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The Democratic Dynamics of Government Consultations: Speaking Freely and Listening Properly

John Morison

There is a growing use of consultation and e-consultation procedures by governments world-wide. This paper seeks to examine the role of consultation as part of a new technology of government. Consultation on policy development can reinvigorate democratic engagement but often it can silence views through a sort of participatory disempowerment. Consultation around service delivery can improve services or it can be used to detach public services from an integrated public sector and loosen the democratic anchorage of the public service within the state. The paper begins to develop a governmentality perspective, interrogating what participation, democratic engagement and free speech mean in this context, and examining how ideas of publicness here are constructed, managed and controlled. The focus here is on the nature of consultation, its relationship to ideas of free speech and speaking freely, and its potential to silence or empower subaltern counterpublics which can formulate oppositional interpretations and urge alternative conclusions. The aim of the paper is to start the development of an idea of the democratic adequacy of the consultation process and begin to draw out a sense of how democratic engagement here can be structured.

The growth and role of consultation

Consultation procedures are being used increasingly world-wide. In part this is about accentuating voice, and trying to bring democratic engagement closer in circumstances where formal electoral politics often seems sterile (Lewis et al 2005). A consultation exercise is often seen as a necessary precursor to a policy initiative or simply a way of measuring public opinion or bringing government closer to the governed (Morison 2007). New information technology seems to offer particular possibilities of directness and immediacy for governments here. It promises to establish a government’s credentials as a modern force appropriate for a web based society (Coleman and Shane 2011). There is also the potential to draw in the “wisdom of the crowd” in a policy making context (Noveck 2009; Lodge and Wegrich 2012), and perhaps even a suggestion that voices that might otherwise not be heard can join in on equal terms. Many initiatives now – from community development
programmes to planning processes to sustainability initiatives – require a
“community planning process”. Here some version of “the community” must
be “engaged with” before government action can be taken (Bentley and
Pugalis 2013). Although it is arguable that the political culture of the United
Kingdom is not conducive to participatory innovation (Bogdanor 2009), the UK
Government’s website page for “Consultations” lists 948 consultations
published in 2015 alone, out of a total of 2,948 since the decade began.3 In
various fields, especially governmental planning and the environment (Stern
et al 2009; Schulz and Newig, 2015), there is particular interest in obtaining
the benefits of the internet. These advantages centre around the immediacy,
reach and interactivity that the internet and related technologies can bring to
the business of government (Sæbø et al 2008; Kamal, 2009; Macintosh et al,
2009; Sudlich 2011).

Many public institutions such as the BBC now invariably seem to offer
opportunities for interaction either through websites, twitter or facebook. Large
companies selling everything from washing powder to jam will have a
facebook page or twitter account (see for example, https://www.facebook.com/daz
and https://twitter.com/hartleysjelly). From the
citizen side there are emerging expectations about consultation, as well as a
belief in its efficacy. Part of this may be a consequence of the online culture
with its belief in the power of crowdsourcing, the participatory dynamic of open
source working, the sharing economy, and a sense that free, democratic
speech can be expressed through a mouse click. As Johansson and
Bengtsson argue in this volume, the internet makes us think differently – in
various different ways, depending on a range of variables – and younger
people in particular tend to be more positive about internet life. A whole range
of online resources have emerged to capture this positive interest such as
such as Change.org, 38 degrees, GetUp.org, Avaaz.org, although of course
the central example of online activism remains Kony 2012 – a Youtube video
with 120 million viewers in 5 days which raised $16m in an unsuccessful effort
to secure the capture of a Ugandan warlord.4 Many of these sites offer the
facility to start a petition, with, for example, ipetition.com and Petitionbuzz.com
enabling users to set up an online petition in less than a minute.
However the TripAdvisor-style ratings that these outlets inspire remain a very mean / thin version of democratic power. Is civic duty really met by simply clicking “like” on a website? What happens next?

Even the various government websites with their own petition sites offer only a rather dubious guarantee of action with, for example, the main UK site promising that 10,000 signatures will receive “a response” and more than 100,000 signatures will result in the petition being “almost always” debated in a committee. This seems redolent of mediaeval rituals where the common people (or at least those with access to ICT) petitioned their masters – and perhaps about as effective. Indeed it may close down dissent and divert activism as people remain disconnected from others with the same views in contrast to real political movements which bring people together to create energy for change.

Beyond this attempt (possibly) to reinvigorate established democracy, consultation is increasingly used to fine-tune the sort of market-based service delivery models that many modernised states have developed for public services. Again there are a series of arguments to be made here about democratic adequacy when we put public services into a consumer model, atomise individuals into customers and more or less specialised “communities”, and seek their input only in the form of “plans for community provision, false “choices” between different providers, and satisfaction surveys.

If we go back (with no apology for doing so) to Arnstein’s (1969) classic account of the levels of participation and their relationship to democratic adequacy (see figure one below) it can be seen that much of the interaction in this brave new (often online) world is of a fairly limited nature.

Figure 1: Eight Rungs on a Ladder of Citizen Participation (Arnstein 1969)
Increased use of consultation in both the traditional formal style, and more and more in ways that develop the new possibilities that the online environment offers, is not necessarily leading to either citizens speaking more freely or government listening more seriously. The qualities of increased interactivity, greater reach and enhanced immediacy that online interaction has brought to our everyday world do not inevitably radically improve the quality of democratic interaction. As some commentators have tried to establish, perhaps echoing Arnstein, there is a difference between e-information, e-consultation, e-decision-making and e-empowering with only the later implying a more direct citizen involvement (Dahlberg 2011; United Nations 2003; 2009; Tambouris et al 2007). Now we may be able to speak more freely in the sense of it being easier to express ourselves with the click of a mouse but is the citizen voice being heard?

Perhaps we are better thinking of this as a new technology of governing within a governmentality paradigm (Foucault 1994; Rose 1999; Miller and Rose 2009; Dean 2007; 2010). Here the focus is on the nature of consultation: its relationship to ideas of free speech and speaking freely, the ability to shape and control the terms of debate, and its potential to empower subaltern counterpublics which can formulate oppositional interpretations and urge alternative conclusions. There is certainly room for a wider project both to develop an idea of the democratic adequacy of existing consultation processes, and to draw up an idea of democratic sufficiency for any proper
and genuinely participatory engagement.

The democratic adequacy of government consultations

The space of interaction, dialogue and free speech provided by a government consultation exercise, with its assumed corollary of voices being listened to and appropriate action taken, is in reality a more complex and certainly less democratic arena than it may first appear. Indeed, the actual operation of participation structures suggests that they may not always be a space for equal exchange between official and participant views.

There may well even be a controlling agenda in place. As this author has developed elsewhere (Morison 2010), a number of critics have noted how official constructions of ‘the public’, and of community and citizenship, not only help shape the conceptions that officials draw on as they establish new forums for participation but also condition the conceptions members of such forums themselves bring to the process of dialogue (Price 2000; McLaverty 2009; Davidson and Elsbrub 2014). Government very often controls the form of the debate, its agenda and the sources of information (Smith and Wales 2000). Invitations to participate are issued by Government, consensus is invariably sought, and the records are kept by officials. Within the debate perceived expertise and notions of ‘science’, ‘fact’ and ‘evidence’ may trump more everyday versions of knowledge. This suggests that far from being an occasion where people speak freely and government listens properly, the whole event may be as much about de-politicising and avoiding conflict as it is about hearing new voices in governance. As Lewis in this volume reminds us, developing Couldry’s (2010) analysis of voice within market economics, for voices to have meaning or significance they must be heard. Indeed, the very occasion of being consulted may limit potential for dissent as the experience of the wider community is disabled by the force of a process where the views of a selected public have been presented as authoritative.
Indeed in the context of consultations about how public services are delivered it may be suspected that efforts to re-work ‘the public’, and the emphasis on ideas of empowerment, may in fact conceal not only attempts to move away from conceptions of the public that accord with older ideas of a welfare state and universalist notions of public good, but also a shift of power towards existing authority – whether within the state directly or in associated private bodies. For all the rhetoric about user involvement, the participation of users in public services in the role only of mere consumers does not necessarily ensure that public services remain political in character, and so public or democratic in a wider sense.

Much of the rhetoric about consultation suggests new levels of public participation and engagement with government as well as a re-engineering of public services to make them more responsive to their end users. However, adopting a governmentality perspective, it may be argued that much of this involves the implementation of a wider process of governing through constructing and reconstructing ideas of the public, community and individual citizen-consumers who can then take on a role in their own governance. This particular governing construct involves the dispersal of state power through individual citizen-consumers and self-regulating bodies or agencies who govern themselves in accordance with templates of power contained in notions such as localism and community, participation and dialogue, choice and personalisation, service and outcomes etc. These governing ideas are set up in opposition to (or rather, instead of) traditional ideas of equal state provision. Indeed, it has been argued that ideas of participation are used to detach public services from an integrated public sector and loosen what has been termed the ‘democratic anchorage’ of public services within the state. There is on offer instead a more fluid concept of public participation and stakeholder involvement within a hybrid model of provision where ‘public’ has changed its meaning (Sorenson and Torfing 2006). As some critics argue, it involves the creation of “ordinary peoples” – who can be summoned as partners or participants in new assemblages of rule.” (Clarke and Newman 2008: 46; Rose 1999). Not only are the public to be seen acting as consumers and citizens they are also participants, expert in their own condition and able
to represent the experience of being a consumer or user of services as they participate further in their own governance.

Clearly government consultations, whether deploying new technology or not, may not necessarily result in an open space of enlarged thinking or communicative democracy in a Habermasian sense. There are familiar problems about inclusion and contention, while universalist notions, drawn up without full recognition of gender, race and other difference, may well mask the problematic access to citizenship for many groups (Nash 2014). However it is important to develop fully the understanding of power that the governmentality approach provides which suggests that power is never monolithic or operating in one direction only. Power exists in many sites: it is rhizomatic. As power is operationalised and transmitted along the chain there is opportunity for resistance and modification. People are not simply passive objects of power, but rather ‘active subjects’ who not only collaborate in the exercise of government but also shape and inform it. This occurs in consultations and e-consultations as elsewhere. There are opportunities for what Fraser describes as ‘subaltern counterpublics’ to mobilise, circulate counter discourses, and formulate oppositional interpretations (Fraser 1997). Indeed as consultation moves increasingly on line it is sure that the characteristics of Web 2.0 will make this almost inevitable. As some of the experience of the Arab Spring illustrated (albeit ambiguously) counter publics with different views can spring up online and mobilise almost (if never quite) on an equal basis to more official sources (Morozov 2012; Drache 2008). Citizens may be irreversibly consumers now but in the online environment there is a choice if they are to become simply new model citizens within a wider state-sponsored programme or more defiant, active and assertive citizens within their own governance projects.

Towards criteria for democratic sufficiency in government consultations
There is certainly room for a wider study that might parse the elements of democracy as they are put into action in the various consultation contexts where the ideas of speaking and listening freely are on offer (Dahlberg 2011; Wright and Street 2007). Figure Two below offers a first attempt at suggesting how technology, participation and democratic decision making might operate together. At this more detailed level what is required is a better understanding of the democratic nature of consultation and its relationship to a wider process of governing. Such an audit of democracy might find the perfunctory nature of much government consultation to be indicative of tokenism rather than any fuller idea of participation.

**Figure 2: A model for online decision making**

<table>
<thead>
<tr>
<th>Level of groupware needed to support stage</th>
<th>Stage of process</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Communicate (exchange messages)</td>
<td>1. Open discussion</td>
</tr>
<tr>
<td></td>
<td>2. Structured problem-solving</td>
</tr>
<tr>
<td></td>
<td>3. Evaluation/choice</td>
</tr>
<tr>
<td></td>
<td>4. Implement</td>
</tr>
</tbody>
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- Develop into practical plan
- Rank options and synthesise solutions
- Create multiple maps from alternative options
- What are the issues and needs?

In the absence of such an audit it is interesting to note how judges have increasingly become interested in the quality of consultation as a number of cases have come to the courts in the UK, including the Supreme Court — many resulting from the austerity agenda producing challenges to public spending cuts, particularly against local authorities. Some of these relate to various statutory duties to consult and others go some way towards suggesting that there may be something approaching a common law duty to
consult arising out of a common law duty to act fairly. However as we shall see, these are fairly minimal conditions of fairness rather than a recipe for any sort of enlarged space of Habermasian free speaking and careful listening.

In the UK the basic principles of fair consultation have been settled for many years. Most recently in *Moseley (Moseley R (ota) v London Borough of Haringey* [2014] UK 56) the Supreme Court endorsed the long standing ‘Sedley Principles’ formulated by Stephen Sedley QC in argument in *R v Brent LBC ex p Gunning* ([1985] 84 LGR 168). Essentially these state that in order for consultation to be fair, a public body must ensure:

- that the consultation must be at a time when proposals are still at a formative stage;
- that the proposer must give sufficient reasons for any proposal to permit of intelligent consideration and response;
- that adequate time is given for consideration and response; and that the product of consultation is conscientiously taken into account when finalising the decision.

A series of cases have shaped the law further, holding mainly that consultation as an element the duty of fairness is intensely case-sensitive. However the overall position remains that the courts generally allow public bodies a wide degree of discretion as to the options on which to consult, and this perhaps only shows the very modest limitations of consultation as presently policed by law.

If it is not to the courts that we should look for standards of democratic sufficiency (except in the most egregious cases of maladministration) where should we look?

Conclusion: A new project to rescue democratic consultation
This contribution like many others in this section, and in this volume generally, sees threats to free speech. Unlike most other contributions it concentrates on how the particular speech that is involved when government and citizens interact is threatened, and it sees this threat mainly coming from the way that this potentially democratic interaction is structured in such a way as to allow the powerful not to listen properly to what is being said. It has pointed to an area where government purports through its consultation mechanisms to offer a platform for citizens to speak freely about policy and services. In return there is an expectation that government will listen to these citizen voices.

Deploying a governmentality perspective it can be seen, however, that what we have here is not a properly democratic exchange. Voice is not being privileged despite appearances. There is instead an idea of consultation as part of a new technology of government, involving a set of programmes, strategies and assemblages designed to mobilize local communities and other targets of consultation to become agents of policy as well as simply objects of policy. We can see also how ideas of publicness here are constructed, managed and controlled. In the context of consultation around service delivery such techniques of governmentality relating to participation can be used to re-configure public services into a consumerist model, detach them from an integrated public sector, and undermine the idea of public services within the state being an expression of the public. In the wider context of legitimating governance, consultation can be conscripted into a process of remaking the public sphere in ways that have a justificatory veneer of democratic engagement.

This calls for a new project not only to develop our understanding of consultation as it is presently practiced, but also to rework its relationship to ideas of free speech and speaking freely. We need to develop the capacity of consultees to shape and control the consultation process, and develop further the potential of subaltern counterpublics to formulate oppositional interpretations and urge alternative conclusions. This new project must develop an idea of the democratic adequacy of the consultation process and
draw out a sense of how democratic engagement here can be structured – for good as well as ill.

The new project which is being urged here involves also looking at how we might rescue consultation, make it a proper instrument of democratic renewal, and what that this might mean. Part of this involves connecting some of the e-technologies with proper understandings of democracy (rather than more flashy ways of simply harvesting clicks and creating apparent consensus). Another part of this involves looking in detail not only at the outworkings of democratic theory into techniques of consultation but also at more practical quality controls on consultation as it is deployed to garner views employing geographic information systems (GIS) and other visualisation systems, complex votes and counts, as well as the power of the crowd and access to big data in a process which presently is often very far from democratic. It involves harnessing the web 2.0 technologies, co-opting the interactive, user-generated nature of a process that can reach many people more cheaply and effectively than normal consultation methods, and ensuring that it is deployed in ways that are genuinely emancipatory.

Unlike many contributions to this volume this one is not about the bigger issue of free speech, speaking truth to power or even offering up opinions that may be beyond the mainstream but ought to be heard and protected nonetheless. Rather it is about the much more quotidian business of citizens connecting with their own governance. This is however also of importance. It involves working with the new information technology to give citizens a real voice in how they are governed. This must be a conversation where government must actually listen rather than turning this exercise into a participatory depoliticisation by covering up voices while simultaneously claiming to hear them.

1 See for example David Cameron’s ‘No 10 dashboard app’, which is designed to provide real time feeds of financial and polling information to the UK Prime Minister, is perhaps one of the most egregious example of a politician seeking to be associated with new technology

2 Of course as Justin Lewis points out in his contribution to this volume, in the real world there are several dynamics operating to narrow the range of contributions.


5 See further http://www.parliament.uk/business/committees/committees-a-z/commons-select/petitions-committee/. At the European level there is the European Citizens' Initiative. Here a proposal from seven EU citizens based in seven member states, backed with at least one million signatories from across the EU member states, will receive “careful examination” by the Commission – although it “is not obliged to propose legislation as a result of an initiative”. See further http://ec.europa.eu/citizens-initiative/public/basic-facts.

6 This was subsequently approved by the Court of Appeal in R v Devon County Council ex p Baker [1995] 1 All ER 73 pp 91 and 87 and in R v North and East Devon Health Authority ex p Coughlan [2001] QB 213 [108]; and see also R (Royal Brompton and Harefield NHS Foundation Trust) v Joint Committee of Primary Care Trusts (2012) 126 BMLR 134 [9] where Arden LJ described the Sedley criteria as a ‘a prescription for fairness’).

7 Interestingly however in the Moseley decision the Supreme Court were prepared to develop the ‘Gunning Principles” to suggest that a the Council did not only have to consult on its own proposals but also provide a brief outline of the alternative proposals which the Council had considered and rejected, and some explanation for this. This is in contrast to the position in Vale of Glamorgan Council v Lord Chancellor [2011] EWHC 1532 (Admin) and R(United Company Rusal PLC) v The London Metal Exchange [2014] EWCA Civ 1271 which decided that decided that there is no common law obligation on a public body to consult on options it has discarded.

References


