the understanding we have about what democracy means. In Australia it starts with "the people" and the votes they cast in an election but doesn't end there. It's also about "the public interest" and that means the rights of minorities as well as the interests of the majority, the future (and past) as well as the present and the environment we all share as well as our economy and society. The contract between the government and the people is an ongoing one - even though broken down into the intervals created by free, fair and regular elections.