

Democratic challenges – a consultation-based perspective

Introduction

One way of looking at the evolution of democracy in Western countries is to acknowledge three distinct phases:

Symbolic democracy

- where the emphasis is on the entitlement to democratic citizenship, including the right to vote. For countries without a strong democratic tradition, the creation of a democratic infrastructure is strongly symbolic, with key elements such as a free Press, an accountable police, the rule of law and an independent judiciary. It takes time for institutions such as these to become well established and to interwork together, and whilst this occurs the symbolism of democracy may indeed be its strongest feature

Functional democracy

- using elections and elected structures to determine policy, make laws and take decisions. This classic operational application of representative democracy is the routine day-to-day administration of Parliaments and Councils, complete with internal and external checks and balances. A mature system develops its own political culture accommodating parties, groups and coalitions, a range of rituals and pragmatic methods of handling dissent. This is *business-as-usual* democracy

Deliberative democracy

- where much of the recent academic and practitioner focus has been in the last twenty years. It means that the legitimacy of laws, decisions and policy-making relies upon the extent to which there has been *authentic deliberation* – usually a transparent process of gathering and assessing evidence, rather than just the accumulation of votes. Its advocates claim that better decisions result from more inclusive participative processes and that these can be supportive of conventional representative democracy or be a substitute – through direct democracy mechanisms such as referendums

For many Eastern European countries, the journey from the **Symbolic** to the **Functional** is a continuing experience. But for more established, 'older' democracies, the challenge is increasingly to maintain legitimacy in the face of growing apathy and disillusionment and for many this involves experiments with Deliberative democracy.

This paper argues that the search for greater deliberation is essential for local as well as national governments and considers in detail how the UK experience of public and stakeholder consultation provides pointers to the issues which need to be addressed more widely.

The case for deliberation

History confirms that many representative structures were originally devised as mechanisms for debate and deliberation. Few are as obvious as in Westminster, where the physical layout of the House of Commons creates an adversarial environment; only the Canadians use a similar model.

But creating a stage for political theatre is not the same as creating a deliberative process. British local authorities did not follow the Westminster example, but instead sought designs that encouraged consensus. So did the great majority of the world's legislatures.

Having arguments is not the same as taking account of evidence. Until recently, apologists for the British system would have claimed that whatever the inadequacies of its Parliament, the smooth-running civil service machine was excellent at evidence-based policy-making. They may have to think again following the publication in 2013 of a thought-provoking book by two leading political academics – Professors Ivor Crewe and Anthony King. In *The Blunders of our Governments*¹ they set out to analyse a large number of high-profile initiatives acknowledged by most to have been mistakes. Very few of these were party political, but they included major changes to taxation, the maladministration of grants or misconceived creation of new institutions or projects.

Their conclusions were stark. There had been in almost all these cases, a **deficit of deliberation**. Issues had not been thought-through; there was a cultural or operational disconnect between policy-makers and the real world. Evidence had been disregarded; groupthink led decision-makers to focus on internal rather than external arguments. Finally there was an over-emphasis on spin and PR, confirming many of the populist criticism that politicians and civil servants talked too much but listened too little.

The local dimension

Many of the same issues apply to *local* as well as *national* government. The scale of the blunders may be different but British Councils have for years their own list of embarrassments. Local newspapers and the broadcast media are quick to highlight white-elephant projects or failed strategies. Local planning decisions are often controversial.

But in the UK, at any rate, the problem is less corruption or even maladministration. It is legitimacy. Turnout at elections has been falling, and where local elections are not timed to be alongside General Elections, as few as a quarter of the population bother to vote for their local Councillors. When the Coalition Government introduced directly-elected *Police and Crime Commissioners*, the average turnout fell to 18%. No wonder responsible municipal leaders worry that such a narrow electoral base gives them a questionable mandate to govern towns and cities.

¹ *The Blunders of our Governments*, 2013; King & Crewe; published by OneWorld Publications

This is a growing concern even at times of prosperity. But, since the international banking crisis, public expenditure cuts in the UK have been particularly savage on local authorities. The challenge for Councils has increasingly been to find and manage service changes such as would address the financial deficit. This creates additional tensions; there is no shortage of civic engagement when cherished public services are threatened!

The attractions of ‘direct democracy’

For some, the answer has been obvious for some time. They argue that public disaffection with politicians – local and national has the same root cause. It arises from a sense of powerlessness, with the general public feeling dis-engaged. No matter who they vote for – nothing changes. They detect a feeling that ordinary people have been by-passed as an increasingly distant clique of politicians and activists speak a different language and take decisions that few others understand.

The remedy, it is claimed, is to create far more opportunities for the general public to feel involved. In the UK, this thinking led the previous Government to introduce legislation to force every Council in England to run elaborate Petition schemes². If more than 5% (for example) of the population signed a petition, the authority would have to respond, either by holding a debate or instituting some other action. When the Coalition took over, it repealed these provisions and instead proposed an automatic *referendum-on-demand* when 5% requested it. In the event, this was dropped but Referendums were introduced for Councils seeking above-limit council tax increases.

More significantly, town planning was affected by more recent legislation³ which introduced a new, more local tier of planning, called *Neighbourhood Plans*. Its supporters argued that much of the dissatisfaction felt by residents stemmed from planning decisions that looked as if they were imposed on unwilling communities by a centralist Government. Under the new arrangements, a Neighbourhood Plan is built from the bottom up and is subject to a local referendum. The idea of giving local people a veto was instantly popular, but in practice the policy has made these local plans subservient to the Council’s overall spatial plans, so the aspirations of direct democracy enthusiasts remained frustrated.

In other ways, experiments with direct forms of decision-making have continued. **Participatory budgeting**⁴ is probably the most impressive of the new techniques and has a host of serious champions, especially in local government where it is widely used for taking decisions on the allocations of small grants, for example. The community is invited to a decision-making event, listens to the arguments in favour of different bidders and makes its choices based on a voting procedure. In this way it amounts to a combination of direct *and* deliberative democracy.

² The Local Democracy, Economic Development and Construction Act 2009

³ The Localism Act 2011

⁴ Participatory Budgeting or PB is defined as involving local people in making decisions on the spending and priorities for a defined public budget. In the UK there is a strong network of specialists consultants and advisors contactable through www.pbnetwork.org.uk

Elsewhere, Professor James Fishkin⁵ of Stanford University is credited with developing a viable method of deliberative polling, and he and others have worked with a large number of public bodies in many countries to help tackle key issues using more participative and direct democracy techniques. They include various forms of Town Meetings, virtual focus groups, citizens' juries and other sample-based forms of citizen participation. Although critics argue that feeding such audiences with balanced evidentiary information immediately makes such samples unrepresentative of the general public, there continues to be growing interest in these alternatives to the traditional democratic model.

The decision-makers' dilemma

So why has direct democracy failed to take off more comprehensively? Why does it continue to disappoint? Is there a flaw in the 'analysis'?

One suggestion is that it makes over-optimistic assumptions about the willingness of elected politicians and public bodies to surrender power. It takes courage to sub-contract decisions to a group of citizens where the outcome may be uncertain and where their legitimacy may be contested. Even where direct democracy is well-established, such as through referendums in California or Switzerland, critics complain that the system is heavily influenced by the ability to pay for campaigns and motivate the grassroots⁶. And, of course, the public is capable of astonishing lack of consistency. Critical Californians complain that its budgetary problems arose (in part at least) from contradictory initiatives in favour of the highest environmental standards and the lowest taxes. Simultaneously!

Above all, elected members rightly point out that even on low turnouts, they are still the public's chosen representatives and that direct democracy initiatives only serve to undermine the electoral process, and encourage extra-parliamentary activities. For some it is an abdication of responsibility and has led to suspicion of ideas like participatory budgeting. In that particular case, Councillors in the UK have argued that there was little point in sending them on training courses on inclusiveness and equalities if a miscellaneous group of individual citizens could take rough-and-ready decisions on a crude show of hands, totally disregarding such considerations!

Their dilemma is that they appreciate the need to involve more people and to give individuals a greater stake in decisions taken on their behalf. And, contrary to populist assertions, politicians in the main genuinely want to hear what people have to say. They just don't want to feel bound by other people's decisions, realising that the loudest voices are not necessarily from those with the best arguments.

⁵ Professor Fishkin is the Director of the Center for Deliberative Democracy, Stanford University and is the author of many books including *Democracy and Deliberation: New Directions for Democratic Reform* (1991)

⁶ According to one commentator, "Today, the initiative process is no longer the antidote to special interests and the moneyed class; it is their vehicle of choice to attempt to get their way without having to endure the scrutiny and compromise of the legislative process" (John Diaz, in "A long way from the grassroots", 2008)

The truth is that democratic power is rightly a jealously-guarded privilege and should only be delegated to others with extreme care. All Governments, national and local, have arrangements to confer administrative power to other bodies, but normally do so by creating adequate machinery for accountability. Politicians instinctively know that in the last analysis, the buck stops with them, and that in cases of controversy the public does not respond well to the claim that it was someone else's responsibility.

In the UK, the best current examples are found in the much-cherished National Health Service (NHS) which is undergoing rationalisation with closures to some hospital functions. Although the management of the NHS is delegated to local organisations, with some limited local authority input, national politicians know they cannot abrogate responsibility fully and retain a degree of ultimate control on the process. Only rarely do politicians feel able to place their fate in others' hands and give away their ability to take the final decisions.

The case for consultation

Fortunately, there has been for some years a way to address this dilemma.

In the UK, public and stakeholder consultation is a permanent fixture of the political process. It is a legal requirement in much of national and local administration, and is deeply embedded in the culture of the community and voluntary sector. It thrives precisely because decision-makers are unwilling to surrender their sovereignty over key decisions, and is therefore much disliked by all those who believe that they should!

When **The Consultation Institute**⁷ was founded in 2003, it calculated that the British public sector spent about £1bn per annum on consultation of one description or another, and that much of it was poorly conducted and tokenistic. In many ways the *raison d'être* of the Institute was to clarify what exactly consultation meant, for early research showed that there was considerable confusion. Terms like *involvement*, *participation*, *engagement* or *empowerment* were used, almost interchangeably and were mostly vague and imprecise. Only *consultation* lent itself to an operationally useful definition, and the Institute has adopted and delivered about 15,000 person-days of training using the following words:

Consultation is the *dynamic process of dialogue* between individuals or groups, based upon a *genuine exchange of views*, with the objective of *influencing decisions, policies or programmes of action*

Using this definition, and observing *best practice* in the management of consultations, it has been possible in the UK to make significant improvements to the process. But there is still much cynicism with critics arguing that consultation is often a PR exercise by public bodies and decision-makers who will not take proper account of what people say. The media complains about '*sham consultations*'. Disappointed stakeholders argue they are just '*going through the motions*'

⁷ The Consultation Institute is a not-for-profit best practice body with a mission to promote the highest standards of public, stakeholder and employee consultation by initiating research, publications and specialist events in order to disseminate best practice and improve subsequent decision-making. See www.consultationinstitute.org

In practice, however, it is becoming more difficult for organisations and politicians to ignore *best practice*. There are several reasons for this:

1. The Courts have intervened to enforce standards.

In the UK, public bodies can be challenged in the Courts if their actions can be shown to be unfair. There is a well-established and demanding set of consultation standards which are called the Gunning Principles⁸, and against which every public consultation can be judged. In simple terms, they include the need for proposals to be at a *formative stage*, for enough information to be published as to allow *intelligent consideration* of those proposals and for there to be enough *time* for *consultees*⁹ to consider and express their views. Finally the organisation must have *conscientiously considered* what *consultees* have said.

Fear of legal challenge through a ‘judicial review’ is now a major factor for Councils and other public bodies when they embark upon a consultative exercise. It is becoming better not to consult at all than to consult badly as the costs of a protracted legal case, and the delays inherent in such a process, can be enormous.

2. Social media gives rise to a wider, more extensive dialogue

In the last decade, the informed public has become much more aware of consultation exercises. They can no longer be buried away deep in bureaucracies or restricted to well-known lists of ‘approved’ stakeholders. Social media is a tremendous facility for those who are interested in local or national issues, and encourages online debates of all kinds, whether within or external to the formal consultation. This helps move away from the less accessible, formalistic consultation based upon a single ‘big fat document’ as was common ten years ago. Instead we have entered a world of multi-channel debates which cannot any longer be ‘managed’ by the *consultor* organisation; it has to monitor a range of social media platforms, recognising that valuable input into decisions may be found in any number of digital environments.

In such a situation, the public voice is far easier to hear, but it makes analysis and interpretation harder, as those who are most active online are not necessarily representative and *consultors* have to learn to compensate by devising ever-more-effective dialogue methods to reach and hear seldom heard groups and other disadvantaged communities

3. Quality Assurance processes are building confidence in best practice solutions

International discussions suggest that the UK is not the only country where deep-rooted suspicion of public consultation is found. When the Institute visited the World Bank in Washington DC in 2012, it became clear that even in countries that are not democracies, the ability to influence decisions through a variety of consultation mechanisms is important. But they are only viable if they carry a degree of integrity and credibility and there are, therefore, growing demands for an independent way to validate a consultation as being properly run.

⁸ Derived from a 1985 case concerning schools - *R v London Borough of Brent, ex p Gunning* [1985] 84 LGR 168

⁹ Note the use of the terms *consultor* for those organising a consultation and *consultee* for those who are intended to or choose to respond

The Consultation Institute spent several years seeking different ways to undertake compliance assessments against its own Consultation Charter¹⁰. It has concluded that for processes that are inherently prone to unforeseen developments, a retrospective report is less useful than a continuous process of quality assurance using a step-by-step sign-off procedure throughout the duration of the exercise. The current Scheme is used by the NHS, local authorities, Fire & Rescue organisations, transport undertakings, infrastructure developers and many others.

Quality Assurance achieves two important objectives. It helps organisations run a *best practice* consultation. But it also builds public confidence that the exercise is genuine and that those who mount such a dialogue are serious about the activity and will take proper account of what people say. Over time, and other things being equal, it should restore much needed credibility to the process.

The implications for local democracy

It is clear that in many countries, voters are disillusioned and elected members are struggling to connect with local people in ways that enhance the reputation of representative institutions. In the UK, an average Unitary council – serving approximately 200,000 residents, will go to formal consultation over 100 times every year, and will provide formal training to 20-30 local government officers from different departments including Town Planning, Education, Environmental services, Adult Social services as well as Children and Young People’s services; all these need skills and support to use and manage dialogues with hundreds of stakeholder organisations who will have an interest in these and allied public services.

For many local authorities, the trend is away from running public services themselves and towards becoming ‘**commissioning organisations**’. They empower or pay for other bodies to deliver services needed by the local community. What characterises this sea-change in traditional local government is that Councils have to learn how to work with and through a range of other types of organisations. In the UK, this includes commercial service providers, ranging from very local small businesses through to large multinational conglomerates. But it also includes charities, voluntary bodies, co-operatives, and social enterprises, all of which have different commercial, contractual and cultural profiles.

Councils will struggle to work successfully in this new world unless they develop an enhanced capability to engage, not only with providers, but also with **service users**. Traditional well-understood patterns of service provision have become less viable due to demographic changes, financial pressures and the advent of new internet-based technologies. Re-designing services has tremendous potential for tapping into the insights and know-how of service users. *Co-production* is becoming a popular concept, but makes new demands upon officials and elected members, requiring new attitudes and greater confidence in the use of dialogue and deliberative methods.

¹⁰ The Consultation Charter was first published in 2004 and contains seven key principles: - Integrity, Visibility, Accessibility, Transparency, Disclosure, Fair Interpretation and Publication. See www.consultationinstitute.org

On this analysis, and drawing from recent experience in the UK, there are three significant implications that warrant serious attention.

- **Public services re-design** will require close attention to users' changing priorities and preferences; new and innovative dialogue methods will prove valuable here.
- **Social media** becomes a given; no local authority can ignore the online debate, and can actually harness the resulting appetite for public involvement to gather better data on public views.
- For really contentious issues, elected members will be expected to pay more attention to **evidence-based policy-making**, and will need to use deliberative techniques as appropriate.

Taken together they require local authorities to invest in the skills, capabilities and capacity for democratic engagement. This not only applies to paid officials, but requires a shift in the expectations of both public and politicians

Summary – the Four Challenges!

This paper argues that many democracies in the Western world are moving, albeit hesitatingly towards a more deliberative mode. They have little choice. Better educated electorates, a worldwide trend towards transparency, the impact of social media and the growing expectations of stakeholders all conspire to put pressure on democratic institutions to adapt to more participative ways of working.

Much of this is about information. Access to data is already widespread - though the ability of civil and civic society to use this data still lags behind. Moving towards a more deliberative culture will force public bodies to make its information more usable and comprehensible. If they fail to do this, any consultations will highlight the lack of agreed evidence and, in the UK, risk legal challenges.

Although much of this analysis applies to public administration at all levels, local government is particularly affected. A wise US politician is credited with having observed, "*All politics is local*"¹¹ and on that basis, many of the issues that concern people most manifest themselves at the level of local communities. As European Parliamentarians will have noticed, all the pressure in recent years is to delegate decisions downwards – to the lowest geographical area possible. This is unlikely to change, if only because we approach a period of very dramatic change in public services, and people are very suspicious of new ideas imposed from the top-down.

¹¹ The phrase is normally associated with the former Speaker of the US House of Representatives, Tip O'Neill, but he was not the first to use it.

Four key challenges therefore emerge as a realistic agenda for local authorities in many countries:

1. **Re-evaluating existing services and equipping organisations for next generation service provision** - seeking to involve public and stakeholders so that new solutions have stronger credibility and are seen to result from an inclusive process.
2. **Retaining public support, even in an environment of services de-commissioning or reductions** - improving contact with opinion-formers, key stakeholders and civil society, so that they feel genuinely part of the process
3. **Embracing** deliberative processes without undermining representative democracy - to focus on substantive arguments rather than processes and personalities; avoiding inappropriate use of populist processes
4. **Learning how to harness the potential power of social media** - taking the positive and negative aspects of new technology but creating a safe space for democratic argument to flourish and for democratic values to be visible.

These are all issues that the UK-based Consultation Institute addresses, but no doubt there are parallel organisations or Institutes in other countries that have a similar agenda. Ideally, we should seek a period of greater information-exchange in the search for even better answers to intriguing and important challenges.

Rhion H Jones

April 2014

Rhion H Jones is Founder and Programme Director of the Consultation Institute, and with Elizabeth Gammell, is joint author of *'The Art of Consultation'* – the only specialist book on public consultation. He is an undisputed authority on the subject having written over 250 Topic papers and over 30 Briefings on the subject. He is in demand as a specialist Facilitator, Workshop Leader and Conference Speaker and delivers a number of training courses, including the Institute's Masterclasses.