

Book Reviews

Stephen Coleman and John Gøtze. *Bowling Together. Online Public Engagement in Policy Deliberation.* Hansard Society, 2001, available at <http://bowlingtogether.net/>

There is a growing recognition in developed democracies that new relationships between citizens and institutions of governance must emerge, if a crisis of democratic legitimacy and accountability is to be averted. With this observation, Coleman and Gøtze open their report, which aims to stimulate the debate about how the Internet might be used to open the policy-making process to greater public involvement. The authors explore the deliberative model of e-democracy, “in which citizens are encouraged to scrutinise, discuss and weigh up competing values and policy options”. The study focuses on five issues that have been neglected in the debate about e-democracy so far. The five chapters of the study are devoted to each of these issues.

Firstly, the authors perceive a need to think through the democratic rationale for online public engagement in policy deliberation, which assessment should include an evaluation of the role of the public in a democracy. The authors link their arguments to wider democratic theory. They conclude that engaging the public, essentially by creating opportunities for mutual learning, is a means of strengthening, and not of weakening the representative relationships. Secondly, the authors see it as vital that institutions of governance, which include elected politicians and policy-making bureaucrats, carefully consider the impact of online public engagement upon their own practices. Proposals for new forms of public engagement, whether online or face-to-face, have to confront various political-institutional, social, cultural and organisational conditions and problems, both with regard to the citizenry and to the political-administrative system. Coleman and Gøtze address several of these problems, when they discuss the objections of politicians and officials with regard to (online) public engagement. Thirdly, the study points out that citizens will require new skills and strategies. According to the authors, “these [skills] are bound to become more sophisticated than those required in the more limited world of ‘analogue politics’”. Fourthly, it is important to think about desired ends in terms of appropriate technologies. Precisely because online public engagement is, first of all, a question of institutional innovation, there is a real danger that the discussion of technology will be neglected. One chapter of the study analyses existing ICTs and offers some recommendations about how they can best be used. Lastly, in order to connect the report to the real world, it includes a brief account of some recent international attempts to engage the public online in deliberative processes.

Coleman & Gøtze’s report is a welcome and adequate account of the need to revitalise the practice of democracy in a deliberative fashion, of possibilities of using new ICTs in public engagement, as well as of the main issues and problems that have to be addressed in this. I shall give a few reflections and comments.

With regard to the role of the citizenry, the authors take a realistic stance when they state that the objective of deliberative exercises is “not to create a permanently deliberative citizenry, but to generate civic discussion around those issues where citizens do have real concerns, knowledge and relevant life experiences”. This argument can be linked to empirical research on modern citizenship. Successful

strategies for (online) public engagement have to appeal to the type of ‘pragmatic’ citizens for whom politics does not lie at the centre of their ‘economy of attention’. These people are only loosely committed to governance processes, but can be mobilised when they perceive their personal good or the public good to be in danger. In a recent Dutch survey, it was found that these ‘pragmatics’ comprise about 42% of the citizenry, besides 20% ‘critical-responsible’ citizens, 22% ‘dutiful-dependent’ citizens, and 16% ‘inactive outsiders’ [1]. In terms of normative theory, one could refer to Schudson’s concept of ‘monitorial citizenship’ [2]. With regard to institutional arrangements, one could consider giving citizens the right to initiate a project of (online) public engagement. Current projects are mostly initiated by the government, but if citizens really are the best judges of which issues pertain to their ‘real concerns, knowledge and relevant experiences’, they should be given more agenda-setting power. The Internet is an excellent instrument for channelling this. The authors rightly indicate that, for the government, the main challenge is that of taking the results of deliberative policy exercises into account in the final political decision-making. This is, first of all, an institutional question that relates to the roles of politicians and civil servants, as well as to routines and procedures in public decision-making. Coleman and Gøtze rightly emphasise that politicians need to interact with the public during the deliberative process. And they add: “In short, there is a need for greater integration between public policy deliberation and political decision-making”. The latter statement needs more consideration. In my own research on ‘interactive policy-making’ in the Netherlands, I concluded that, at the end of the interactive process, i.e. in the transition phase to final political decision-making, this process often tends to relapse into the old institutional patterns. Such a situation asks for special provisions and procedures in the transition phase. For instance, there might be a role to play for the moderator as a democratic intermediary. Coleman and Gøtze emphasise the importance of moderation, primarily in terms of facilitation of the deliberative process: “deliberation requires trusted facilitation”. They specify a number of facilitator tasks and roles (including that of securing that there is feedback to the citizenry on how the results of the deliberative process were used in further decision-making!). In this context, too, I would like to add that more attention has to be paid to the organisational and institutional aspects of the ‘interface’ through which moderators perform their tasks. Moderators do not operate in a vacuum. They have to cooperate with other actors that are involved in the management of online deliberative exercises, such as public officials and (representatives of) social organisations.

In the fourth chapter, the authors discuss appropriate technologies for online engagement. They discuss, amongst other things, the available ‘technologies of connection’, like e-mail, instant messaging and bulletin boards. In addition, they address several key issues that have to be considered about how to make these technologies people-friendly, what facilitator tools and techniques can be used as well as what design principles there are for building virtual communities. This chapter is rather loosely structured, which may be due to the fact that it lacks an explicit conceptualisation of ‘technology’. At first, it seems that the authors take a rather narrow view of technology, namely, solely in terms of built devices. However, the range of topics that are discussed in the chapter, seem to suggest that ‘technology’ includes the social practices to deal with these devices as well.

After reading the report, I see several implications for research and the acquisition of knowledge. Firstly, in view of certain common fundamental institutional aspects, research into projects on digital democracy should be more closely linked to research into projects on ‘analogue’ forms of democratic renewal. The concept of ‘e-democracy’ might even form an obstacle to this, if it is not understood as ‘electronically enhanced democracy’, where digital and analogue forms and strategies complement each other. The more robust forms of online public engagement might be those that are embedded in broader schemes in which digital methods, usage of traditional media and face-to-face encounters

are combined. Secondly, experience has to be acquired of how ‘appropriate technologies’ function in practice and either help or hinder public engagement, community building and mutual learning. More case studies are needed that focus on the way concrete technologies, such as web-based community tools, groupware, filter technologies and moderation software, function in the settings in which they are applied, and how they interact with social, cultural, organisational and institutional factors. For example, do filtering tools and user-rating techniques (always) stimulate mutual learning, or do they give rise to a climate of ‘group think’ in which creativity is impeded? And under which conditions would this occur? Thirdly, there is a need for more design-oriented contributions from the scientific community. There still seems to be a dividing line between, on the one hand, the practitioners discussing concrete e-government solutions, and scientists on e-democracy on the other. Fourthly, in my view, research and design could benefit more from a social-constructionist approach to technology. Earlier, I referred to the conceptualisation of ‘technology’ in Coleman and Gøtze’s report. The social-constructionist approach is common in, for instance, studies of technology in the workplace. If we want to develop our knowledge of how technologies help or hinder public engagement, an approach that focuses on the way social actors (re)construct technologies and their roles of citizenship would be more than helpful. Above all, Coleman and Gøtze’s report stimulates theorists, designers and practitioners to exchange experiences with one another, and the chapter on global case-studies deserves a periodical follow-up.

References

- [1] Commission on the Future of Government Communication, In Service of Democracy, The Netherlands Ministry of the Interior, The Hague, 2001.
- [2] M. Schudson, *The Good Citizen, A History of American Civic Life*, New York: The Free Press, 1998.

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J.E.J. Prins, ed., *E-Government and its Implications for Administrative Law: Regulatory Initiatives in France, Germany, Norway and the United States*, 2002, TMC Asser Press, The Hague.

Electronic government as an expression has been around for almost as long as electronic commerce – ten years or so – but it has not attracted the same legal and legislative attention as its private sector equivalent. Perhaps the ability to use electronic communications with legal effect was thought more urgent for businesses, which may have been more eager to invest in the technology than were governments. Perhaps people considered the solutions devised for commercial users likely to be readily applicable to the public sector.

In any event, governments have been working hard in recent years to catch up with businesses in going electronic. Official web sites abound. E-mail addresses are handed out to civil servants. Ambitious targets are set for the proportion of government-to-citizen transactions to be conducted online. Working groups are formed, information is published, statutes and court decisions are put on the Internet, consultations are held. Progress is made. This is recognized internationally as well, for example through European Union declarations and its eEurope initiative.

If governments have followed businesses to the Internet, they have certainly been slower to answer the important legal questions that such activities raise. Are existing laws a barrier to the use of electronic media? Are there special considerations in practice for public sector transactions? What duty has the State to maintain traditional communications for its citizens who do not want to use computers? While most governments around the world are facing these questions, they have found diverse answers.

Governments are by their nature more subject to national borders than are businesses in the wired world. Nevertheless, the technology is often common to all, and the services their citizens want are similar. How much can they learn from each other's legal responses and reforms? Professor Corien Prins and her team of researchers begin to answer these questions in their new book, *Electronic Government and Administrative Law*. The results are promising, even if general conclusions are few.

They selected four countries – two in the European Union (France and Germany), one outside the EU in Europe (Norway), and one outside Europe and outside the civil law tradition (the United States). Each writer took one country and asked essentially the same questions about its law of e-government as did the others. What is being done on the ground, and what is promised? What barriers have these efforts encountered? What remedies are proposed? In particular, have efforts to remove barriers in civil matters had an impact on administrative law issues? What experiences has each country had with the special problems of “careful communications” (a class that seems to combine considerations of prudence and security)?

Not surprisingly, the different countries were much influenced by their history and traditions. The French contributor found her country impeded by strong resistance to change, despite bold declarations from the (then) Prime Minister. The German author deals at length with the complexity of the federal system, where a striking amount of power is exercised by municipalities as well as at the “senior” levels. Norway, as a unitary state with a small population, comes off as having the simplest solutions to the common problems. The United States is so diverse and its government so fragmented, even at the national level, that it is analyzed through the experience of two federal agencies, not as a whole.

In France, considerable progress has been made in the use of “téléprocédures”, transactions at a distance, especially involving transmission of information. There is no capacity for an electronic order or decree from the State, however. Administrative law – largely judge-made in France through the Conseil d'État – requires that many kinds of decision need to be accompanied by written reasons. This is a challenge to automating such determinations. Administrative law does not overlap with civil law, so recent legislation on electronic signatures and electronic evidence may have little impact on state processes. The author is hopeful that some notions of equivalence will filter through. No rules have been expressly devised for “safe” or “careful” communications, though the decrees on electronic signatures may constitute a start to such rules.

The French are acutely aware of “detrimental discrimination” against those who are less at ease with computers, and are unlikely to go exclusively electronic with individual citizens. An example of mandatory e-filing is given for large businesses. Despite some disappointments in the Conseil d'État, there is no formal administrative law barrier to electronic communications, according to the author, so progress depends more on political will than on law reform.

In Germany, a lot of administrative rules are expressed in media-neutral terms, so they may be fulfilled electronically. Nevertheless there are “several thousand provisions” whose language anticipates the use of paper or hand-written signatures. The variety of governmental authorities make it difficult to know what is being done in practice. The description of German law here is much more specific than for France, no doubt in part because there is more to work with.

Administrative procedure is complex, and traditionally separate from civil law. However, in recent years there has been more willingness to fill gaps in administrative rules with civil concepts. This does

not mean that the German legislation on electronic signatures necessarily eases difficulties for their use by the State. Conversely, where electronic communication is authorized, government does not have to use it. However, if it does use such media, it must do so consistently.

A good deal of law reform is noted, as well as some case law supporting the use of computer-generated faxes. Legislation seems to be following the EU Directive on Electronic Signatures in giving preference to advanced electronic signatures (which the Germans call qualified electronic signatures). A good deal of specific legislation is accompanying the general rules, however. Germans are keenly aware of the need to ensure access to government services for those without computers. This can take the form of public access terminals and assistance in using them. Some rules exist for secure communications, not surprisingly in the country that led in digital signature legislation. The main criterion for use in situations needing security is said to be “durable checkability”.

A long appendix to the book, in German only, contains the proposed text of administrative law reform on e-communication, with section by section commentaries on the source and purpose of the provisions. A second appendix sets out guidelines for Bavarian municipalities for official use of electronic mail. These interesting documents are not described or analyzed in the text.

As mentioned, Norway presents a simpler picture, and its description is the shortest in the book. The government is enthusiastic about providing services electronically, and official action plans promote such ideas. While civil, commercial and administrative law are strictly separate in this country, detailed law reform had been proposed for all three areas of the law in mid-2001. Some barriers are dealt with expressly, such as rules on writing, signatures, and providing copies. Extensive regulation-making power is provided as well. The Norwegian proposals did not make specific provision for “careful communications”, except as covered by potential regulations.

Particularly for Germany and Norway, one felt regret at the delays of publication. A great deal of law reform was poised to occur in late 2001, and the book does not touch any developments after August of that year – its latest event is in fact the introduction of the Norwegian administrative law legislation. The picture may be quite different today.

The United States, like most common law countries, does not have a tradition of a distinct body of administrative law. What is known as administrative law tends to be the law of judicial review of the activities of state agencies exercising delegated power. It makes sense in that context that the American chapter of this book focuses on two such agencies – two important ones with considerable experience in electronic processes. The fragmentation of US. government operations, even at the federal level, make comprehensive coverage a challenge in any reasonable length, which reinforces this approach.

The Inland Revenue Service (IRS) has been receiving tax returns electronically for several years. It has devised its own electronic signature system for this purpose, consisting of a PIN and two “shared secrets”, information not readily available from anyone but the taxpayer. This has been very successful, though without legislative support. However, communications after the initial filing continue to be on paper, because of legal demands for privacy and security that are not met with such informal methods.

The US. Patent and Trademark Office accepts electronic filing of very large numbers of patent and trademark applications, and offers online searching of the millions of existing records. This had been supported by legislation that allows for a digital signature system. Again there seems more success at incoming than at outgoing communications, for security reasons.

After describing these agencies, the author does make some generalizations about US. legal principles. He notes an “intense” interaction between civil and administrative law, though Congress legislates frequently about what government has to do electronically, to the point of creating a body of distinct administrative law. The basic set of rules, however, dates from 1946 – the Administrative Procedure Act

(which the book calls the Public Administration Act) – and does not deal at all with electronic media. American federal agencies are subject to two strong privacy statutes, described in more detail than this topic is given for the other countries. The basic message is that the political will is strong (especially under the Clinton administration), but agencies conform to it through pragmatic means as often as by legislation, and by specific legislation more often than by general law. The federal legislation of 2000 on electronic signatures is noted but not described.

The book closes with a substantial analysis of the findings of the country reports, along with a brief comparison to Dutch practices and law. Given the origin of the book, one had expected more Dutch references. Perhaps those are known to many of the intended readers, who could make comparisons on their own. The book points out, however, that all Dutch civil law rules apply to the public sector as well, so the Netherlands has a considerable advantage in flexibility over its European neighbours described here.

The conclusion lifts out a number of elements of the country descriptions to discuss larger themes. The most notable is the treatment of careful communications, or trustworthiness, a key element of electronic communications. Most of the countries studied did not expressly support this by legislation, though Germany was an exception, and Norway anticipated regulations that could provide some help there. No conclusions are reached on the right way to handle such questions. The other big common themes are electronic signatures and the fate of those who do not want to use computers to deal with government. Little is added to the country reports on these topics.

Overall, the book is an interesting look at the commonality of e-government trends and concerns, even across different approaches to resolving those concerns. E-government is understood as electronic service delivery. More advanced questions such as the impact of networked communications on internal policy making or on public input into government policy, are not addressed. The nature of information itself in the electronic age – as a public resource in itself, as a sometimes disturbingly accessible element of public databases that used to benefit from practical obscurity on paper – is not part of the discussion. Such questions are admittedly speculative at this time, and may be beyond the reach of the kind of administrative law that inspired this book.

Working through the descriptions of administrative law principles is sometimes made more difficult in the book by problems of expression in English. However, one is more generally grateful for having this useful information together in a single volume, in English rather than the three languages of the contributors or four of the subject countries. The introduction seems to promise general principles on questions of legislation, regulation, and security, promises that are not realized. Nonetheless, international sources on achievements in e-government law are rare enough that this one is still most welcome.

(The views in this review are not necessarily those of the Ministry.)

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