INSTRUCTING OUR REPRESENTATIVES: AN ARGUMENT IN FAVOR OF THE IMPERATIVE MANDATE

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Politicians lie. Politicians lie *all the time*. They make promises during elections knowing full well that they will not keep them. They lie in office knowing that there is nothing we can do to remove them until the next election. When they don't lie and genuinely believe what they say, the power of money and corporate interests means that they're more likely to carry out the will of the rich and powerful than stick to the promises they made to us. What politicians *say* before an election thus ends up having only an incidental relationship with what they *do* after an election.

We are told that this is simply the nature of representative democracy. Regrettable perhaps, but unavoidable. For representation to work, representatives need a relatively free hand to deal with complex and fast-moving issues. Common citizens don't have the time or capacity to understand these issues let alone to formulate the legislation to respond to them. If citizens had the power to force representatives to do what they promised, the result would be (we are told) chaos, paralysis, and incompetence.

Of course (we are simultaneously assured), representatives shouldn't have an entirely free hand either. Some controls are obviously necessary. But these should be limited to the tried and tested methods of the pressure of public opinion and periodic elections. If politicians ignore their

electorates too frequently, they can eventually be thrown out after four or five years. These mechanisms are enough (it is claimed) to ensure that representation does its job: that a group of elected rulers decide what is the common good of the people.

But just because we have been told that this is what democracy is, that doesn't mean that we have to accept it. What goes by the name of "democracy" today is in fact better thought of as "representative government," which has only a weak relationship with what was historically understood as democracy (Manin, 1997). Democracy, for many of those who fought for it, meant that representatives (or delegates) should carry out the instructions of those they represented and that there should be binding mechanisms in place to ensure this. This is known as representatives having an imperative mandate (rather than a free mandate). In what follows I'll briefly outline its history, its functioning, and its contemporary potential.

As Max Krahé argues in his essay, democracy in pre-modern political thought usually meant lotteries and not elections. By the time of the Atlantic Revolutions at the end of the eighteenth century, however, it was elections that dominated the political imaginary of revolutionaries. But there remained fierce debate over the institutional architecture surrounding elections. Who should be able to stand for election? Who should be allowed to vote? How long should terms of office be? Should voters be able to recall their representatives? And indeed, should representatives be bound by the instructions of their constituents?

The resolution of these questions took much longer than one might think. The victory of the idea that all adults should be able to vote and stand for office, without qualifications based on property, education, sex, or race, was undoubtably a huge democratic advance. But on the other institutional questions, victory went to those who explicitly opposed the advance of democracy. Elections are generally held on four- or five-year timetables rather than the annual elections proposed by radicals. Representatives are rarely subjected to the threat of being recalled and when they are it usually requires substantial hurdles. And nowhere in any constitutional democracy today are representatives held to their constituent's instructions. Indeed, many constitutions — such as those of France and Germany — explicitly ban imperative mandates for representatives.

How did we get here? An important element of the story begins in the French Revolution. When the king was forced to call a meeting of the Estates General in 1789, most of the representatives arrived with instructions from their constituents detailing how they should vote on various issues. These also often specified that the deputy should vote as part of their respective order (clergy, aristocrats, and the commoners of the so-called Third Estate). A crucial milestone in the Revolution occurred when the deputies of the Third Estate forced the other deputies to join them in a joint National Assembly without estate divisions. As part of that process the imperative mandates with which the deputies had arrived were set aside. This was initially seen as an important progressive victory over feudal institutions and the power of the clergy and the aristocracy.

But as the Revolution progressed there was growing unease amongst some radical deputies with the constitutional principle they had enshrined. Removing imperative mandates seemed to free representatives from all control by their constituents and potentially empowered a new body to oppress the people. Radicals thus turned once again to the imperative mandate as a critical element of a constitution that would establish popular power. An important success was achieved with the 1793 Jacobin constitution, which enshrined short one-year terms of office, provisions for representative recall, primary assemblies for direct political participation, popular ratification of laws, as well as allowing for imperative mandates. But the seeming victory proved short-lived as the constitution was never enacted and the reactionary turn in the Revolution buried its popular proposals.

The imperative mandate continued to feature in post-revolutionary radical thought on democracy and was defended by democrats throughout the nineteenth century, including in several Latin American countries (Colón-Ríos, 2020; Gargarella, 2013). The debate around imperative mandates came to renewed prominence in France with the Paris Commune of 1871, which briefly involved a flourishing of radical democratic ideas, including the use of imperative mandates for the deputies of the Commune (Zaidman, 2008). While the Commune was quickly suppressed, it left an important political and constitutional legacy. French radicals repeatedly attempted to implement the imperative mandate in the constitution of the

Third Republic in the 1870s and 1880s and developed a range of proposals to do so (Mollenhauer, 1998, pp. 138–66). Yet the resistance of conservatives and liberals ensured that the free mandate eventually won out. Over the following decades, the free mandate increasingly established itself as the constitutional orthodoxy in regimes that claimed to be democracies.

The radical dream of real democratic accountability was instead transferred into the idea of the political party as a mechanism to constrain the free mandate of representatives. In socialist and social-democratic thought particularly, the party was seen as the instrument through which representatives would be tied to the interests of workers. While some saw representatives' membership in the party as a sufficient guarantee of accountability, others attempted to formalize the grassroots power of party members over their representatives and developed the idea of a *party* imperative mandate. Such ideas have been a continual feature of intra-party debates and became particularly heated in the 1970s and 1980s, when radical members of the German SPD and Green Party attempted to institute imperative mandates within their parties (Kevenhörster, 1974).

The history of the imperative mandate suggests a range of institutional possibilities to realize its core idea of binding instructions for representatives. Three key questions emerge when thinking about the details of its institutionalization. (1) How extensive should instructions be? (2) What sanctions should representatives face when they fail to carry out instructions? (3) Who gives instructions and decides whether they have or have not been followed? We can summarize these as questions of *scope*, *sanctions*, and *selection*. I'll take each of these in turn.

(1) *Scope*. Opponents of the imperative mandate often assume that it implies representatives are entirely restricted to their instructions and have no freedom of action. Such a completely imperative mandate has in fact rarely been defended. Most defenders of the imperative mandate have argued that representatives are only bound when they have explicitly received instructions on a particular issue. Beyond those instructions, representatives are free to vote and act as they see fit. That might include issues that constituents have deliberately left to the representative to decide or issues unforeseen at the time of instruction. (Though defenders of the imperative mandate have also often wanted such non-instructed

issues to be subjected to subsequent controls or ratification, e.g., through popular ratification.) Additionally, instructions might also have varying levels of generality. They might simply specify the broad position that a representative should take but leave the contents of their instructions unspecified so that the representative can decide on the finer details of the issue. That would hence still allow for deliberation and compromise in legislative debates (something the imperative mandate is often accused of negating).

(2) *Sanctions*. Without sanctions for non-compliance with instructions, a supposedly imperative mandate is little more than a moral promise to uphold the wishes of constituents. Some defenders of the imperative mandate have indeed thought that the dishonor and shame that would result from breaking an election promise would be enough to ensure that representatives stuck to those promises. That has been a minority view, however, and the practice of electoral democracy suggests that representatives are more than content to weather a little shame and dishonor. Consequently, more muscular sanctions have usually been thought necessary. One simple solution is a financial sanction. That might involve a reduction of wages or the imposition of a fine on a recalcitrant representative. Such measures might also be extended to criminal charges for the representatives resulting in imprisonment. While such legal and punitive measures have featured in defenses of the imperative mandate, the principal sanctioning mechanism has been the political threat of recalling the representative. A representative who fails to carry out their instructions thus faces the possibility of being immediately removed from office. In the case of a party imperative mandate, this translates to the representative losing the whip or having their membership revoked and being unable to stand for the party at the next election. Finally, annual elections might also be thought of as a kind of sanctioning mechanism as voters have the power to sanction their representatives much more frequently than with longer terms of office.

(3) *Selection*. Probably the most important question when it comes to the realization of the imperative mandate is the perennial political question of who decides. To get a better sense of the specific options it is helpful to initially split the question of who instructs from who judges

(though as we will see the same body might carry out both tasks). One influential way of conceptualizing who instructs is to see the citizenry of each constituency as instructing their representative through the pledges made before the election. These might have a more informal character (such as the promises made by candidates in their speeches) or be formalized through meetings in which citizens compel candidates to commit to specific pledges. (That of course raises a host of further questions on the form and composition of such meetings.) Under that broad model there is then a subsequent question of who decides whether those pledges have been broken and applies the appropriate sanction. One solution defended in the debates in the French Third Republic was that the adjudicating body would be the courts and hence the judges who sit on them. On that account, the imperative mandate becomes quite similar to a legal contract, with citizens having the power to sue representatives who do not uphold their end of the contract and judges deciding whether there has been a breach of contract. That might strike many as too legal a solution and hand too much power to judges. Thus, another option considered by radicals in the Third Republic was to have committees set up at the same time as the election, which would then be responsible for judging the representative. Ideas for who might sit on such a committee included those who had nominated the candidate, local or municipal counsellors, or fellow members of the representative's party. That final option brings us closer to the idea of the party imperative mandate. The adjudicating body here was usually taken to be the constituency branch of the party. This would decide whether the representative had stuck to the pledges made to the constituency (and the wider country) in the party's election manifesto. (Under this conception, it becomes particularly salient whether the constituency branch is internally democratic.) Finally, the questions of who instructs and who adjudicates can be melded together. That is the case with the idea of primary assemblies in which each constituency has an assembly in which all of the constituency's citizens can meet to deliberate amongst themselves, and consequently instruct and sanction their representative. That idea was particularly popular during the French Revolution. It has the advantage of inclusivity but also an obvious concern with numbers.

There are thus several different ways we might realize the imperative mandate, each with advantages and disadvantages. As Rahel Süß aptly suggests in her contribution, we might take those possibilities as an invitation to experiment with different options and even combinations of options. Taking a leaf from Max Krahé's chapter on lotteries, one potential idea would be to make the body that adjudicates and sanctions the representative one that is randomly selected from the representative's constituency. Such a Constituency Assembly or Constituency Jury could perhaps be made up of 50–100 randomly selected citizens who would meet on a regular basis amongst themselves as well as with their representative. Its members would be tasked with holding the representative accountable to the constituency, by having the power to recall the representative. Since there are always unforeseen issues and changing circumstances, the representative would still have the opportunity to explain and justify to the randomly selected constituents why they diverged (or intend to diverge) from their instructions. Its members would then have the option to decide whether they found such explanations to be satisfactory. The idea of Constituency Assemblies or Constituency Juries might thus incorporate some of the popular inclusivity and control offered by Primary Assemblies (and avoid the potential elitism and exclusiveness of other solutions), while also side-stepping the worry about numbers. Lotteries might thus be one way in which the imperative mandate could be realized today.

What the imperative mandate might achieve would vary with different possible institutional realizations. One common expectation is that it would help address the appallingly limited ability of citizens to hold their representatives accountable. The current structure of our "democracies" gives representatives remarkably free reign to ignore the people they supposedly represent in the confident expectation that they will be able to ride out any outrage until the next election. In the absence of such real accountability, representatives overwhelmingly represent not their constituents but the interests of wealth and corporate power. It is these elites that currently have an imperative mandate over our representative institutions. The task before us is to ensure that it is citizens, and not these wealthy and corporate elites, that have the power to instruct our representatives.

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