

The legitimacy of the "Secretary's Commission on Opportunity in Athletics" as a deliberative democratic process

Dr. Lisa A. Kihl
Matthew Soroka
University of Minnesota

Executive Summary

In 2002, the former Secretary of Education established a "milestone" commission to examine ways to strengthen enforcement of Title IX law and expand opportunities to ensure fairness for all college and high-school athletes (www.edgov.edu). Four town hall meetings were held where "expert" opinions from invited speakers and testimonies from the public were heard about the issues pertaining to Title IX's application and effect on equal opportunity. Subsequently, the *Open to All: Title IX at Thirty* report was released, which provided findings and recommendations for "improving the enforcement of Title IX" (Secretary's Commission on Opportunity in Athletics, 2003). A minority report was also released by two Commission members, as they were dubious about the process and outcome of the Commission. Whilst the co-chairs of the Commission characterized the procedures as "open, fair, and inclusive," the overall credibility of the Commission was questioned by various critics and participants in term of representation and procedural fairness (Rosenthal, Morris, & Martinez, 2004; Staurowsky, 2003).

Federal commissions are commonly used as a regular democratic procedure to actively engage the Nation's citizens in government decision-making process (USDA OGC, 2000). Deliberative democratic procedures are the basis for legitimate policy-making where the *process* of deliberation is central rather than the deliberative *outcomes* (Habermas, 1996; Parkinson, 2006). Procedural conditions for legitimate deliberative policy require at minimum broad representation (communicative competence and inclusiveness), quality of deliberations (publicity and reciprocity), and credibility (fair procedures) (Gutmann & Thompson, 2004; Habermas, 1996; Parkinson, 2006). Although Commissions are an important means for gaining citizen input about state issues, little is known about how this type of public deliberative process realizes deliberative democratic principles.

The purpose of this study was to examine the legitimacy of Commissions as a deliberative democratic process through the examination of the *Secretary of Education's Commission on Opportunity in Athletics*. The following research questions guided the study: 1) What were selection criteria for individuals to participate in the Commission? 2) How did communicative competence impact deliberations? 3) How did procedure impact the quality of deliberations? and 4) How did procedure impact the credibility of the Commission?

In this case study we conducted semi-structured, audio-taped phone interviews (30-60 minutes) with 12 individuals who either served on the Commission or were invited to speak at one of the town hall meetings. Various archival documents, including the town hall meeting transcripts, Commission reports, and newspaper articles were also collected. Drawing from deliberative democracy theory (Gutmann & Thompson, 1996; Habermas, 1996; Parkinson, 2006) the data were analyzed into major categories and sub-categories relative to legitimacy of the Commission within a deliberative democratic process.

Key Findings

The findings are presented in three broad topic areas. First, findings associated with the nature of representation (scale versus broad representation). Second, findings related to the selection criteria for the representation of Commission members and town hall expert speakers. Third, findings that discuss the fairness of the procedures—in terms of the public nature of the Commission and the impact of the process on the quality of deliberations. Last, suggestions are provided for instituting best practices for enhancing the legitimacy of Commissions as a deliberative democratic process.

1) *Nature of Commission representation—National reach counteracted scale concerns*

The 14-member Commission was narrowly represented by primarily Division I-A intercollegiate athletic programs. The four town hall meetings, however, promoted national citizen involvement through strategic geographic location of the meetings (Atlanta, GA; Washington D.C.; San Diego, CA; Colorado Springs, CO; and Philadelphia, PA). The meetings permitted different citizen viewpoints about the nature and impact of Title IX policy in providing equal opportunities and experiences for high-school and college athletes. The national discussion provided a counterpoint to the Commission's skewed representation.

2) *Commission Selection—Representative of Those Affected by the Policy*

The findings demonstrated that no public information was provided about the selection criteria for either those who were appointed to the Commission or those who were invited to testify at the different town hall meetings. Some of the representatives were also questioned about their expertise on Title IX legislation. The Department of Education was perceived to have hand-picked commissioners in order to support a pro-Division 1-A outcome. The Department of Education has the right to select participants for the Commission, however, from a legitimacy perspective, the criteria for selecting those serving on the Commission and town hall speakers should be public else the democratic nature of the process comes into question (Parkinson, 2006). When considering the nature of the representation of these commissioners, it is essential to consider how the representatives are connected with those most affected by the policy—male and female athletes in youth, high school, and all levels of intercollegiate sport.

3) *Fairness of Commission procedures*

In general, participants felt that the procedures were generally fair with respect to the overall process, the public nature of it, equal opportunity to be heard, inclusive nature of town hall meetings, and the accessibility to information and to the support staff. However, four general concerns were evident in the data: 1) Seven pre-established Commission objectives set by the government framed the policy problem that was investigated. Through pre-establishing the Commission agenda, it was argued that it did suitably allow for the collection of appropriate information to address the central issue regarding Title IX legislation. 2) Some participants did not come into the Commission fully open-minded (i.e., already were biased for or against Title IX), which restricted their acceptance of opposing viewpoints. 3) While the public nature of the deliberations permitted citizens to hold the commissioners, speakers, and experts accountable, it also created some tension amongst the Commission members. Participants felt that Commission members were unable to debate their perspective on its objectives without being publicly labeled for or against Title IX, which made them feel like they were unable to freely pose questions. 4) Time limitations imposed on the Town Hall dialogues (15 minutes for town hall speakers and 5 minutes for public speakers) made it difficult for

Commission members to assess the rhetoricalness of public and expert testimony. Finally, the process of determining the content of the final report drew four criticisms. First, requiring a unanimous vote in deciding which recommendations were to be included was deemed unfair as it allowed for an individual and or the minority to control the voting. Second, the inability to include commissioner feedback into the final report was perceived as unfair. Third, it was voiced that the final report was not endorsed by all of the Commissioners. Fourth, participants were disappointed because the limited implications of the final report were perceived to have a decreased public impact.

Conclusion

Through our examination of the Secretary of Education's Commission on Opportunity in Athletics and drawing from the literature we recommend the following 10-point set of guidelines for realizing deliberative democracy and engaging in public policy discussions. 1) Legitimate representation requires that the organizers of the deliberations determine and make known the purpose of the deliberative body. 2) Legitimate representation also suggests that organizers ensure that all points of view of the considered issue are represented and engaged in the policy process. 3) Participants in public deliberations need to possess communicative and cognitive competence to actively interact in the debate and make valid judgments during the exchange of knowledge to insure that they are properly representing those outside of the deliberations. 4) Quality of deliberations are enhanced through discussions that are held in public forums. Though tensions might arise for those speaking in a public arena, as indicated by our findings, requiring open discussions is critical to realizing a legitimate deliberative democratic process. 5) When participants take each other's claims seriously and are open to other viewpoints, the quality of deliberations will provide an improved democratic framework. 6.) The agenda for discussions needs to be flexible in terms of time management to prevent any unreasonable restrictions being placed upon policy discussions. 7) Decisions need to be justified through collective agreement where majority rules in decision-making. 8.) The participants in the deliberations need to be granted the autonomy to revise procedures as deemed necessary. 9) The organizers of the deliberations should provide a forum for on-going discussions to take place once formal policy discussions have ceased. 10) Both procedural and substantive principles need to be central to ensure legitimacy. The Commission highlighted that a legitimate process requires fair procedures and morally acceptable outcomes.

References

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