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5 Deliberative Processes in Practice

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Abstract This chapter discusses the use of deliberative processes in policy making about bioethics, drawing more broadly on deliberative democracy theory and health policy. We discuss who runs deliberative processes and why, but are particularly concerned with what conditions are needed for deliberative processes to be successful. We note uncertainties and tensions that may be inevitable in meeting these conditions. Fairness and accountability emerge as themes in which these conditions can be grouped. For accountability in particular, understanding the policy context and motives for deliberative processes are essential to their evaluation.

Keywords: Deliberation, Bioethics, Public, Policy, Participation, Evaluation

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Introduction

Deliberative democracy theories are being practically tested internationally in a range of formats. The growing pool of evaluations of deliberative events in which the public participate mean we can begin to draw conclusions about what can work and why, by addressing a series of questions. Who organizes deliberation and for what purpose? What methods of deliberations suit different aims? What conditions lead to fair deliberations and useful outcomes? How can this fairness be demonstrated?

Deliberation can occur in public and private spheres. People deliberate in their own minds while making decisions, without any communication with others. Organizations can deliberate internally with little regard to the perceptions and expectations of outsiders. In this chapter, we are interested in public deliberative events. That is, deliberative events that actively seek to involve citizens in decisions that they would not otherwise have power to influence. We are interested in deliberative events rather than broader political or media discourse – the types of events that are the subject of research within public participation and deliberative democracy theory. Within bioethics, these processes can take the form of citizen juries, health technology assessments or other models for public participation, which have been listed elsewhere (Rowe and Frewer 2005). What these different methods have in common is shared principles and goals, which will be discussed within this chapter. These shared principles and goals allow conclusions to be drawn about what kind of conditions can lead to goals being achieved, and how principles can be translated into practice.

Organizations run public deliberative events for different reasons. We are focused on deliberations related to bioethics, though experiences regarding issues in other areas can support the conclusions drawn here. Some events aim to raise public awareness rather than influence policy; in this chapter, we are focused on public deliberation linked to policy. Policies are made not only by governments. Private organizations have internal and external policies, some of which impact the public. As well as local, state and national governments, other authorities engage with the communities in which they operate. For example in the sphere of bioethics, local health authorities or hospitals, which may operate at arm's length from local government, can lead deliberations. In environmental ethics, farmer's associations can be a form of local authority. In the context of deliberative democracy it can seem politically incorrect to label one partner in a deliberative process a 'local authority', in the same sense labeling someone as an expert can cause problems. However in policy contexts, an organization with local authority is typically one driving the implementation of policies, so it is a useful label in the context of public deliberations about policy decisions.

How deliberative events can demonstrate success when it comes to policy impact is a question in need of further research. Most evaluations have been focused on the processes of single events, and are usually done by event organizers rather than people observing the broader political context (Rayner 2003). Demonstrating success is contingent on defining aims and objectives that can be evaluated. Useful questions that can be evaluated include who are you seeking to include in your deliberative process? What is the aim of the process? The process can be aimed at reaching a specific decision on a given topic or providing consultative input for strategy planning. Those processes aimed at reaching a specific decision are easier to evaluate for accountability, as the process of reaching the decision and then acting on the decision can be made transparent. This chapter draws primarily on research involving the evaluation of multiple participatory events, although individual examples also are mentioned. Rather than addressing specific examples of deliberative events that are successful or not, this chapter outlines the questions and options organisers of deliberation should consider so they can meaningfully evaluate the utility of deliberative processes in practice.

Putting theory into practice

For deliberative theories to become practice, someone must facilitate action. So what organizations or individuals run public deliberative events, within the sphere of bioethics? Academic researchers can initiate deliberation (O'Doherty and Burgess 2009; Rowe and Frewer 2004; Dolan et al. 1999). Some researchers have attempted to generate citizen-led deliberation (Powell and Colin 2009). Researchers can collaborate with local authorities to run deliberations with the aim of informing local policy, (Abelson et. al. 2007 and Abelson 2003; Litva 2002; Lenaghan 1999 and Lenaghan et. al. 1996), or authorities may initiate deliberation in their own right (Bowie et. al. 1995; Dixon and Welch 1991).

What form should deliberations take? There are several established methods for deliberative public engagement, some of which are more suited to policy aims than others (Rowe and Frewer 2005; Morrell 2005). Mitton et. al. (2009) assessed 391 articles about public consultation to create a table of events that were focused on public involvement in priority setting. The final list was composed of health-related examples from the United States, the United Kingdom and New Zealand. Using Rowe and Frewers' (2005) framework, they identified four types of participatory processes: type 1, citizens' juries or consensus conferences; type 2, negotiated rule making or task forces; type 3, deliberative polling or planning cells; and type 4, town meetings that involve voting. Participants in events using face-to-face deliberation reported more satisfaction with outcomes.

Evaluating deliberative events

There are now several frameworks for evaluating deliberative events (Webler et. al. 1995; Fiorino 1990; Laird 1993; Renn et. al. 1995; Santos and Chess 2003; Rowe and Frewer 2000, 2004 and 2005). Areas of consensus about what should be evaluated as constituting “good deliberation” have been summarized by Chilvers (2008) and are adapted here (Table 5.1):

Table 5.1 Areas of consensus about “good deliberation” (adapted from Chilvers 2008).

Representativeness and inclusivity	Everyone interested in and affected by a decision was represented; barriers to participation and representation were removed.
Fair deliberation	Everyone was able to share their views. Interaction allowed mutual understanding between participants to develop.
Access to resources	Sufficient resources, including information, expertise and time, were provided for effective participation.
Transparency and accountability	Objectives and boundaries were made clear to participants and outsiders. How participation would inform decision making was explained.
Learning	Participants, specialists, decision makers and institutions learnt from the process.
Independence	The process was facilitated and managed in an independent and unbiased way.
Efficiency	The process was cost effective and timely.

In Chilvers’ own research, he found organizers of deliberative events emphasized the importance of processes being fit for purpose and adaptable (2008). Nagel (1992, 1967), who specifically focused on participation in policy decisions, also emphasized transparency and accountability issues. Two of his four questions for evaluation focused on whether participant recommendations were binding and for what purpose officials had sought citizen participation. As with all evaluations, understanding the aims and objectives of the activity being evaluated is important for measuring success. In deliberative processes, this clarity of purpose is important for transparency and accountability during the deliberative process as well as evaluation following.

Evidence of fairness

Given there is no consensus on what makes how to define success in deliberative processes, demonstrating fairness is a more realistic goal for evaluation (Martin et. al. 2002; Tenbensel 2002). For Chilvers (2008), fairness is about people being able to express their views and develop mutual understandings. Fairness is related to process and representation as well as individual participants' experiences. Knight et. al. (1997) call fair process procedural equality, and quote Kenneth Arrow (1977) in outlining three conditions for the enforcement of procedural equality in deliberation.

The first of these conditions is unrestricted domain, which means that people reflecting all interests were able to participate in reaching deliberative outcomes. Who participated is an important consideration; how participants were recruited should be evaluated for fairness and representation. Besides the democratic value of equal opportunity to participate, diverse perspectives allow participants to learn from each other and consider the broader picture (Delli Carpini et. al. 2004). On the other hand, heterogeneous groups can require more facilitation and individuals may gain less satisfaction from the process (Stewart et. al. 2007). Single representatives of particular views may not be enough to level potential power differences within deliberation; an individual may feel intimidated if other perspectives have greater representation in a group (Martin et. al. 2002; Stewart et. al. 2007).

There can be tension between unrestricted domain and the expectation that all participants commit to reasonable discussion, which John Rawls emphasized for effective deliberation in his Theory of Justice (1999). It can be difficult to reconcile diverse viewpoints to reach agreed outcomes. Organizers can take responsibility for procedural fairness and fair representation, but fairness during deliberations relies on the mindset of individual participants. Good facilitation and communication can bring out the best in participants' deliberative skills, but the attitudes and behaviours of participants are ultimately their individual choices. Bruni et. al. (2008) argue that representation is not as important as having a diversity of fair-minded people who can articulate a range of values. Daniels (2000) described fair-minded people as "those who seek mutually justifiable grounds for cooperation", who "must agree that the reasons, evidence, and rationales are relevant to... the shared goal of deliberation" (Daniels 2000, 1301).

Restricting participation to those deemed to be "fair-minded" participants is a more comfortable prospect for local authorities experimenting with deliberative processes for policy. For example, a member of the UK's National Institute for Health and Clinical Excellence (NICE) appraisal team expressed concern with the participation of "emotional" patients in NICE processes, preferring representatives who would "maintain a degree of professionalism" (Quennel 2003). But Knight

et. al (1997) are among several scholars to point out that such patient views and interests are valid, even though they may not be conveyed in a rational and unbiased manner. They argue perceptions of reasonableness should not be a strict condition of participation, standing in the way of unrestricted domain. Navigating how to balance diverse representation in participants' views and personalities with the need for practical, actionable outcomes is a challenge for deliberative practitioners, and how this is navigated is a worthy question to address in evaluation.

Before excluding people perceived as biased or irrational it is worth considering how transparent processes and good facilitation can encourage a fair and cooperative mindset among participants. Powell and Colin (2009) argue that all citizen engagement projects should include capacity building and training for citizens; people should not be expected to instinctively know how to deliberate effectively. On the other hand, organisational or cultural change within institutions may be required for meaningful deliberations, rather than putting the onus to learn new skills on public participants (Newman et. al. 2004). Young (1990) discusses in depth how oppression can be inherent in a process or structure. Without conscious planning to enforce fair-minded attitudes, deliberation involving laypeople and experts may give rise to criticism of laypeople's credibility and legitimacy (Milewa 2006). A part of procedural fairness and facilitation is working to eliminate or at least minimize inequalities between participants so that arguments, not individuals, are the subject of scrutiny and the cause of persuasion.

Minimizing power differences and inequalities involves allowing time for advance preparation and discussion of information during the deliberative process. This enables people to build their confidence in decision making and supports the expression of divergent views. Clearly defining participant responsibilities can also increase participant confidence and process fairness (Gibson et. al. 2005). Allowing people to abstain from making a final decision reinforces the acceptability of divergent views. While consensus may be ideal, transparently recognising that a final decision is agreed but not endorsed by all participants can be preferable to a consensus reached by a process in which power imbalances were overlooked.

Following *unrestricted domain*, the latter two of Knight and Johnson's (1997) conditions for procedural equality are focused on the obligation for organizers to promote fair-mindedness among participants: namely *anonymity* and *neutrality*. *Anonymity* means that the deliberative procedure must treat all participants equally, regardless of characteristics such as socioeconomic background or religious affiliation, to use Knight and Johnson's examples. Resisting stereotypical assumptions about patients, clinicians or administrators is a particular issue for deliberations in bioethics, if participants are to be treated equally. Thirdly, *neutrality* requires that the procedure not favour a particular outcome; this condition is linked to accountability and the importance of transparent aims and objectives, mentioned earlier and addressed in more detail next. These conditions demonstrate

why deliberations with people defined as stakeholders rather than citizens struggle to demonstrate fairness. If participants are recruited as stakeholders, such as representatives of patient groups or religious movements, it is more difficult for them to reason and deliberate as individuals open to different arguments, as they have come to the deliberation representing a particular position. Similarly, it may be more difficult for other participants to consider the arguments or preferences of others fairly, knowing others are representing different interests to their own, as defined through their stakeholder status.

Deliberative outcomes and accountability

There has been little published on the policy outcomes of participatory deliberative events, aside from scholars lamenting the lack of evidence in this area (Tenbensel 2002; Contandriopoulos 2004; Mitton et. al. 2009), and criticism of event planners who fail to consider outcomes in the first place (Powell and Colin 2009). Knight and Johnson (1997, 292) believe it would be “next to impossible” for any deliberative process to embody the procedural equality they outline. Rayner (2003, 167) notes that a general problem in evaluating outcomes is the inability to establish a causal link between the process and its outcomes. In other words, how do we know that public deliberation played a decisive role in reaching an outcome? Deliberations that lead to decisions unacceptable to policy makers could arguably be evaluated as failures (Webler 1995). On the other hand, if public deliberation results in a decision aligned with the pre-existing preferences of policy makers, what evidence is there that deliberation was actually useful and relevant, more than a mere formality?

Causal relationships are infamously difficult to demonstrate in the social sciences, no less in assessing the impact of public deliberations on policy (Bernert 1983; Collins 1989; Goldthorpe 2001; Pötter & Blossfeld 2001). However other aspects of accountability can be evaluated, which is where transparency becomes essential. As explained earlier in this chapter, accountability and transparency have been highlighted as particularly relevant in evaluating policy-focused public deliberations. How can deliberations be assessed for accountability and transparency, in the absence of causal links with outcomes? Daniels and Sabin’s (1997) conditions of accountability for reasonableness have been summarized by Martin et. al. (2002), and have been further refined here to apply to a broader range of deliberations than in their original setting:

1. Relevance: rationales for decisions must be evidence-based and use fair-minded reasoning.
2. Publicity: rationales must be publicly available.
3. Appeals: appeals or revisions must be possible.

4. Enforcement: the process must be regulated to enforce the first three rules.

Gibson et. al. (2005) proposed an addition to these conditions of accountability for reasonableness:

5. Empowerment: power differences must be minimized.

The issues of empowerment and enforcement were discussed in the last section of this chapter in relation to procedural fairness, while relevance relates to having transparent aims and objectives, which has been emphasised throughout. The remaining two conditions, namely those regarding publicity and appeals, are primarily related to outcomes rather than processes and shall now be addressed.

Abelson et. al. (2007) analysed the accountability of health technology assessment methods in Canada under three headings: publicity of outcomes and rationales; citizen engagement; and availability of appeals. Their research included assessments with varying levels of citizen engagement – those with little public engagement were outside of the scope of this chapter, given the focus on public deliberative processes.

Publicising outcomes and the rationales behind deliberation is an important and relatively straightforward way for event organizers to promote accountability; such information is essential for effective evaluation. Not only is publicising outcomes and rationales good practice for transparency and accountability, it allows bigger picture research and analysis, such as this book, to get value from a deliberative event. The public information emerging from deliberations could form part of an evidence base for influencing policy beyond the scope that the organisers of deliberation anticipated. Transparency about how outcomes were reached and what processes were used in recruitment in public information about a deliberative event not only supports fairness but also supports other researchers and policy-makers in fairly interpreting the information.

Processes for appeal of decisions are applicable in contexts that lead to direct recommendations, such as NICE's decisions on health technologies (Milewa 2006; Dyer 2007; Sellars and Easey 2008). However the use of appeals is poorly suited to public deliberations that do not result in binding recommendations, as there is little to appeal. Other scholars have emphasized the importance of iteration and review in deliberative processes (Powell and Colin 2009; Peacock et. al. 2009). Iteration and review perform similar functions to appeals, in that they allow new information to be included and acknowledge that continued deliberation might form part of the process. Whereas appeals have negative connotations, suggesting the process or decision under appeal was unsatisfactory, reviews allow greater public input without undermining previous contributions. Mitton et. al. (2009) found that nearly 60% of deliberative processes are episodic rather than one-off. Committing to future deliberations and review processes expresses an organization's commitment to accountability and transparency, demonstrating that

public deliberation is not seeking simply to legitimize a predetermined outcome, as Nagel (1992) cautioned may sometimes be the case.

What process for policy?

Organizers of deliberative events have emphasized the importance of deliberative methods being adaptable and fit for purpose (Chilvers 2008). Particular deliberative methods may not be feasible for some policy decisions (Bishop and Davis 2002; Abelson et. al. 2007), so organizers must consider for what purpose public deliberation is initiated. This brings us back to the importance of clear aims and objectives. At this time, there is insufficient evidence to provide clear guidance on which methods should be used for which types of policy aim (Mitton et. al. 2009). However the need for organisers to consider the context of their participative events is evident; poorly planned public deliberation is not necessarily better than none at all – and indeed, may be much worse, leading to outcomes such as a diminution of trust in the organizers, greater cynicism amongst the participants involved, and policy recommendations that are based on biases and misunderstandings. Nagel (1992, 1966) argues that left unstructured, “intensified voluntary participation can prove antithetical to the egalitarian values on which democracy ultimately rests”.

Newman et. al. (2004) also discuss the importance of policy context. Specifically they discuss how different types of engagement and collaboration can introduce “tensions between national policy priorities and local views and priorities” (Newman et. al. 2004, 213). Facilitators of deliberation can feel frustrated if their sponsoring institution resists implementing suggested changes, as can participants if their contributions are not recognized in policy outcomes. For instance, a patient involved in the UK’s health technology decision making processes (Quennell 2003, 42) said: “...we’re always being told how important we are...and NICE value our input. Yet we’re never told how they value our input and why they value our input”. Demonstrating how and why contributions were valued relies on having well-defined expectations of participants at the outset, and transparent plans for the use of outcomes.

When should deliberation happen?

At what point in policy making should public preferences be sought? Nagel (1992) was sceptical about the purposes of participation. He suggested that officials may use public participation to “pass the buck” on controversial issues, to “test the waters” when devising a program, to try and reach consensus, or more

broadly to legitimize a decision. It is unlikely that participants will feel that cynically designed deliberative processes merit their participation, but they may support deliberative processes that aim at consensus or clarification of participants' preferences among several preformed policy options. Anand (2002) cautions that we should not expect more openness and transparency in decision making to lead to consensus, given the challenges of bringing together a range of viewpoints discussed earlier in this chapter. Clarifying public preferences is a more realistic and achievable outcome.

Public deliberation can aim to inform strategic direction, or can consider more specific decisions about particular projects (O'Donnell and Entwistle 2004). Martin et. al. (2002) criticized much deliberation as being merely consultative rather than directly involving the public in specific priority setting. Tenbensel (2002) said that to be transparent, deliberations must keep information to a minimum so that assumptions can be made simply, avoiding biases in interpretation of public preferences. Sabik and Lie (2008) looked at eight countries' methods of prioritizing health care and considered their impact on policy and practice. Their work was not exclusively focused on public deliberation, though they analyzed citizen involvement in different countries and generally found it wanting. They conclude that when commissions outlined principles for decision making, they were too abstract or broad to be useful. In contrast, some countries "anchored the discussion of priorities in concrete policy determinations" allowing specific recommendations to affect policy and practice (Sabik and Lie 2008, 9). This research suggests that deliberative events addressing specific decisions may be more useful for policy makers than those designed to influence strategic directions. Deliberation on specific decisions allows the scope of information to be contained; broader strategies can be less concrete and therefore open to more accusations of bias or misinterpretation. Another reason for focusing public deliberations on specific decisions is that those decisions can be questioned in appeal and review processes, while more amorphous strategy statements are more difficult to pin down for review or questioning later. In these sense deliberations about specific decisions can be more accountable than those about direction or broader strategy.

However public deliberation event that is broad and consultative rather than focused on binding decisions is not without merit (Tenbensel 2002). Just because it is more difficult to evaluate the role of public participation in strategic or far-ranging policy decisions does not exclude it from being useful. Rayner (2003, 168), while criticizing the lack of outcomes of public participation, acknowledges "the constitutional difficulty that legislatures may have in binding themselves to decisions made by less representative bodies". Deliberative processes need to demonstrate procedural fairness before outcomes can be considered binding policy. Focusing on fairness can overcome concerns about representativeness, anonymity and neutrality that plague deliberative processes, particularly those that recruit participants as stakeholders rather than public citizens.

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Conclusion

In this chapter, we have discussed the issue of using deliberative processes in policy making. Our main concern has been to highlight the areas of uncertainty and tension that exist within this research domain, and raise – if not answer – a series of pertinent questions about whether deliberative events serve their purpose.

We have addressed deliberative processes in practice, after introducing this chapter in the context of deliberative democracy theory. An advance in theory could be the development of a typology of contexts, in a similar manner to existing typologies of methods (Rowe and Frewer 2004), so that policy situations may be defined and differentiated in a unitary framework.

If evaluation is concerned with the satisfaction of participations, processes that are transparent and understandable regarding what is expected of participants is desirable. If evaluation is concerned with whether organisations make use of deliberative outcomes, events deliberating about specific decisions are preferable to those about long-term strategies, given that concrete outcomes can be reviewed, understood and accounted for.

What is clear is that there are diverse perspectives on what it means for deliberation to be successful, although certain concepts, such as related to fairness of representation and process, are becoming common metrics. It is equally clear that deliberative processes are used (and sometimes misused?) for diverse purposes, and that different methods may be fit for different purposes. Understanding the policy context for a deliberative process is essential for its effective design and evaluation.

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