

Public Involvement in Environmental  
Decision-Making in Ireland by DR. BRIAN MOTHERWAY



## **Introduction**

Consultation is in vogue. Not a day goes by without national newspapers carrying advertisements for consultation processes on such diverse matters as energy and telecoms deregulation, planning and development, health, Europe and, recently, school bus safety.

This paper looks at a subset of all of these; consultation processes around environmental issues, within which I will include planning and development, waste management, and more general environmental policy issues. By consultation processes I mean attempts to enhance public participation in decisions by direct engagement of people through public meetings or other such events, in which information is shared and views are sought.

The aim of the paper is to work from the assumption that democratising decision making processes around these issues is a good thing and to consider how to do it well. To do this, I will consider some background issues and some theoretical and analytical perspectives, and then discuss these frameworks in the specific context of some Irish case studies from the last decade. This will lead to a tentative set of issues identified as key to quality and central to a prospective concept of best practice.

The implications of a well developed practice of consultation are wide, and indeed a more frequent problem in the past has been the tendency to try to make consultation do less than it can rather than more. To explore this, I will start with a consideration of why one might choose to employ consultation approaches, and what can be achieved with them. Only by understanding what the processes are meant to do can we address the question of whether they are doing it well.

## **Why is consultation good**

According to Fiorino (1996: 196), consultation for decision making is good for three principal reasons; firstly that it is in harmony with the core values of democratic society; that it confers additional legitimacy on decisions and on processes and encourages people to feel, and act, like citizens; and thirdly, that it leads to better decisions by allowing more perspectives to be brought to bear.

Expanding these goals out a little further, Beierle identifies what he terms the 'social goals' of consultation:

- Educating and informing the public,
- Incorporating public values into decision-making,
- Improving the substantive quality of decisions,
- Increasing trust in institutions,
- Reducing conflict, and
- Achieving cost-effectiveness.

(Beierle, 1998: 3)

I will come back to this list later, but for now the essential point is that consultation goals relate to communication of values and information in two directions to lead to better decision making in the specific and better democracy in general. Note that some commentators make a distinction between consultation and participation, the latter being the broader term and the former signifying an emphasis on transmission of information from institutions to the public, rather than real interaction. I do not use this delineation here, I use the terms interchangeably and I use consultation to mean processes and procedures generally employed to bring people together to discuss and articulate public will on particular issues.

### **The particulars of environmental consultation**

Environmental issues have been a strong focus of consultation experiments. To a degree this is simply driven by the policy imperative of sustainable development and Local Agenda 21. Most definitions of sustainable development, in the Rio mode, tend to put high value on democratic participation (WCED, 1987; see also for example Lafferty & Meadowcroft, 1996; Buckingham-Hatfield & Evans, 1996). In this thinking, democratisation is seen as a central element of the sustainable development agenda, and democratic enhancement and environmental protection are interrelated projects.

Environmental decision making has tended to be technocratic in the past, and has largely been perceived to have failed in its environmental protection mission. This has made it an arena of contention, seen by many to be an issue in which democratic content has been inadequate (see for example Broderick, 2000; Taylor, 1998).

There are some attributes shared by most environmental debates that make them particular in the context of decision making:

- Environmental issues tend to incorporate a mixture of technical and social elements
- Such issues tend to encompass local and broader aspects, both in terms of causes and consequences
- Environmental questions invariably involve uncertainty and incomplete knowledge, in particular relating to risk

So environmental decision making lends itself to processes that go beyond simple expert systems, due both to the nature of the issues themselves and the failure of these systems in the past. By broader process I mean ones that recognise the role of social, political and economic elements in the decision, and recognise that simple technical or generalised considerations are inadequate. Consultation processes, able to deal with issues and to use approaches to decision making that suit the particular case, should, at least in theory, provide a model for such broader processes and address the inadequacies of narrower methods. The potential for flexibility and innovation is thus a key element.

## **Basic principles of consultation**

Broadly speaking, recent experiments in consultation can be seen as attempts to enhance the direct democratic component of a representative democratic system, seeking to improve what Dryzek (1996) terms the *authenticity* of the democratic system.

A useful theoretical framework for this is the idea of discursive, or deliberative, democracy, developed by Jürgen Habermas and others (Habermas, 1998; Bohman & Rehg, 1997). This model posits a set of autonomous public spaces in which issues are debated and public opinion is formed and articulated, and a parallel set of state institutions that respond to this public opinion. These public spaces are normal elements of civil society, such as debating forums, NGOs, or media spheres. The institutions of the state attain public legitimacy by being seen to take the discourses of public spaces on board and to incorporate these articulations of public will into their decisions.

In contrast to some excessively utopian models of direct democracy, I find the discursive democracy concept to be the best description of how current political practices can be democratised in a direct manner. Moving towards a deliberative democracy approach does not necessarily involve radical reinvention of practices or institutions. In fact, current attempts at various consultation processes, freedom of information or institutional accountability can all be seen as contributing to the climate of enhanced direct involvement. The deliberative democracy model describes how an ongoing, gradual, process towards better direct involvement in democracy can occur.

But discussions on deliberative democracy usually incorporate versions of Habermas' ideal communicative action model. In this thinking, all actors ideally strive for mutual understanding, working towards consensus, and the 'best' arguments win. Any action of power, be it strategising, the elevation of certain knowledges or exclusion of certain types of arguments or arguers, is a corruption of the ideal, to be eliminated. Consensus doesn't necessarily mean unanimous agreement, it can accommodate some level of conflict. But it does expect genuine participation, with no power distortions or strategising, acceptance of outcome, and actors must be 'oriented towards mutual understanding' (Habermas, 1984). Also, implied in the notion of deliberation in which the 'best' argument wins is an assumption about universal agreement on what constitutes best, that is an assumption of one agreed discourse and one rationality.

In my view, the gap between this ideal and all observable practices is so wide, and is so fundamental, that the ideal is not a useful norm on which to base action. The evidence strongly suggests that different discourses wield different degrees of influence on debates (the elevated position of scientific knowledge being the obvious example); that strategising to 'win', as opposed to seeking consensus, is very much the norm; and that real world practices are far more complex than the notion of everyone listening to each other and being persuaded by the 'best' argument (see for example Hajer, 1995).

In the first instance, different discourses and knowledges hold more or less sway with different people. Some people want to hear the 'scientific facts' of a case, while

other have a fundamental distrust of all science talk. Some people will align themselves to what they see as left wing or liberal causes, others the exact opposite. Such differentiations and stratifications among discourses are inevitable. But more than this, the connections between this kind of discourse-related power and more traditional forms of structural power are strong. Governments, whether they intend to or not, influence the power relationships among discourses through everything from the education system to the use of expertise in policy making. The very notion of an expert-oriented systems imbues certain types of actor with more power to influence a debate than others. There is nothing revolutionary in this observation, but I simply want to draw attention to the fact that it would be overly simplistic to ascribe stratifications in knowledges, discourses or actors to some form of natural or purely merit-based dynamic.

In theory terms, this is Michel Foucault's model of discourse and power and the notion of *governmentality* (see Darier, 1999). The state and traditional power sources are fundamentally involved in the shaping of this, and thus the notion of 'stepping back' and letting debate happen by itself, is a fallacy. This should be recognised and confronted. The ideal communicative action model fails to do this.

I have tried to be brief with this discussion in the hope that I can suggest the subtleties involved in looking at debate and decision making without exploring them in great detail. The relevant elements will emerge in the discussions that follow. Complexities of dealing with a range of discourses, knowledges and world views are particularly pertinent to environmental issues, as such diversity is very common. Any consultation method that is to successfully enhance the quality of decision making and the democratic credentials of the process will have to be able to address these issues.

### **Consultation methods**

With this background, I would now like to move on to specific discussion of ways of doing environmental consultation. There are a number of well established methods of public consultation, as well as some innovative approaches that show promise and have been tested in several countries. The following paragraphs introduce some of the more well known of these.

#### *-Public hearing*

This is probably the most commonly employed model in Ireland, covering the general approach of some form of pre-determined panel (of experts or officials), possibly with invited speakers, and usually some opportunity for questions or statements from the audience. In policy processes, hearings often follow a preliminary stage of a published discussion document and a period of written submissions from the public.

#### *-Planning Oral Hearing*

This is a specific case of the public hearing model, with its own developed procedures and practices. Largely a legal model, with 'witnesses', often lawyers, and a kind of judge in the form of the planning inspector. It is largely an input model, with information coming from the participants to the inspector. In the absence of other routine practices, it has been the default consultation method for many controversial issues in Ireland.

### *-Consensus conference*

This is probably the most discussed of the relatively novel methods of consultation, based on a panel of 'laypersons' considering an issue or technology of the near future. The panel set the agenda, select 'witnesses', ask questions and draw conclusions. Hearings are held in public. People interested in participating in the panel are invited to apply through advertisements, and then the panel is selected on a representative basis. An explicit link between the panel's deliberations and the policy process is considered a prerequisite.

### *-Citizens' jury*

Broadly similar to consensus conferences with the distinction usually made that citizens' juries tend to consider very specific controversial plans whereas consensus conferences are more general and forward looking. Citizens' juries usually take place in private, but publish their findings.

Other models of consultation include appointed representative panels (usually official representatives, NGOs etc), participative foresight exercises, and more established methods that were not designed as deliberative consultation methods as such but can be routes to public input, such as survey type methods, court cases and, of course, referenda.

## **Some Irish examples of consultation attempts**

A number of specific Irish environmental consultation processes have been reviewed in the political science and sociology literature. For the rest of this paper, I will draw mostly on three case studies<sup>1</sup>:

### *EPA Oral Hearing – Incinerator at Roche*

Taking place in 1996, this was the first oral hearing on an Integrated Pollution Control licence held by the Environmental Protection Agency (EPA) since its establishment, and related to the proposed development of a toxic waste incinerator at the Roche (formerly Syntex) pharmaceutical plant in County Clare (Keohane, 1998; also Taylor, 1999).

### *An Bord Pleanála Oral Hearing - Merrell Dow Pharmaceutical Development*

One of the more famous planning oral hearings, which took place in County Cork in 1988. The issue at stake was the proposed construction of a pharmaceutical plant in East Cork, strongly opposed by the local community. Representing the only possibility of direct input for the local community, the process was unable to meet expectations (Peace, 1993; Allen and Jones, 1990). I will also make reference to more recent examples of planning oral hearings to build up a more complete picture of the method.

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<sup>1</sup> In addition to those discussed here, other recent recorded examples include Cork Environmental Forum (Broderick, 1999), the National Recycling Forum (Skillington, 1997), and Local Agenda 21 processes (Mullally, 2001).

### *Consultation Process on Genetically Modified Organisms*

A high profile consultation process commencing in 1998 and culminating in two days of oral debate in 1999. The process was to assist the Minister for the Environment in forming a national policy position on the introduction of genetically modified foods and crops, and was prompted by considerable controversy around the issue at the time (Motherway 2002).

These case studies represent the most commonly employed consultation methods in Ireland. Indeed, oral hearings around planning, and more recently EPA licensing, represented the majority of all consultation processes until the recent upsurge in interest and activity in policy consultation. The third case study is a good example of this type of process. The case studies also share the attribute that they were instigated as a reaction to controversy, a very common attribute among consultation examples.

Before I discuss these case studies in more detail with a view to some form of evaluation, it is obviously necessary to consider appropriate frameworks for such evaluation.

### **An approach to evaluation**

Critics of previous consultation attempts have dubbed them anything from 'modern theatres of control' (Peace, 1993), or 'rituals of assent' (Gusterson, 2000: 339), to lip service exercises based on 'a structural system that is non-participative at heart' (Skillington, 1997: 510). Indeed, most of the literature discussing specific cases of consultation takes a negative view on their performance. It should be noted that much of the literature takes a community perspective on the processes, but this certainly does not diminish the concern over so many negative verdicts.

Most of these evaluations have been general in structure and not based on systematic evaluation criteria. I do not believe that very rigid evaluation approaches are particularly necessary, but I do think that a detailed consideration of the basis for evaluation can reveal much about exactly what consultation techniques can and cannot do, and indeed what they are trying to do in the first place. The next sections of this paper present an attempt to apply evaluation frameworks to specific case studies, not to develop the evaluation methods themselves, but to disaggregate the goals and attributes of consultation and to try to understand why most analysis has produced negative evaluations for efforts undertaken to date. I will draw upon two evaluation frameworks, one considering the social goals of consultation, and one developing a set of acceptance and process criteria for good consultation.

### Social Goals of Consultation

Thomas Beierle argues that the best way to evaluate a consultation exercise is to be specific about the 'social goals' of the exercise, and then to attempt to rate the

process on how well it meets each of these goals. According to Beierle, these goals are as follows:

- Educating and informing the public,
- Incorporating public values into decision-making,
- Improving the substantive quality of decisions,
- Increasing trust in institutions,
- Reducing conflict, and
- Achieving cost-effectiveness.

A consultation process should clearly, at the very least, inform the public about the issues involved and the basis for any decisions made. This is about communication from institutions to the public. On the other hand, any consultation process that goes no further is little more than a marketing exercise for predetermined decisions, and it is surely the quality of communication flows from the public to institutions that determine success or otherwise. Such communication can be categorised as relating to public values or relating to knowledge and information.

In terms of the communication of public values in a consultation exercise, an important question is whether or not this is the intention of the process. In later discussions, I will find it useful to distinguish between what I will call *value articulation* exercises and *value interpretation* exercises. A lack of such a distinction has caused many processes to fail when they could not meet the high expectations of participants.

Allowing for knowledge and information to be communicated by the public acknowledges that expert knowledges are not definitive and that decisions can very often be improved by incorporating local knowledge. There are many examples of laypersons' knowledge about local conditions or actual practices improving the knowledge base for solutions or producing alternative solutions not previously considered (see Beierle, 1998; also Clark & Murdoch, 1997).

Consultation obviously aims to enhance trust in institutions and in the quality of democracy processes generally. This is a circular process in that people's willingness to take part in an open manner depends strongly on their perceptions and previous experiences. For many people direct interactions with institutions are rare, and these few experiences form long lasting perceptions:

Attitudes of trust, or lack of trust, towards specific abstract systems are liable to be strongly influenced by experiences at access points.

(Giddens, 1990: 90)

A more specific, local goal, is the reduction of conflict between various parties in the case under discussion. Practice shows that this is, unsurprisingly, highly dependent on at what stage in the process a consultation exercise is undertaken and how serious the levels of conflict are at this stage.

Cost-effectiveness speaks for itself, and often sets the level of ambition for a process. However, this criterion obviously becomes relevant only when 'effectiveness' is achieved and then its 'cost' can be considered, and, according to the literature, this is rare.

### Acceptance and Process Criteria

A second approach to evaluation is that of Rowe and Frewer (2000), based on a set of acceptance criteria, close to the social goals concept; and a set of process criteria, concerned more with the specific operation of the consultation exercise.

#### Acceptance criteria:

- Representativeness: the public participants should comprise a broadly representative sample of the population of the affected public
- Independence: the participation process should be conducted in an independent, unbiased way
- Early involvement: the public should be involved as early as possible in the process as soon as value judgements become salient
- Influence: the output of the procedure should have a genuine impact on policy
- Transparency: the process should be transparent so that the public can see what is going on and how decisions are made

#### Process criteria:

- Resource accessibility: public participants should have access to the appropriate resources to enable them to successfully fulfil their brief
- Task definition: the nature and scope of the participation task should be clearly defined
- Structured decision making: the participation exercise should use/provide appropriate mechanisms for structuring and displaying the decision-making process
- Cost-effectiveness: the procedure should in some sense be cost-effective

(Rowe and Frewer, 2000: 12-17)

In my view, it is the acceptance criteria that are of ultimate interest, and too much emphasis on process criteria could serve to narrow the range of possibilities. The acceptance criteria cover the integrity of the process - representivity, independence, early involvement – and connections to governance in terms of influence and transparency. The process criterion of most interest is resource accessibility, and I will return briefly to this topic later.

These evaluation frameworks help us to understand what makes a consultation process good and what are the core requirements for such a process. However, two areas they are weak on are the specifics of communication and the relevance of broader context. In terms of the former, good quality interaction and debate are obviously implicit, particularly in Beierle's social goals, but one is left with the impression (especially from Rowe and Frewer's framework) that it is assumed that once people are put together in a room under the proper conditions, good debate, interaction and consensus building will occur. In the light of my earlier comments on power and discourse, I see this as a problematic assumption.

A second concern relates to the role of context and history. As acknowledged in the goal of building trust in institutions, people will engage in processes in more 'genuine' ways if they have a sense of citizenship and a perception that the process will be fair and rewarding. A history of success through strategising and manipulation, as is largely the case at the moment, will not encourage good participation. A consideration of how to do consultation well and the barriers to this objective must give adequate attention to such issues of context.

One further point is worth mentioning for setting the framework. As I have noted, most consultation approaches tend to categorise themselves (at least implicitly) as either articulating shared values or interpreting previously articulated values, but not both. I will argue that this categorisation, if properly articulated and applied, is useful, and can enhance the quality and impacts of a consultation process. However, this distinction has not been clear enough for many processes, and this has led to problems around expectations. The mixture of technical, social, economic and political elements that so often characterises and environmental issue tends to make such a delineation particularly difficult and this, I believe, is a key reason why the case history of environmental consultation contains so few clear successes.

### **Evaluating the Irish cases**

As I have stated, my interest in applying evaluation frameworks to specific case studies stems from the objective of elaborating the goals of and challenges facing environmental consultation. In addition, I acknowledge that the data for these evaluations comes from a limited range of sources, and from particular perspectives. Thus I do not claim to be definitively analysing the case studies themselves, but rather using them to illuminate points for a more general discussion.

#### EPA Oral Hearing

The Roche (Syntex) oral hearing was the first to be held by the EPA under its discretionary powers to hold such hearings regarding objections to integrated pollution control (IPC) licences issued by the agency. Indeed the fact that the decision was discretionary did not help the situation, it left the local objectors with a perception of facing into an opaque bureaucracy and having to fight for every concession. Locals had reacted angrily to Roche's proposal to install an incinerator at its well established pharmaceutical plant, and issue was controversial long before the oral hearing was announced.

The hearing itself was procedural and quite legalistic in format; one person presided as chair, recorder and decision maker, and each 'side' presented their 'case' in turn. Only agreed representatives could speak, along with the 'witnesses' called. The general public could observe, but not directly participate. The dominant discourse, as imposed by the chair though not always complied with by the community side, was that of scientific evidence and technical solutions.

Both Keohane (1998) and Taylor (1999) make similar observations as to the shortcomings of the process from the community's perspective. The principal of these are:

- the community's negative perception of the professionalism of the procedure and the seriousness with which the issue is being treated,
- the dominance of technical discourse to the exclusion of other discourses and actors,
- the breadth of discussion allowed (failing to discuss the company's poor compliance record in other countries for example), and
- the transparency of the basis for decision making.

In terms of Rowe and Frewer's acceptance criteria then, there was no early involvement opportunities for the community, and no access to setting the agenda or the format. Also, the community came away with no sense of whether or in what way the hearing had influenced the outcome.

In Beierle's terms, there were poor information flows in both directions and no sense of anyone coming away better informed about other points of view. From the community's perspective, the central problem was the failure to incorporate the value set for decision making they put forward. The EPA would see the process as interpreting information with regard to a pre-determined value set. However, as is very common in such cases, the essence of the community line is that if the underlying values would allow this development then the values must be wrong, and their clear expectation was that this was the core issue to be discussed. In this case, trust in the relevant institutions was not enhanced and conflict, already strong before the process, was not reduced.

### An Bord Pleanála Oral Hearing

Planning appeal oral hearings are becoming more common and, by general consent, better. As above, the decision to hold an oral hearing is based on imprecise criteria relating to level of controversy and the public interest. However, the oral hearing is now a well established and well understood method of consultation, with many communities well versed in how to approach such processes and comfortable with their requirements. Planning consultants, lawyers and sometimes even barristers are regularly employed by both sides of an issue. These practices were less well established fifteen years ago, when the Merrell Dow hearing took place.

The Merrell Dow oral hearing was held in December, 1988, to consider the proposed construction of a pharmaceutical plant in the Womagh Valley, East Cork. Once again, the issue was already very controversial, the oral hearing had to be fought for, and people were entrenched in strongly conflicting positions by the time the hearing took place.

Again, taking a community perspective, people came to the hearing with a range of issues to discuss, but found the inspector drawing a sharp line between 'facts' and 'opinion', and ruling out much that they wanted to discuss about their sense of community, what they wanted for their area, and their 'gut feelings' against the development. Instead, the language was science, and the topic was what would minimise (not eliminate) pollution from this proposed factory. Thus the community representatives found themselves in the midst of negotiations about compromises on factory design that would reduce negative impacts, and in this context the 'no factory under any circumstances' line was the radical, intransigent position, and the

community found themselves marginalised. The community came away feeling they had been defeated by narrow procedure and clever, manipulative opponents. This language of contest, strategy, opponents and, in this case, defeat, is common, and is an issue to which I will return. When people are going into a consultation process on the basis that 'Merrell Dow will happen over my dead body' (Allen and Jones, 1990: 135) the prospects for consensus on the common good are remote.

Once again, a key failure in acceptance criteria terms is the lack of transparency in how the hearings that took place led to the decision, and in particular confidence that the process was open to other outcomes. As with the EPA oral hearing, the planning oral hearing sits between the inputs of the cases presented and the output of the final decision, but it is often far from clear what process the data has gone through in the middle. Again, a technical discourse is imposed to the exclusion of many concerns. Again, topics such as previous compliance or environmental records of the company are excluded.

The two hearings both assume that the values on which decisions are based have been pre-determined elsewhere, and the hearing itself is largely an interpretive exercise based on these values and the specific information of the case. However, this was not necessarily clear to all participants. Further, if the exercise is to interpret values articulated elsewhere, then these values must have general legitimacy. The basis for this has improved in recent years, with guidance from policies such as regional planning guidelines, the link between planning and strategic objectives made in the Planning and Development Act, 2000, and the forthcoming National Spatial Strategy. The legitimacy of decisions made in the planning context depends on the sense of shared ownership of such guiding instruments.

In relation to reducing conflict and enhancing trust in institutions, the Merrell Dow hearing suffered from much the same problems as the Roche case. A common problem was that the hearing did not see itself as the forum for many of the issues the community wanted to discuss, and thus expectations of the processes were far from met.

I would note from more recent writings, and from my own observations, that planning appeal oral hearings are now much improved on older cases. There is no doubt that the hearings are now much better at allowing information flows from participants on the community side. Several recent hearings I have attended admitted video or photographic evidence designed to give the inspectors a 'sense' of the community, what it looked and felt like. How much such evidence influences outcomes is harder to assert.

### Consultation on genetically modified organisms

In response to growing controversy around the introduction of genetically modified crops and food, sparked to a degree by the licensing of test sites for genetically modified sugar beet, the Minister for the Environment launched a public consultation process in August 1998. The process was based on a detailed discussion document to which responses were invited, culminating in two days of public discussion in the summer of 1999. The format of these discussions was the presentation by eight speakers on various topics presided over by a four person chairing panel appointed by the Minister, with opportunities for questions or comments from the floor.

Two of the speakers represented the biotechnology industry, and two the interested academic community (both strongly pro-biotechnology). Four of the eight speakers represented the alliance of NGOs opposed to GMOs, although this alliance withdrew from the process between the first and second discussion days.

The debates themselves suffered from a lack of clarity around format and procedure, but the essence of the process was introductory talks from the speakers followed by plenty of time for comments from the floor and interchanges among the speakers. There was certainly plenty of opportunity for everyone present to have their say, but there was little direct interaction in the form of say response to arguments or questions. Mostly it was a pattern of consecutive statements from people with pre-formed views. There was little listening or persuasion, and certainly no working towards consensus.

The panel's final report was issued a few months later, along with the Minister's response fully accepting its conclusions. These conclusions were a strong acceptance of the pro-GMO path and largely an endorsement of the policies and practices that had evolved anyway. Industry and other pro-biotechnology actors praised the process, while others dismissed it as flawed and tokenistic.

This model of consultation is strong in many ways; all sides were given good access and everyone had their chance to shape the process (if not the initial agenda per se) and to participate. And yet it did not succeed in producing an outcome shared and accepted by all. Two major barriers prevented a better process. The first related to the quality of debate and participation, and was not entirely within the organisers control. The debate was polar from the start, and no-one came into the process looking for consensus or compromise solutions – everyone wanted to 'win'. Additionally, the debates tended towards 'one entrenched speaker ... followed by the next' (Dick Ahlstrom, *Irish Times*, 3 June 1999), with assertions or contradictory claims never tested, citations of scientific evidence left unexplored, and questions or challenges left mostly unanswered.

So the process did allow for good two way flows of information, and for articulation of public values. Problems arose however in relation to using all of this data to come to a conclusion, and it was here that a second major barrier interfered. This relates to the use of an adjudicating panel to work through the representations and draw up recommended policy outcomes. Such a panel is employed in many consultation models, but in most cases some form of representivity is sought, either through random selection from the public or through selection of official representatives, say of agencies departments and NGOs. In the GMO consultation the panel was more of an expert model, with four distinguished and experienced people appointed by the Minister. The basis for their appointment was neither representivity nor expertise in the specific area, although much was made of their eminence and their independence.

The success of the process entirely hinged on the ability of the panel to work with very large amounts of diverse inputs to come to conclusions that would be seen as fair and reasonable, even if not to the agreement of all parties. However, in my view the evidence strongly suggests that the panel were more open to one type of argument and one side of the debate more than the other, not through any form of bias or prejudice, but simply due to their own pre-established world views. Readers

of their report would find little to convince them that all sides of the debate had been carefully considered on equal terms.

How could it have been otherwise? There are clearly many value judgements and political questions involved, and yet the process of an expert panel sifting through evidence presupposes a task of factual analysis and interpretation. The job of the four people on the panel was to represent the values of the public and decide how these values would interpret the evidence of this case - not an enviable task. In these circumstances is it hard to see how any outcome could have been found that would have been acceptable to the majority of interested parties.

The outcome of the process did little to reduce conflict or enhance trust in the relevant institutions, and indeed was viewed by many as not much more than what Skillington calls 'a controlled opening of the policy space' (1997: 508), where any outcome other than the conservative one reached was very unlikely. In my opinion, the process contained many good elements, but these were not sufficient to overcome some of the fundamental barriers to good consultation that make it such a difficult project. It is these barriers I wish to discuss next.

### **The core problems for consultation**

As with all democratic practices, environmental consultation seems to suffer from the classic trade-off of quality (depth) against representivity (breadth). In Rowe and Frewer's framework, there is a tendency for consultation processes to score well in terms of either process or acceptance criteria, but not both. Methods that can guarantee broad representivity, which uncoincidentally then have good connections to outcomes and decision making, are approaches such as referenda or other very large scale methods. These methods are weak in terms of providing for good quality interactions and detailed discussion. Those approaches that do well in this regard, such as consensus conferences or citizens' juries, are weak on representivity and are thus not allowed to directly shape policy outcomes.

Attempts to marry both attributes have tended to be on the clumsy side, such as the biotechnology forum in the UK which tried to combine a consensus conference model with large scale surveys. This evolved due to concerns on the part of ministers and senior civil servants about the representivity of smaller focus groups, and the result was to diminish the role of these qualitative discussions and to over rely on the cruder results of a standard opinion survey (Irwin, 2001).

As an aside, an interesting 'combination' method may be in the process of emerging here in Ireland through the National Forum on Europe, a series of local public debates presumably to be followed by a referendum on the Nice Treaty. Setting aside the emergence of the process from the previous 'failed' referendum, if the Forum manages to develop an understanding of people's concerns and preferences and reflect these in the content of the next referendum, this could turn out to be a very healthy process.

Assuming concerns over representivity can be addressed, questions remain about the potential of new consultation methods for environmental decision making, largely due to the lack of significant success to date. The following paragraphs discuss what

I believe are the principal elements that need to be explored if such questions are to be answered.

### Competing discourses

As I have mentioned, a common criticism of consultation attempts is their tendency to slip into a discourse of science, to the exclusion of other ways of talking and other bases for decision making. While the need is clear, therefore to accommodate a multiplicity of discourse, the challenge of this goal should not be underestimated. I have been at planning appeal hearings where consecutive submissions have ranged from descriptions of the architectural plans, traffic management measures or planning and development policy goals; to videos or photos of local conditions, people describing their 'gut feelings' about a project, or even poems especially composed for the occasion. How is a planning inspector to somehow weigh all of this up and come to a decision in a systematic and transparent manner?

A key issue for this problem is the choice between lay and expert panels for a consultation. Expert panels, as I have discussed, have clear advantages in terms of their technical qualifications but tend not to be appointed with due regard to their own world views and value sets. Thus, radical solutions are rare and a generally accepted sense of shared ownership of the outcome is unlikely. An alternative then is some form of lay panel, but this raises problems regarding representivity and, hence, of acceptance by institutions of the direct influence of the process on policy.

In keeping with my distinction between value articulating and value interpreting processes, I would note that lay panels may be more suitable for the former and expert panels for the latter.

### Assumptions of communicative action

A core assumption of deliberative democracy is that all participants must be oriented towards mutual understanding and the notional common good (even if one argues that the ideal common good is ultimately unobtainable) (Cohen, 1997: 69). Such orientation is certainly rarely observed, and strategic behaviour, oriented towards 'victory', is ubiquitous. The general practice is that actors go in to a process with a desired outcome and fight to win this outcome, in other words much more of a pluralistic, antagonistic approach, than the consensus ideal underlying most consultation processes. If this is the actuality, do our approaches to consultation still make sense?

One can compare a method of debate and decision making that assumes conflict, such as a court case, and one that assumes co-operation and consensus, as is the basis of many of the methods discussed in this paper. Some of the consultation methods discussed here, particularly the planning oral hearings, do anticipate some degree of disagreement and conflict, and this is a major distinction between these established methods and most of the novel forms of consultation. But even the oral hearing doesn't address the role of power in swaying an outcome (imbalanced resources for hiring experts or marketing for example) - it implies it can overcome this through its fair deliberation of all the information. Also it doesn't address the

concern about multiple discourses – it assumes there is a best answer for everyone on the basis of shared understanding of what criteria this 'best' is based on.

So none of the models really address the question of what happens when people come to the process trying to manipulate or undermine it to achieve their outcome. And the evidence suggests that at least manipulation is very common, and certainly everyone is seeking their outcomes more than particularly trying to deal with the process 'fairly'. An important point here is that the strategic approach is not an unalterable given, and people's approaches to these processes are strongly influenced by the perceptions and previous experiences of themselves or others. The general case history of attempting to impact on decision making in Ireland strongly suggests that strategic approaches are rewarded. And this leads on to the next discussion point.

### Context

*if you do not have a minister on your side your chances are poor<sup>2</sup>*

When coming to a consultation process of any kind, people's expectations and strategies will be informed by the previous experiences of themselves and others. One can clearly observe more 'strategising to win' now in many consultation processes, simply because it has been seen to work in the past. Lobbying, threats of strikes, pickets or court actions, non-co-operation with environmental impact assessments or other processes, and generally making noise and trouble, have all been successful ways to avoid landfills, roads or unwelcome factories in one's neighbourhood.

As is noted in Beierle's social goals, building good processes based on good citizenship is a circular process where people engage better in processes when their trust in these processes has been developed over time. Overcoming the cynicism that undoubtedly exists about many consultation processes is along term project. A consistent pattern of importance ascribed to the processes, and a clear understanding of their role in the policy making context is necessary. Arguments for genuine, consensus-oriented participation need to be built up over time.

One common negative perception of past processes has related to their narrowness. Since most people have few chances to talk to policy makers so directly, when the occasion does arise they expect, and desire, a wide, all encompassing discussion. However, the scope and aims of a process tend to be fairly tightly defined. A pollution licence hearing for example will want to restrict itself to the technical aspects of the licence in accordance with the framework, and a planning hearing to specific planning related matters. Thus there tends to be a tension around the extent of the agenda and scope.

To a degree this is about managing expectations, in line with Rowe and Frewer's goal of good task definition, but it is also about ownership of the values guiding a process. As I have stated, there is a clear need for better shared ownership of the underlying value guides of processes. In a particular process, the guiding principals

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<sup>2</sup>Residents' association spokesperson, An Bord Pleanála hearing, Dublin, February 2002

need to be clearly articulated. Further, these principals need their own legitimacy, and so probably need to be put through consultation processes themselves.

These are the issues that present the key challenges to better consultation practices, and previous attempts have not always explicitly faced up to these challenges. As I have said, the attraction of deliberative consultation processes in a representative democracy context is the ability to move gradually towards a deliberative setting on the basis of individual actions and small institutional adjustments. However, the attendant danger is the temptation to assume that the process is too simple. It is not so simple that the above concerns can be ignored. The need to address these issues forms the basis for a discussion of what a best practice outline for environmental consultation might look like.

### **Towards best practice**

Using Beierle's social goals as a framework (ignoring the cost-effectiveness issue for now), we can consider the general performance of environmental consultation and where the key issues lie for its development.

- Educating and informing the public,

Of all the goals, this seems to be the best attended to, and many processes can be praised for their success in providing information that is clear and thorough. On the other hand, some processes can perhaps be criticised for believing that information provision is all that is required, and that the objective of the consultation is to let people know what is happening without actually seeking real inputs. This is rarely the full extent of the aims of the process.

- Incorporating public values into decision-making,

This is surely the core goal for all democratic processes. As I have said, lay panel approaches might lead to better performance in this regard, but they raise other concerns. At the very least, I would argue for more clarity as to what is up for discussion in a particular process, and whether it sees itself as value articulating or just value interpreting. Beyond this, I would also suggest there would be value in instigating more processes working on the goal of shared ownership and articulation of the values and guiding principles underlying decisions.

- Improving the substantive quality of decisions

This goal considers the success in facilitating information flows upwards and taking proper account of this information. An important element here is allowing input as early as possible, and access to agenda setting should be a key criterion for good consultation (Irwin, 1995: 79). As well as this, the issue of resource imbalances arises. If processes can be influenced by resources (hiring experts, using barristers), then providing resources to communities might be important. Ideally, though, resources just shouldn't be relevant. Flexibility in processes and less rigid procedures are probably desirable.

- Increasing trust in institutions

As I have said, if people have few encounters with policy makers and institutions, then those encounters will have a strong and lasting impact on perceptions. Complaints that arise frequently about allowing free access to processes include the intimidatory nature of formal procedures, the formal nature of consultation documents and submission requirements, and simple things like the need to take several working days off to get involved. None of these would seem too difficult to address. Beyond this, as I have argued, building trust is a long term, circular process, that must be based on building up a case history of good experiences.

- Reducing conflict

There is a tendency to employ consultation in response to controversy, and this makes solving conflict all the more challenging. The most successful experiments in consultation tend to be those dealing with foresight issues, laying down principles before conflict arises. However, consulting on controversial issues will always be necessary, and so ways to deal with this must be developed. Again a gradual process of building trust and rewarding genuine participation is required.

Finally then, I can present a wish list, in no particular order, that might be seen as a tentative set of best practice guidelines based on lessons to date:

- Early access (agenda setting)
- Explication of what is to be discussed, what is on the table
- Clear articulation of values on which decision is being made, and shared ownership of these values
- Cognisance of context and history
- Transparency on procedures and decision making
- Less legalistic procedure, more flexibility and openness on both format and content
- Addressing resource distortions
- Openness to alternative discourses

## **Conclusions**

There is no doubt that there is now pressure on institutions to guide decision making practices towards the well established and widely used rhetoric of democratic participation (Skillington, 1997: 494). This doesn't necessarily require radical reinvention overnight; as Taylor argues it might simply imply a consideration of 'the extent to which the participative structures of the current regulatory regime may be enhanced (Taylor, 1999: 150). At the same time, however, it does require more than a piecemeal effort of occasional consultation experiments with no real root in

institutional responses. The extent to which participants are oriented towards consensus and genuine participation depends on the sense of citizenship built up over time and across institutions and practices (see e.g. Cohen, 1992).

Structures for meaningful participation in Ireland are getting better. Regarding environmental areas, initiatives such as Local Agenda 21, City/County Development Boards and Integrated Area Planning all have great potential. Also, the development of strategies and principles such as regional planning guidelines, the Retail Planning Guidelines, and the National Spatial Strategy, should all contribute to the legitimacy of the basis of decision making.

Consultation has the potential to contribute to better decisions and better democracy, but only when it is allowed to do so. Consultation is an alternative to more technocratic, expert-oriented decision making, and so there is no point in employing consultation methods while trying to defend these approaches. At the very least there should be openness to the value of diversity in approaches. Too many consultation exercises continue to try to keep decision making narrow and technical and to undervalue broader contributions. If this is the value set underlying decision making then consultation has nothing to contribute. Consultation raises expectations and opens up policy making to scrutiny, and the implications of this must be anticipated (see Beck, 2000: 98–101). Consultation will only add value when it itself is valued.

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