Representation: Legislative Role

The three selections in this section are illustrative of a long-standing debate among political theorists and elected officials alike: Whose views should prevail on a given issue—the constituents’ or the representatives’? In the first selection, taken from an early debate in the General Assembly of Virginia, the argument is made that legislators are obliged to act as instructed delegates—that is, they must vote in accordance with the will of their constituents. In the second selection, Massachusetts senator and future president John F. Kennedy, writing in 1956, argues that legislators should act as trustees, voting according to their own consciences, regardless of whether their choices reflect the sentiments of their constituents. Finally, George Galloway, a former staff assistant in Congress, contends that on some occasions legislators must follow public opinion, but on others they are obliged to vote according to their consciences. This view, which combines both the delegate and the trustee approach, is characterized as the politico role.
The Legislator as Delegate

General Assembly of Virginia

There can be no doubt that the scheme of a representative republic was derived to our forefathers from the constitution of the English House of Commons; and that that branch of the English government ... was in its origin, and in theory always has been, purely republican. It is certain, too, that the statesmen of America, in assuming that as the model of our own institutions, designed to adopt it here in its purest form, and with its strictest republican tenets and principles. It becomes, therefore, an inquiry of yet greater utility than curiosity, to ascertain the sound doctrines of the constitution of the English House of Commons in regard to this right of the constituent to instruct the representative. For the position may safely be assumed that the wise and virtuous men who framed our constitutions designed that, in the United States, the constituent should have at least as much, if not a great deal more, influence over the representative than was known to have existed from time immemorial in England. Let us then interrogate the history of the British nation; let us consult the opinions of their wise men.

Instances abound in parliamentary history of formal instructions from the constituent to the representative, of which ... the following may suffice: In 1640, the knights of the shire for Dorset and Kent informed the commons that they had in charge from their constituents seven articles of grievances, which they accordingly laid before the House, where they were received and acted on. In the 33rd year of Charles II, the citizens of London instructed their members to insist on the bill for excluding the Duke of York (afterward King James II) from the succession to the throne; and their representative said "that his duty to his electors obliged him to vote the bill." At a subsequent election, in 1681, in many places, formal instructions were given to the members returned, to insist on the same exclusion bill; we know, from history, how uniformly and faithfully those instructions were obeyed. ... In 1741, the citizens of London instructed their members to vote against standing armies, excise laws, the septennial bill, and a long train of evil measures, already felt, or anticipated; and expressly affirm their right of instruction—"We think it" (say they) "our duty, as it is our undoubted right, to acquaint you, with what we desire and expect from you, in discharge

From Commonwealth of Virginia, General Assembly, Journal of the Senate, 1812, pp. 82-89. In some instances, spelling and punctuation have been altered from the original in order to achieve greater clarity.
of the great trust we repose in you, and what we take to be your duty as our representative, etc." In the same year, instructions of a similar character were sent from all parts of England. In 1742, the cities of London, Bristol, Edinburgh, York, and many others, instructed their members in parliament to seek redress against certain individuals suspected to have betrayed and deserted the cause of the people.

Instances also are on record of the deliberate formal knowledge of the right of instruction by the House of Commons itself, especially in old times. Thus the commons hesitated to grant supplies to King Edward III till they had the consent of their constituents, and desired that a new parliament might be summoned, which might be prepared with authority from their constituents.

"Instructions" (says a member of the House of Commons) "ought to be followed implicitly," after the member has respectfully given his constituents his opinion of them: "Far be it from me to oppose my judgment to that of 6000 of my fellow citizens." "The practice" (says another) "of consulting our constituents was good. I wish it was continued. We can discharge our duty no better, than in the direction of those who sent us hither. What the people choose is right, because they choose it." ...

Without referring to the minor political authors... who have maintained these positions (quoted from one of them)—"that the people have a right to instruct their representatives; that no man ought to be chosen that will not receive instructions; that the people understand enough of the interests of the country to give general instructions; that it was the custom formerly to instruct all the members; and the nature of deputation shows that the custom was well grounded"—it is proper to mention that the great constitutional lawyer Coke... says, "It is the custom of parliament, when any new device is moved for on the king's behalf, for his aid and the like, that the commons may answer, they dare not agree to it without conference with their counties." And Sidney... maintains "that members derive their power from those that choose them; that those who give power do not give an unreserved power; that many members, in all ages, and sometimes the whole body of the commons have refused to vote until they consulted with those who sent them; that the houses have often adjourned to give them time to do so and if this were done more frequently, or if cities, towns and counties had on some occasions given instructions to their deputies, matters would probably have gone better in parliament than they have done."... The celebrated Edmund Burke, a man, it must be admitted, of profound knowledge, deep foresight, and transcendent abilities, disobeyed the instructions of his constituents; yet, by placing his excuse on the ground that the instructions were but the clamour of the day, he seems to admit the authority of instructions soberly and deliberately given; for he agrees, "he ought to look to their opinions" (which he explains to mean their permanent settled opinions) "but not the flash of the day"; and he says elsewhere, that he could not bear to show himself "a representative, whose face did not reflect the face of his constituents—a face that did not joy in their joys and sorrow in their sorrows." It is remarkable that, notwithstanding
a most splendid display of warm and touching eloquence, the people of Bristol would not reelect Mr. Burke, for this very offense of disobeying instructions.

It appears, therefore, that the right of the constituent to instruct the representative, is firmly established in England, on the broad basis of the nature of representation. The existence of that right, there, has been demonstrated by the only practicable evidence, by which the principles of an unwritten constitution can be ascertained—history and precedent.

To view the subject upon principle, the right of the constituent to instruct the representative, seems to result, clearly and conclusively, from the very nature of the representative system. Through means of that noble institution, the largest nation may, almost as conveniently as the smallest, enjoy all the advantages of a government by the people, without any of the evils of democracy—precipitation, confusion, turbulence, distraction from the ordinary and useful pursuits of industry. And it is only to avoid those and the like mischiefs, that representation is substituted for the direct suffrage of the people in the office of legislation. The representative, therefore, must in the nature of things, represent his own particular constituents only. He must, indeed, look to the general good of the nation, but he must look also, and especially to the interests of his particular constituents as concerned in the commonwealth; because the general good is but the aggregate of individual happiness. He must legislate for the whole nation; but laws are expressions of the general will; and the general will is only the result of individual wills fairly collected and compared. In order... to express the general will... it is plain that the representative must express the will and speak the opinions of the constituents that depute him.

It cannot be pretended that a representative is to be the organ of his own will alone; for then, he would be so far despotic. *He must be the organ of others*—of whom? Not of the nation, for the nation deputes him not; but of his constituents, who alone know, alone have trusted, and can alone displace him. And if it be his province and his duty, in general, to express the will of his constituents, to the best of his knowledge, without being particularly informed thereof, it seems impossible to contend that he is not bound to do so when he is so especially informed and instructed.

The right of the constituent to instruct the representative, therefore, is an essential principle of the representative system. It may be remarked that whenever representation has been introduced, however unfavorable the circumstances under which it existed, however short its duration, however unimportant its functions, however dimly understood, the right of instruction has always been regarded as inseparably incidental to it.

A representative has indeed a wide field of discretion left to him; and great is the confidence reposed in his integrity, fidelity, wisdom, zeal; but neither is the field of discretion boundless, nor the extent of confidence infinite; and the very discretion allowed him, and the very confidence he enjoys, is grounded on the supposition that he is charged with the will, acquainted with the opinions, and devoted to the interests of his constituents.
Various objections have been urged to this claim of the constituent, of a right to instruct the representative, on which it may be proper to bestow some attention.

The first objection that comes to be considered . . . is grounded on the supposed impossibility of fairly ascertaining the sense of the constituent body. The impossibility is denied. It may often be a matter of great difficulty; but then the duty of obedience resolves itself into a question, not of principle, but of fact: whether the right of instruction has been exercised or not. The representative cannot be bound by an instruction that is not given; but that is no objection to the obligation of an instruction actually given . . .

It has been urged that the representatives are not bound to obey the instructions of their constituents because the constituents do not hear the debates, and therefore, cannot be supposed judges of the matter to be voted. If this objection has force enough to defeat the right of instruction, it ought to take away, also, the right of rejecting the representative at the subsequent election. For it might be equally urged on that occasion, as against the right of instruction, that the people heard not the debate that enlightened the representative's mind—the reasons that convinced his judgment and governed his conduct . . . In other words, the principle that mankind is competent to self-government should be renounced. The truth is, that our institutions suppose that although the representative ought to be, and generally will be, selected for superior virtue and intelligence, yet a greater mass of wisdom and virtue still reside in the constituent body than the utmost portion allotted to any individual . . .

Finally, it has been objected, that the instructions of the constituent are not obligatory on the representative because the obligation insisted on is fortified with no sanction—the representative cannot be punished for his disobedience, and his vote is valid notwithstanding his disobedience. It is true that there is no mode of legal punishment provided for this . . . default of duty and that the act of disobedience will not invalidate the vote. It is true, too, that a representative may perversely advocate a measure which he knows to be ruinous to his country; and that neither his vote will be invalidated by his depravity, nor can he be punished by law for his crime, heinous as it surely is. But it does not follow that the one representative is not bound to obey the instructions of his constituents any more than that the other is not bound to obey the dictates of his conscience. Both duties stand upon the same foundation, with almost all the great political and moral obligations. The noblest duties of man are without any legal sanction: the great mass of social duties . . ., our duties to our parents, to our children, to our wives, to our families, to our neighbor, to our country, our duties to God, are, for the most part, without legal sanction, yet surely not without the strongest obligation. The duty of the representative to obey the instructions of the constituent body cannot be placed on higher ground.

Such are the opinions of the General Assembly of Virginia, on the subject of this great right of instruction, and such the general reasons on which those opinions are founded . . .
The Legislator as Trustee

John F. Kennedy

The primary responsibility of a senator, most people assume, is to represent the views of his state. Ours is a federal system—a union of relatively sovereign states whose needs differ greatly—and my constitutional obligations as senator would thus appear to require me to represent the interests of my state. Who will speak for Massachusetts if her own senators do not? Her rights and even her identity become submerged. Her equal representation in Congress is lost. Her aspirations, however much they may from time to time be in the minority, are denied that equal opportunity to be heard to which all minority views are entitled.

Any senator need not look very long to realize that his colleagues are representing their local interests. And if such interests are ever to be abandoned in favor of the national good, let the constituents—not the senator—decide when and to what extent. For he is their agent in Washington, the protector of their rights, recognized by the vice president in the Senate Chamber as “the senator from Massachusetts” or “the senator from Texas.”

But when all of this is said and admitted, we have not yet told the full story. For in Washington we are “United States senators” and members of the Senate of the United States as well as senators from Massachusetts and Texas. Our oath of office is administered by the vice president, not by the governors of our respective states; and we come to Washington, to paraphrase Edmund Burke, not as hostile ambassadors or special pleaders for our state or section, in opposition to advocates and agents of other areas, but as members of the deliberative assembly of one nation with one interest. Of course, we should not ignore the needs of our area—or could we easily as products of that area—but none could be found to look out for the national interest if local interests wholly dominated the role of each of us.

There are other obligations in addition to those of state and region—the obligations of the party. . . . Even if I can disregard those pressures, do I not have an obligation to go along with the party that placed me in office? We
believe in this country in the principle of party responsibility, and we recognize
the necessity of adhering to party platforms—if the party label is to mean anything
to the voters. Only in this way can our basically two-party nation avoid the
pitfalls of multiple splinter parties, whose purity and rigidity of principle, I
might add—if I may suggest a sort of Gresham's Law of politics—increase
inversely with the size of their membership.

And yet we cannot permit the pressures of party responsibility to submerge on every issue the call of personal responsibility. For the party which, in
its drive for unity, discipline and success, ever decides to exclude new ideas,
independent conduct or insurgent members, is in danger . . .

Of course, both major parties today seek to serve the national interest. They
would do so in order to obtain the broadest base of support, if for no nobler rea
son. But when party and officeholder differ as to how the national interest is to
be served, we must place first the responsibility we owe not to our party or
even to our constituents but to our individual consciences.

But it is a little easier to dismiss one's obligations to local interests and
party ties to face squarely the problem of one's responsibility to the will of his
constituents. A senator who avoids this responsibility would appear to be
accountable to no one, and the basic safeguards of our democratic system
would thus have vanished. He is no longer representative in the true sense,
he has violated his public trust, he has betrayed the confidence demonstrated
by those who voted for him to carry out their views. "Is the creature," as John
Tyler asked the House of Representatives in his maiden speech, "to set him
self in opposition to his Creator? Is the servant to disobey the wishes of his
master?"

How can he be regarded as representing the people when he speaks, not their
language, but his own? He ceases to be their representative when he does so,
and represents himself alone.

In short, according to this school of thought, if I am to be properly responsi
tive to the will of my constituents, it is my duty to place their principles, not
mine, above all else. This may not always be easy, but it nevertheless is the
essence of democracy, faith in the wisdom of the people and their views. To be
sure, the people will make mistakes—they will get no better government than
they deserve—but that is far better than the representative of the people arro
gating for himself the right to say he knows better than they what is good for
them. Is he not chosen, the argument closes, to vote as they would vote were
they in his place?

It is difficult to accept such a narrow view of the role of a United States
senator—a view that assumes the people of Massachusetts sent me to
Washington to serve merely as a seismograph to record shifts in popular opin
ion. I reject this view not because I lack faith in the "wisdom of the people," but
because this concept of democracy actually puts too little faith in the people.
Those who would deny the obligation of the representative to be bound by every
impulse of the electorate—regardless of the conclusions his own deliberations
direct—do trust in the wisdom of the people. They have faith in their ultimate
sense of justice, faith in their ability to honor courage and respect judgment, and faith that in the long run they will act unselfishly for the good of the nation. It is that kind of faith on which democracy is based, not simply the often frustrated hope that public opinion will at all times under all circumstances promptly identify itself with the public interest.

The voters selected us, in short, because they had confidence in our judgment and our ability to exercise that judgment from a position where we could determine what were their own best interests, as a part of the nation’s interests. This may mean that we must on occasion lead, inform, correct and sometimes even ignore constituent opinion, if we are to exercise fully that judgment for which we were elected. But acting without selfish motive or private bias, those who follow the dictates of an intelligent conscience are not aristocrats, demagogues, eccentrics, or callous politicians insensitive to the feelings of the public. They expect—and not without considerable trepidation—their constituents to be the final judges of the wisdom of their course; but they have faith that those constituents—today, tomorrow, or even in another generation—will at least respect the principles that motivated their independent stand.

If their careers are temporarily or even permanently buried under an avalanche of abusive editorials, poison-pen letters, and opposition votes at the polls—as they sometimes are, for that is the risk they take—they await the future with hope and confidence, aware of the fact that the voting public frequently suffers from what ex-Congressman T. V. Smith called the lag “between our way of thought and our way of life.”

Moreover, I question whether any senator, before we vote on a measure, can state with certainty exactly how the majority of his constituents feel on the issue as it is presented to the Senate. All of us in the Senate live in an iron lung—the iron lung of politics, and it is no easy task to emerge from that rarefied atmosphere in order to breathe the same fresh air our constituents breathe. It is difficult, too, to see in person an appreciable number of voters besides those professional hangers-on and vocal elements who gather about the politician on a trip home. In Washington I frequently find myself believing that forty or fifty letters, six visits from professional politicians and lobbyists, and three editorials in Massachusetts newspapers constitute public opinion on a given issue. Yet in truth I rarely know how the great majority of the voters feel, or even how much they know of the issues that seem so burning in Washington.

Today the challenge of political courage looms larger than ever before. For our everyday life is becoming so saturated with the tremendous power of mass communications that any unpopular or unorthodox course arouses a storm of protests. . . . Our political life is becoming so expensive, so mechanized, and so dominated by professional politicians and public relations men that the idealist who dreams of independent statesmanship is rudely awakened by the necessities of election and accomplishment. . . .

And thus, in the days ahead, only the very courageous will be able to take the hard and unpopular decisions necessary for our survival. . . .
The Legislator as Politico

George B. Galloway

One question which the conscientious congressman must often ask himself, especially when conflicts arise between local or regional attitudes and interests and the national welfare, is this: "As a member of Congress, am I merely a delegate from my district or state, restricted to act and vote as the majority which elected me desire, bound by the instructions of my constituents and subservient to their will? Or am I, once elected, a representative of the people of the United States, free to act as I think best for the country generally?"

In a country as large as the United States, with such diverse interests and such a heterogeneous population, the economic interests and social prejudices of particular states and regions often clash with those of other sections and with conceptions of the general interest of the whole nation. The perennial demand of the silver-mining and wool interests in certain western states for purchase and protection, the struggle over slavery, and the . . . filibuster of southern senators against the attempt to outlaw racial discrimination in employment are familiar examples of recurring conflicts between local interests and prejudices and the common welfare. These political quarrels are rooted in the varying stages of cultural development attained by the different parts of the country. It is the peculiar task of the politician to compose these differences, to reconcile conflicting national and local attitudes, and to determine when public opinion is ripe for legislative action. Some conflicts will yield in time to political adjustment; others must wait for their legal sanction upon the gradual evolution of the conscience of society. No act of Congress can abolish unemployment or barking dogs or racial prejudices. . . .

TYPES OF PRESSURES ON CONGRESS

One can sympathize with the plight of the conscientious congressman who is the focal point of all these competing pressures. The district or state he represents may need and want certain roads, post offices, courthouses, or schools. Irrigation dams or projects may be needed for the development of the area's resources.

If the representative is to prove himself successful in the eyes of the people back home, he must be able to show, at least occasionally, some visible and concrete results of his congressional activity. Or else he must be able to give good reasons why he has not been able to carry out his pledges. The local residence rule for congressmen multiplies the pressures that impinge upon him. Faithful party workers who have helped elect him will expect the congressman to pay his political debts by getting them jobs in the federal service. Constituents affected by proposed legislation may send him an avalanche of letters, telegrams, and petitions which must be acknowledged and followed up. The region from which he comes will expect him to protect and advance its interests in Washington. All the various organized groups will press their claims upon him and threaten him if he does not jump when they crack the whip. Party leaders may urge a congressman to support or oppose the administration program or to "trade" votes for the sake of party harmony or various sectional interests. He is also under pressure from his own conscience as to what he should do both to help the people who have elected him and to advance the best interests of the nation. Besieged by all these competing pressures, a congressman is often faced with the choice of compromising between various pressures, of trading votes, of resisting special interests of one sort or another, of staying off the floor when a vote is taken on some measure he prefers not to take a stand on, of getting support here and at the same time running the risk of losing support there. Dealing with pressure blocs is a problem in political psychology which involves a careful calculation of the power of the blocs, the reaction of the voters on election day, and the long-haul interests of the district, state, and nation.

SHOULD CONGRESS LEAD OR FOLLOW PUBLIC OPINION?

It is axiomatic to say that in a democracy public opinion is the source of law. Unless legislation is sanctioned by the sense of right of the people, it becomes a dead letter on the statute books, like Prohibition and the Hatch Act. But public opinion is a mercurial force; now quiescent, now vociferous, it has various moods and qualities. It reacts to events and is often vague and hard to weigh.

Nor is public opinion infallible. Most people are naturally preoccupied with their personal problems and daily affairs; national problems and legislative decisions seem complex and remote to them, despite press and radio and occasional Capitol tours. Comparatively few adults understand the technicalities of foreign loans or reciprocal trade treaties, although congressional action on these aspects of our foreign economic policy may have far-reaching effects upon our standard of living.

In practice, a congressman both leads and follows public opinion. The desires of his constituents, of his party, and of this or that pressure group all enter into his decisions on matters of major importance. The influence of these factors varies from member to member and measure to measure. Some congressmen consider it their duty to follow closely what they think is the majority opinion of their constituents, especially just before an election. Others feel that
they should make their decisions without regard to their constituents’ wishes in the first place, and then try to educate and convert them afterward. Some members are strong party men and follow more or less blindly the program of the party leaders. Except when they are very powerful in the home district, the pressure groups are more of a nuisance than a deciding influence on the average member. When a legislator is caught between the conflicting pressures of his constituents and his colleagues, he perforce compromises between them and follows his own judgment.

The average legislator discovers early in his career that certain interests or prejudices of his constituents are dangerous to trifle with. Some of these prejudices may not be of fundamental importance to the welfare of the nation, in which case he is justified in humoring them, even though he may disapprove. The difficult case occurs where the prejudice concerns some fundamental policy affecting the national welfare. A sound sense of values, the ability to discriminate between that which is of fundamental importance and that which is only superficial, is an indispensable qualification of a good legislator.

Senator Fulbright* gives an interesting example of this distinction in his stand on the poll-tax issue and isolationism. "Regardless of how persuasive my colleagues or the national press may be about the evils of the poll tax, I do not see its fundamental importance, and I shall follow the views of the people of my state. Although it may be symbolic of conditions which many deplore, it is exceedingly doubtful that its abolition will cure any of our major problems. On the other hand, regardless of how strongly opposed my constituents may prove to be to the creation of, and participation in, an ever stronger United Nations Organization, I could not follow such a policy in that field unless it becomes clearly hopeless."

A TWO-WAY JOB

As believers in democracy, probably most Americans would agree that it is the duty of congressmen to follow public opinion insofar as it expresses the desires, wants, needs, aspirations, and ideals of the people. Most Americans probably would also consider it essential for their representatives to make as careful an appraisal of these needs and desires as they can, and to consider, in connection with such an appraisal, the ways and means of accomplishing them. Legislators have at hand more information about legal structures, economic problems, productive capacities, manpower possibilities, and the like, than the average citizen they represent. They can draw upon that information to inform and lead the people—by showing the extent to which their desires can be realized.

In other words, a true representative of the people would follow the people’s desires and at the same time lead the people in formulating ways of accomplishing those desires. He would lead the people in the sense of calling

*At the time this article was written, J. William Fulbright was a U.S. senator from Arkansas.—Editors.
to their attention the difficulties of achieving those aims and the ways to overcome the difficulties. This means also that, where necessary, he would show special interest groups or even majorities how, according to his own interpretation and his own conscience, their desires need to be tempered in the common interest or for the future good of the nation.

Thus the job of a congressman is a two-way one. He represents his local area and interests in the national capital, and he also informs the people back home of the problems arising at the seat of government and how these problems affect them. It is in the nature of the congressman’s job that he should determine, as far as he can, public opinion in his own constituency and in the whole nation, analyze it, measure it in terms of the practicability of turning it into public policy, and consider it in the light of his own knowledge, conscience, and convictions. Occasionally he may be obliged to go against public opinion, with the consequent task of educating or reeducating the people along lines that seem to him more sound. And finally, since he is a human being eager to succeed at his important job of statesmanship and politics, he is realistic enough to keep his eyes on the voters in terms of the next election. But he understands that a mere weather-vane following of majority public opinion is not always the path to reelection. . . .

NOTE