

New Governance and Public Reasoning – Towards a Better Quality of EU Deliberation

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1. Background and Summary¹

Following the Commission's (2001) White Paper on Governance, there have been a number of measures to improve the openness and transparency of European Union policy making, in particular through the European Transparency Initiative.

This Policy Briefing argues that there is a missing dimension to the search for better governance. Current concerns are procedural and involve such matters as the registration of participants in public consultation and their obligations of transparency. These are important matters and the Commission's programme of work is to be welcomed. However, there should also be a concern for the *quality of public reasoning* in decisions and policy.

Drawing on traditions of thinking in normative political theory, the Briefing highlights the need to think about processes of reasoning. In particular, it:

- Locates the discussion of public reasoning in the policy concerns of the Commission stemming from the 2001 White Paper on Governance.
- Sets out a conceptual analysis of the idea of public reasoning.
- Identifies three main models: the impartialist, the reciprocal and the pluralist.
- Suggests that in the present stage of the EU, the pluralist approach is the right one.
- Proposes the creation of a *code of practice of public reasoning* for policy consultations by the Commission.

2. The 2001 White Paper and Beyond

One of the central goals of the 2001 White Paper on Governance was to put more effective and transparent consultation at the heart of policy making. The White Paper suggested that what was needed was a reinforced culture of consultation and dialogue. This would involve greater transparency and a code of conduct that would set minimum standards on how consultation should be managed.

This concern with consultation and accountability is related to the European Union's lack of input-legitimacy in its decision making. Consultation with civil society organisations, through transparent and well-structured procedures, may go some way towards rectifying this aspect of the democratic deficit (Greenwood, 2007).

Since the White Paper, the Commission has taken a number of steps to improve consultation and social dialogue. The Europa web-site makes plain how the public as well as interested parties can comment on Commission proposals. The European Transparency Initiative seeks to improve the quality of the Commission's dialogue with civil society groups. There is a Code of Conduct for Interest Representatives, as well as a Commission (2002) communication on the minimum standards and principles of consultation.

However, there is a need to go beyond the programme stemming from the White Paper. Current initiatives are procedural, concerned with such matters as the time scale for consultation and the need to declare interests. However, within the tradition of democratic thinking we see a concern with political authority as public reasoning. From this per-

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spective, we need also to consider issues to do with the quality of dialogue and policy deliberation.

3. Public Reasoning: A Conceptual Analysis

There is a long tradition of constitutional and democratic thinking that has stressed the place of *public discussion and public reasoning as central to our understanding of democratic governance*.

Recently this strand of democratic thinking has been revived under the title of ‘deliberative democracy’. Deliberative democratic theory comes in many varieties, and a briefing note does not provide sufficient space to set them all out. However, it is possible to identify three major positions that can be taken about deliberation and democratic governance. These positions are schematically represented in Table 1.

In the impartialist model, associated with Jürgen Habermas (1996) and his followers, the idea is that public discussion should be governed by a norm in which only the force of the better argument should shape the views of participants. Although practically there may be a need to make decisions before a consensus has been reached, the ideal is agreement and consensus.

In the reciprocal model, associated with Gutmann and Thomson (1996; 2004) who build on Rawls (1996), the idea is that there will be persistent disagreements about some

fundamental values so that consensus will not be possible. However, public discussion should be governed by norms of civility in which participants strive to meet their opponents half-way so far as they are able.

In the pluralist model, proposed here, consensus seeking and civility are recognised as important, but there are no assumptions about the form that valid arguments can take nor are the legitimate self-regarding interests of participants excluded. Instead, emphasis is placed upon standards of reasoning and access to shared evidence and explicit assumptions.

There are two main reasons for this approach:

- The pluralist model is the most suitable at this stage of the development of the EU. Under the Treaty of Lisbon, article 1a cites pluralism as one of the founding values of the Union, and article 2.3 highlights the importance of respecting the rich cultural and linguistic diversity of Europe. This diversity and pluralism means that when citizens and civil society reason in the public forum that their arguments will take a variety of forms.
- The pluralist model also allows for arguments from legitimate self-regarding interests to play a part in policy deliberation. This is in accordance with the Commission’s practice of including representatives of producers in the definition of civil society. Those with the strongest interest in a matter are usually those who have most informa-

Table 1: Comparing Forms of Public Reason

	Impartiality	Reciprocity	Pluralist
Value	Consensus on general interest	Respectful Disagreement	Open expression of views and interests
Relation of participants	Actors sharing space in common relations	Actors sharing space in reciprocal relations	Actors sharing space under system of rules
Presence of public required?	Essential, ideally universal, practically representative	Essential, but can equally be representative as participatory	Not essential, but views must be visible to wider public
Form of accountability	High accountability to other participants	Accountability to other participants and public at large	Accountability to constituents and other actors
Form of Public Reason	Search for principles that can be universalised	Search for principles that can be mutually accepted	Expression of best partial understanding possible

tion. While it is important to prevent special interests from monopolising policy deliberation, it would be wrong to exclude those voices with a legitimate interest.

4. An Audit of Public Reasoning

How can these ideas be given practical effect? One way is for there to be a Code of Practice of Public Reasoning. This would build upon the Accountability Charter signed by a number of International Non-Governmental Organisations (INGOs, 2005), which among other things committed those groups to using generally-accepted standards of technical accuracy and honesty in presenting data and research.

A Code of Public Reasoning would have at its heart the distinction of the types of reasons that participants in a social dialogue advance for general consideration. In particular, it would provide a tool to distinguish between empirical claims about the likely consequences of policies from claims about the social values that policies might advance. This distinction is important, because al-

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Further reading

This policy brief is based on research carried out within the NEWGOV “Democracy Task Force”.

The Democracy and Legitimacy Task Force (DTF) aims to provide a series of normative analyses of the problems of legitimacy in the EU in the light of the more empirical research conducted by the other partners in the Integrated Project. Members of the DTF are: Richard Bellamy, Dario Castiglione, Andreas Follesdal, and Albert Weale.

Further information can be found on the NEWGOV Website in the [special section](#) of the DTF.

though any participant to a social dialogue is entitled to hold to their own particular values, claims about consequences can be tested and examined by others.

How would the identification of reasons be done in practice? Commission consultation takes a number of forms. The easiest application for a Code of Practice would be in relation to written consultation where a common procedure has existed across all Directorates-General in the Commission since 2002 (Bozzini, 2007: 97). Such written consultations involve responses to a specified set of questions as well as the opportunity for free text response. It would be helpful if the Commission were able to specify in its questions whether it is asking for an empirical estimate of the consequences of a policy or a statement of values or position in relation to a policy. Similarly, in the free text responses, participants could be invited to say whether their claims were empirical estimates of consequences or judgements of value. They could also be invited to reference the evidence or sources for their claims where relevant.

Over time, the sort of questions that can be developed through such a Code could include the following:

- What generally acknowledged values do you see your proposals furthering?
- What are the value conflicts and trade-offs implied by your preferred position?

- Are there groups or legitimate interests that might be set back were your position adopted? If so, is that fair and why?
- How much confidence can be placed in the empirical assumptions that you are making? Have they been well-established through research or other evidence, or are they conjecture?
- Is there evidence relevant to the debate that does not currently exist that you would value? If so, how might it be researched?
- What degree of confidence is reasonable to place upon your predictions of the effects of policy?

One aim of such a Code would be to foster a culture of civil public reasoning. By asking participants to a dialogue to be aware of the type of reasoning in which they were engaged, the aim would be to enable participants to understand what reasons were being advanced. A process of reflective deliberation among citizens and civil society representatives – even when their opinions and interests are conflicting and divergent – is one that accords with the ideals of public reasoning. Similarly, for the Commission, adherence to such a Code would signal a commitment to the principle of political accountability.

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