3. Consultation as collaboration?

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INTRODUCTION

Can consultation really be collaborative? It may have the potential to be an effective mechanism of collaborative governance insofar as it is empowered – that is, characterized by a degree of decision-making power or, at least, power to directly influence decisions – but this potential is far from realized in policy processes. Not only is there a long road to travel towards ensuring that consultations are not merely a one-way process serving essentially to justify pre-existing interests established by policy elites, but there is even further to go towards entrenching empowered consultation in the formulation and implementation of public policy. Towards the end of realizing the potential of consultation for public policy and collective governance, we identify categories of consultation – their features and their ends – ranging from the disempowered to the empowered. In doing so, we home in on the particular characteristics of empowered consultation that need to be in place in order for its potential as a collaborative mechanism to be achieved. We also make a normative argument for empowered consultation, while clearly articulating the limitations of this particular mechanism.

Ansell and Gash define collaboration as involving the mutual interdependence of actors, who take up a consensus-orientation and engage in collective deliberation, as they work towards joint action (2008). Thus, collaboration involves interdependence, consensus building, shared deliberation, and joint decision-making, all of which constitute a rich ideal. Consultation, as classically defined by Arnstein (1969), is miles away from this ideal. For Arnstein, consultation may involve a range of actors hearing and being heard by decision makers, but it does not necessarily entail influencing the decisions made. There is no necessary empowerment of participants in consultations to affect the substance of the decision in question. Can this gap be bridged conceptually and practically? Should it be bridged?

In this chapter, we invoke Arnstein's ladder metaphor to exemplify the importance of empowerment when considering the potential of consultation

as a kind of collaboration. As opposed to one, we develop two ladders. One is a Ladder of Forms, which is a categorization developed on the basis of a qualitative survey of consultation processes in diverse areas of public policy. This ladder represents an empirical claim, ranking particular kinds of consultation from the disempowered to empowered (e.g. from online surveys, through advisory bodies and parliamentary committees, to participatory budgeting). The second is a Ladder of Ends, which ranks the particular ends of consultation in terms of their normative significance (e.g. from policy education, to policy stability to policy reform and on to policy justice and legitimacy). This ladder embodies a more explicitly normative claim. There are two basic claims of this chapter: (1) consultation is only collaborative insofar as it takes an empowered form; and (2) the greater the normative significance of the ends of consultation, the greater the importance of collaboration. In other words, if the end goal of consultation is the development of just and legitimate policy, then it is of greater importance that the consultation is empowered and thus collaborative. This chapter serves not only in sharpening our understanding of the importance of empowered consultation, but also of highlighting the fundamental limits of this mechanism for collaborative governance. Ultimately, these limits are likely to be overcome only if elites climb both the Ladder of Forms and the Ladder of Ends. Before turning to a discussion of collaboration and consultation, and an analysis of the conditions necessary for empowered consultation, we begin with a brief outline of the concept of empowerment.

EMPOWERMENT

Remarkably, the literature on democratic empowerment is limited. Fung and Wright define empowerment as the ‘expectation that citizens’ participation and deliberation will directly affect public action’ (Fung and Wright 2003: 118–119). More specifically, democratic empowerment refers to the capabilities, capacities, and opportunities of individuals and communities to shape the policies and laws that either bind or affect them. As Johnson has argued, empowerment encompasses the personal skills, social and political resources and networks, and procedural and institutional opportunities necessary to directly influence policy (Johnson 2009, 2011; see also Johnson and Howsam 2018).

Our definition of democratic empowerment is conceptualized in three dimensions: individual and community capacity; intermediary responsiveness; and institutional opportunity. In the individual and community dimension, we conceive empowerment as including agency (i.e. an ability to act according to one’s reasoning or the shared reasoning of one’s community), autonomy (i.e. an ability to act according to one’s considered conception of the good or the shared good of one’s community), political literacy and skills (i.e. an ability

to understand and articulate political ideas and problems, work through issues, advance interests, and resolve conflict), and social capital (i.e. interpersonal networks, based on shared public values and trust, and facilitated by lines of communication). In the intermediary dimension, we conceive empowerment as working through public sphere discourses that influence political parties, civil society organizations, and other political actors seeking to make or change public policies. In the institutional dimension, our focus is on direct empowerment, including opportunities for individuals and communities to participate in inclusive, equitable, transparent, and consequential procedures and institutions, and to induce responsive political decisions. Ultimately, institutional empowerment entails systematic shifts in decision-making power away from existing elite policymakers and towards members of affected publics. In this chapter, we focus on empowerment in terms of institutional opportunities to participate in policy decision-making.

COLLABORATION AND CONSULTATION

Over a generation ago, Wood and Gray called upon scholars and practitioners of collaboration to more adequately develop the meaning of collaboration. For them, a ‘general theory of collaboration’ ought to identify the phenomena that encompass ‘all observable forms and excludes irrelevant issues’ (Wood and Gray 1991: 143). Doing this kind of research and analysis, Keast, Brown and Mandell write, collaboration is distinct from similar activities, such as cooperation and coordination, because of the ‘high intensity’ of participant engagement that strives to create a common understanding and a shared set of goals (Keast, Brown and Mandell 2007: 12, 19). For Thomson, Perry and Miller, collaboration requires participants to establish mutual interdependence and joint action but nonetheless enables them to be autonomous and responsive to their particular communities (Thomson, Perry and Miller 2007).

As a mode of mutual interdependence and collective action for public purposes, Emerson, Nabatchi and Balogh write that collaborative governance refers broadly to ‘the processes and structures of public policy decision-making and management that engage people constructively across the boundaries of public agencies, levels of government, and/or the public, private and civic spheres’ (Emerson, Nabatchi and Balogh 2012: 2). More narrowly, as Ansell and Gash write, collaborative governance refers to the interactions of stakeholders in a collective decision-making process that is ‘formal, consensus-oriented and deliberative’ (Ansell and Gash 2008: 544). Collaboration is also designed to achieve goals that strengthen the normative values of ‘democracy and social learning’, with other goals and strategies co-produced by participants themselves, who share ‘responsibilities and resources’ to execute collectively-determined strategies (Davies and White 2012: 160). In the past,

as Ansell and Gash note, governments, civil society, and private enterprises have often turned to collaborative processes ‘as a last resort’ (Ansell and Gash 2018: 17). More recently, however, such processes are now being taken up ‘as a more proactive policy instrument on a grander scale’ (Ansell and Gash 2018: 17; see also Johnson 2015 and Johnson and Howsam 2018).

Chris Ansell and Alison Gash are pioneers in the field of collaborative governance, so it is important to explore their understanding of the approach in greater detail. One of their relatively early contributions to the field was a meta-analysis of 137 case studies of consultative governance, developing both a stronger definition and deeper understanding of the processes at work (Ansell and Gash 2008). In this work, they describe collaborative governance as a type of ‘governing arrangement’ that is made unique through formal processes that employ consensus and deliberation to reach decisions (Ansell and Gash 2008: 544). While a government agency might ultimately hold the decision-making power, the point of deliberating collectively is to reach consensus among disagreeing interests, or at least ‘discover areas of agreement’ (Ansell and Gash 2008: 547).

For Ansell and Gash, the goal of collaborating on public policy is to ‘transform adversarial relationships into more cooperative ones’ (Ansell and Gash 2008: 545–547). Stakeholders are to have ‘real responsibility for policy outcomes’ if these *fora* allow for direct decision-making, even if those decisions do not bind the government. Moreover, the state collaborates with stakeholders – whether as individuals or as groups – in a multilateral fashion, to enable stakeholders to create dialogue among themselves (Ansell and Gash 2008: 546). The process of collaboration is ‘highly iterative and non-linear’ (Ansell and Gash 2008: 550) with outcomes contingent upon four factors: starting conditions that might either constrain or incentivize participation; ‘facilitative leadership’ that goes about ‘setting and maintaining clear ground rules, building trust, facilitating dialogue, and exploring mutual gains’; the design of the rules and processes for the collaboration itself, including mechanisms that either promote inclusiveness or exclusiveness and the collaborative process itself, which the authors discovered was usually ‘cyclical rather than linear’, suggesting that previous stages impact the potential of future progress towards consensus (Ansell and Gash 2008: 550–558).

Ansell and Gash build on this work to develop an understanding of ‘platforms’ of collaborative governance and, in particular, to develop an appreciation of the rules, procedures, and processes that facilitate public and/or stakeholder input and that create ‘positive feedback effects’ for public policy (Ansell and Gash 2018: 16). These stable yet flexible structures provide the foundations of collaboration, as well as channels for expert insight, but they also allow for local decision-making in policy formulation and implementation. Unlike single collaborative events, these platforms allow collaboration

to become ‘a basic policy instrument’ that creates ‘a distinctive institutional framework for promoting multiple collaborations’ (Ansell and Gash 2018: 20, 22). These collaborations then adapt to changing conditions, ‘become more elaborated’, and ‘create spin-off collaborations’ (Ansell and Gash 2018: 16). Collaborative platforms can thus be empowering because they are ongoing, open to new actors and new methods of interaction, and are designed to bring about consensus or agreement. They also allow local wisdom and knowledge to build upon technical expertise and scientific analyses that would either be beyond the reach of a small community, or might, in a non-collaborative policymaking scenario, result in policy experts imposing a less effective – and less welcome – solution.

Ansell and Gash (2018) offer EPODE as an example. EPODE (*Ensemble Prévenons l’Obésité Des Enfants* which translates to Together Let’s Prevent Childhood Obesity), developed in France, provides a fundamental set of methodologies and marketing techniques that are then tailored to country- and community-specific needs. The expertise, and the growing experience of EPODE, has been employed by over 500 communities in six countries with four different predominant languages. Local authorities initiate the programme rather than having a centralized government determine where the need is greatest. While these local authorities assign a central liaison to interact with the EPODE organization, the model relies on the mobilization of community members to both promote and implement the model (Borys et al. 2012). Not only do these communities tailor EPODE’s strategies to their own unique circumstances; their experiences and experiments strengthen the programme itself by generating new tactics and strategies (Ansell and Gash 2018). This is the dynamism offered by an empowered approach. It is driven by those who are most directly impacted by the decisions, and the model itself evolves based on new inputs from the community.

Collaboration as defined by Ansell and Gash sets a high bar. They appear optimistic that this bar is being reached. As they claim, instead of political stalemates forcing collaboration when all other avenues of political resolution fail, collaboration has evolved into a ‘generic policy instrument’ that is deployed as a matter of course (Ansell and Gash 2018: 29). They claim not only that government actors must strive for consensus through multilateral engagement, but also that they must create an environment that fosters ongoing investment and involvement by non-state actors. While Ansell and Gash tend to overstate their recent empirical claim regarding the prevalence of real collaboration in policy processes by not explicitly acknowledging the ways in which elite actors may create illusions of collaborative and deliberative governance (see for example Johnson 2015, 2011, 2009 and Johnson and Howsam 2018), their normative point remains as forceful as it was more than a decade ago. For Ansell and Gash, ‘collaborative governance is never merely consultative’ because such

mechanisms do not provide ‘two-way flows of communication or multilateral deliberation’ (Ansell and Gash 2008: 546).

Indeed, the gap – canyon, even – between collaboration and consultation is a well-established theme. Sherry Arnstein’s classic definition shows consultation is neither collaborative, nor necessarily empowering (Arnstein 1969). Consultation lands on a ‘middle rung’ of Arnstein’s typology of participation. It is a step above merely informing citizens of government activities and policy, but below the kinds of partnerships that could be described as collaborative and empowered. In her view, government agents and agencies do not strive to gather information to guide decisions. Instead, they only do so to demonstrate that ‘they have gone through the required motions’ (Arnstein 1969: 219). In this sense, consultation has some flexibility in that it can be incorporated into policy processes without having substantive impacts.

This remains the greatest concern with consultative processes: the consulted citizens have no guarantee that ‘their views will be *heeded* by the powerful’ (Arnstein 1969: 217, italics in original). Indeed, government and corporate actors are not bound to act upon the views they hear in consultation processes (Arnstein 1969; Catt and Murphy 2003; Fung 2006; Roberts 2015). The process is often a one-way flow of information that does not foster ongoing participation through dialogue (Ansell and Gash 2008). The consulted rarely participate in the design of the consultation (Arnstein 1969; Ansell and Gash 2008; see e.g. Halseth and Booth 2003). Moreover, neither elite actors nor consultation participants are provided an opportunity to clarify responses (Andriof et al. 2017; Ansell and Gash 2008; Arnstein 1969). Finally, the kind of interactions that might foster participation, for example, bringing competing stakeholders into direct contact with one another to reach a solution, are not encouraged (Andriof et al. 2017; Ansell and Gash 2008).

Arnstein’s ladder is helpful in thinking through the possibility that consultation can be empowered and thus a mechanism of collaborative governance. In order to be collaborative, at a minimum, consultations must avoid activities that constitute a mere ‘window dressing ritual’ (Arnstein 1969: 219). However, it needs pointing out that even more advanced efforts at consultation rarely meet the criteria of collaboration and deliberation, such as inclusion, interdependence, equal contributions to decisions, orientation towards agreement, access to information, exchanging reasons and considerations, and institutional empowerment (Johnson 2015; Johnson and Howsam 2018). Even when elites initiate what they view as a more empowered and deliberative consultation with the intention of creating a ‘synthesis’ of views (see Catt and Murphy 2003), employing formal regulatory processes (see Halseth and Booth 2003) or participatory planning to create more sustainable outcomes (see Cuthill 2001), they still frame the issues and choose the methods by which the consultation will occur. Fung elaborates on Arnstein’s work, presenting consultation as an

activity that occurs on a communication–decision-making continuum, where its lack of ‘investment, knowledge, and commitment required of participants’ places it on the lower end of an ‘intensity’ scale (Fung 2006: 69). He also analyzes who participates and how decisions are linked with public action. He agrees with Arnstein that consultations, such as those that might take place at a public meeting, offer very little assurance to participants: ‘officials commit to no more than receiving the testimony’ under such circumstances and then taking these views under advisement during ‘their own subsequent deliberations’ (Fung 2006: 68).

CRITERIA OF EMPOWERED CONSULTATION

Consultation can be defined as a form of political participation that is initiated from the top-down typically by either a government or corporation. Non-elite actors as individuals, as an aggregate, or as group provide their opinions to state or corporate actors – in other words, to actors with decision-making authority – on a specific policy or issue. There are no guarantees that the opinions of the consulted will be binding on decision-making actors. Again, this is a long way away from practices of collaboration, let alone the ideal of collaborative governance. While there is no hard and fast line that separates disempowered from empowered consultation, we argue that the more certain criteria are present in a form of consultation, the more likely it will be empowered. The more empowered, the more we can expect non-elite actors to participate in ways that influence the formulation and implementation of policy and the more we can say that the consultation between elites and non-elites is collaborative.

There are several criteria for empowered consultation, and chief among these is that such processes are inclusive and equitable. This goes beyond merely inviting all who are impacted by the policy under consideration. It includes ensuring participants are able to attend, which includes, for example, providing child-minding services, transportation and/or financial compensation for the expenses participation incurs. While participating, these actors need to understand the policy problem, options and implications of proposed solutions. This might mean translating background materials into multiple languages, producing materials at appropriate reading levels, and providing expert presenters who can independently describe the situation and answer questions. It might also mean ensuring all participants can voice their thoughts – including those who for cultural or personal reasons shy away from addressing a large audience. Thus, an opportunity to share views and exchange reasons for those views is foundational to empowered consultation. Such a system promotes equity of participation and equal contributions to decisions.

Participants in empowered processes are interdependent and seeking joint action in empowered processes. Their interests may not be identical but

achieving them requires cooperation. If they achieve joint action, the outcome is mutually beneficial. Such processes are consensus or agreement oriented. They are not designed to operate as democratic legislative systems do, with simple majorities, contentious debates and questions, and rhetorical strategies to embarrass opponents. Instead, participants in empowered processes share their perspectives, conclusions, opinions and reasoning to find common ground, reveal shared priorities and goals, and reach a shared understanding. Communication is not unidirectional if a consultation is to be empowering. It must allow participants to present their views, respond to inquiries about those views, clarify, and even alter their positions. All participants must be able to interact with one another directly and contemporaneously, rather than through appointed intermediaries, the news media or a government committee.

Finally, the process of empowered consultation must be consequential by inducing responsive political decisions. For this criterion to be met, the process should in some way be binding on the authority that initiated it, and on the participants. Ideally, it also allows participants to play a role in implementation, ensuring the intentions of the participants are manifested, unintended consequences can be addressed, and eventually the policy can be evaluated. This leads to another important element of consequential consultations: they allow for improvisational agenda setting. That is, the participants can, in some way, raise questions and concerns that the initiators of the process had not anticipated being part of the process. In short, participants can set their own agenda.

In the next section, we employ these criteria to categorize several processes of consultation. In invoking Arnstein's ladder metaphor, we are able to highlight a range of consultation mechanisms that are ordered in terms of their features of empowerment. This exercise serves in highlighting the importance of empowerment when considering the potential of consultation as a kind of collaboration. We develop a Ladder of Forms ranking particular forms of consultation in terms of empowerment and a Ladder of Ends ranking the particular ends of consultation in terms of their normative significance.

LADDER OF FORMS

On the bottom rung of the Ladder of Forms are surveys and polls. Both Arnstein (1969) and Ansell and Gash (2008) cite surveys and polls as an example of the kind of consultative mechanism that is far removed from collaboration. Actors involved in these forms of consultation are not interdependent. Nor are they seeking joint action. This particular form of consultation is driven by elites from the top-down. It is designed to gather public opinions – not to foster consensus or agreement – for purposes established by policy or corporate elites. Moreover, surveys and polls are not directly consequential. Elites may or may not act on their results. They are therefore not empowered.

An example of an online survey that bears no features of empowerment is the Canadian Department of Justice consultation and subsequent analysis regarding prostitution laws in the Criminal Code (Department of Justice 2014). All questions were framed by the Department of Justice. Of only six questions asked in a single round, three called for binary ‘yes/no’ responses. One of the questions simply asked if the respondent was affiliated with an organization. While there were three opportunities to provide open-ended responses, there appears to have been little analysis – or at least little publicly available analysis – of these responses. The seven-page public report offers little actual analysis for the government, relying solely on a keyword search (Department of Justice 2014) for one question. There is little in the report to suggest that the remaining open-ended questions were analyzed.

However, not all online consultation processes are equal. The proliferation and sophistication of online surveys demonstrates attempts to be more inclusive, at least through the problem definition, formulation, and decision-making phases of policymaking. For example, The City of Vancouver has increased the use of its online consultation platform, ‘Talk Vancouver’ since it was introduced 2013, when it conducted 10 such consultations (City of Vancouver n.d.). By 2016, the City was hosting 18 per year (City of Vancouver n.d.). Administered by a private third-party, the platform asks participants to weigh in on a wide range of issues, including infrastructure planning, livability, transportation systems, housing, and the presence of advertising in the city’s visual landscape (City of Vancouver n.d.). For large and controversial projects, the City involves respondents in multiple rounds of online consultation, which suggests a kind of mutual interdependence and commitment to joint action. Starting with ‘guiding principle’ surveys that help define values and priorities, the survey administrators come back to the same pool of respondents for more detailed guidance as implementation nears, providing specific options from which citizens can choose. Respondents then are given the option to receive regular updates on the progress of the policy development after completing a survey.

For example, when the city began planning the relocation of St. Paul’s Hospital – the only hospital in its downtown core – it went through two phases of consultation. It first launched an online survey and in-person open house to ‘identify aspirations and concerns’ (City of Vancouver 2016a: 1). Later in the year, the City returned to the public with two concepts to determine which one more closely adhered to the principles developed in the first phase. In this second phase, the City used online surveys as well as hosted workshops and open houses (City of Vancouver 2016b). While this project saw the integration of the guiding principles integrated into the final policy statement developed by the city (City of Vancouver 2017), the larger, more controversial aspect of the project was ignored.

Thus, the process was disempowering in terms of what participants were allowed to decide and comment on. It was the Ministry of Health, along with St. Paul's Hospital management, through Providence Health Care, that determined the hospital should be moved. Although one elected representative expressed concern over the move itself, public consultations were not designed to question whether the move was necessary or in the best interests of the city and or province; indeed, prior to a provincial election, residents had been assured the hospital would not be moved (CBC News 2016). Although Providence Health Care developed its own 'public outreach and consultation' process 'to share information ... and to gather input' (Providence Health Care 2016), this process was not meaningful to affected communities. In this process, we see that policymakers often make important and controversial decisions prior to consultative processes.

Consultation processes in the form of town-hall or open-house meetings are an improvement over online forms. These types of meetings typically seek input from the general public on complex and controversial policy options. For example, in 2002, the Canadian Nuclear Waste Management Organization (NWMO) launched a consultation process to obtain input that would not only be technically effective in managing nuclear waste but also that would align with the social and environmental priorities of Canadians. As directed by the *Nuclear Fuel Waste Act*, the NWMO became responsible for studying waste management options for Canada's growing stockpile of irradiated nuclear fuel bundles (including on-site storage, centralized storage, and deep geological disposal), proposing to the federal government its preferred option, and implementing the option chosen by government (NWMO 2005). The expressed aim of this process was to develop collaboratively with Canadians an option that would be 'socially acceptable, technically sound, environmentally responsible, and economically feasible' (NWMO 2005: 17). The process was driven from the top down. Designed, funded, and overseen by the NWMO, the process included more than 150 information open-houses and other participatory events organized over four phases. However, the process was iterative and oriented towards the development of an agreement. Moreover, the process was inclusive, equitable, transparent, and involved 'two-way' flows of communication. During each phase, NWMO management and staff focused these events, which they characterized as dialogues, on a key decision related to the long-term waste management and disposal of Canada's nuclear waste. At the end of each phase, the NWMO publicly released a discussion document encapsulating the overall results of the dialogues. The document was then the focus of the next phase of dialogues, which sought validation of the previous decision and direction on the subsequent decision. In 2005, at the end of the fourth phase of the study, the NWMO released its final report and recommendations.

The NWMO's recommendation for 'adaptive phased management' was accepted in 2007 by the federal government. Generally, the consultation process yielded support for the recommendation (Stratos 2005). However, it suffered from many barriers to empowered participation, including insufficient funding and time for groups to develop their positions, important documents translated into only English and French, and the exclusion of important views from the ultimate recommendation (Johnson 2015). Indigenous nations and organizations in particular claimed their views were not given sufficient or even equal weight (Johnson 2015), which led to claims of further disempowerment. In other words, the consequential nature of this consultation process was limited. As the NWMO continues to implement adaptive phased management, its decision-making processes may ultimately revert to a more explicitly elitist model. While having engaged in a collaborative process of developing an approach to site selection, seeking to find a site in an informed, willing host community, articulating expectations and requirements about what it means to be 'informed and willing', and holding regional open houses in prospective host communities (NWMO n.d.), the approach may result in prioritizing the insights of officials within the NWMO and of local politicians and civil servants. These kinds of meeting are a step up a rung from online consultations, but still not bearing key features of empowerment.

National commissions of inquiry in parliamentary democracies are one rung higher on the Ladder of Forms in part due to their capacities for inclusiveness and two-way communication. While each commission has its own mandate, given to it by the government of the day, they all hear testimony and issue findings (Privy Council Office n.d.). Their fact-finding function is often limited by their mandate, as exemplified by the recent Truth and Reconciliation Commission of Canada (TRC). Unlike other reconciliation commissions in other countries, this one had no power to find fault or guilt as it attempted to uncover the truth and tell the stories regarding Canada's residential school system. Further, it could not compel testimony, like other commissions in Canada have. Moreover, it had no formal role to play in the separate process that was designed to compensate survivors (Niezen 2017). While such powers might not align with the goals of empowered collaboration, these limitations demonstrate the flexibilities and prerogatives governments retain when using this instrument of consultation and investigation. This indicates that during the initial setup, the establishment of commissions can be disempowering.

Although somewhat rare – on average only three per decade in Canada – these multi-year processes can be empowering in terms of inclusion. The TRC was distinct in its efforts to create mechanisms for inclusive testimony, as it attempted to elicit testimony regarding abuses of colonialism. It not only accepted spoken testimony in the formal commission setting, it accepted audio, video, photographs, documents and written testimony. Such testimony

could be submitted via an online form, rather than as sworn testimony (see Truth and Reconciliation Commission n.d.). In addition to testifying in front of a large audience and members of the press, the TRC invited participants to testify in a private session (Niezen 2017). This is the kind of inclusiveness that is sensitive to the subject matter being discussed and is an important criterion in circumstances of historical and ongoing oppression and exploitation. Furthermore, participants acted as co-creators of the process. Local Aboriginal ceremonies were incorporated into proceedings, and Elders and traditional healers were present throughout proceedings to aid in the healing process (Truth and Reconciliation Commission 2015). We might consider this a form of cultural inclusivity.

These commissions can provide an opportunity for stakeholders to raise new issues. At the TRC for example, witnesses not only testified to their treatment at residential schools, but also put ‘unresolved claims on the table’, bringing to light their mistreatment and attempted assimilation through ‘Indian day schools, orphanages, schools for the deaf, convents, TB wards and prisons’ (Niezen 2017: 149). And indeed, commissions, once established, can interpret their mandate as they see fit. The TRC did so in offering its eventual 94 Calls to Action that ranged from child care, poverty reduction, jurisdictional and juridical issues, to cultural issues (Truth and Reconciliation Commission 2015).

Although creating an opportunity for innovation and inclusion, however contingent, commissions lack real multilateral deliberation and the capacity to directly initiate joint action. Moreover, such commissions’ findings are not binding on governments, and they have been seen as a means of putting off government action on controversial issues. Their consequentiality, then, is determined in part by the government’s response to them, which of course varies from case to case. In a foreboding sign for the TRC, representatives from Aboriginal Affairs and Northern Development would appear on the first day of hearings at every new location, make a brief statement, and then simply not participate in or be present at the rest of the hearings (Niezen 2017). This suggests a lack of interest, at least on that ministry’s part, under that particular government, in turning the knowledge and experience of participants into policy.

Legislative committees at federal and lower-level governments are a step up the ladder from commissions of inquiry. When a bill has moved to committee, it ideally receives scrutiny that exposes its unintended consequences, negative impacts, and realistic potential benefits. The committees provide the opportunity for citizens, very often represented by civil society actors, to voice concerns about or support for pending legislation. This dynamic can be more inclusive than commissions of inquiry, but there are other institutional and procedural factors at work. While there is an opportunity for participants

to interact directly with legislators, legislators retain all of the power. They choose whom to bring before their committee and what questions to ask. While David Docherty (2005) reminds us that legislative committees can be less partisan and more collegial than whole legislatures, they are hardly oases from the ideological disagreements characteristic of democratic institutions. Indeed, a witness's position on a bill might impact the kind of questions that witness is asked, and consequently impact that participant's experience. While this might seem obvious to even casual observers of politics, it was only recently measured (Johnson, Burns and Porth 2017).

When Canadian Parliamentarians recently took up Bill C-36, new prostitution legislation in response to a Supreme Court decision striking down existing laws, a witness's position on the bill affected the treatment they received. Witnesses at the House of Commons Standing Committee on Justice and Human Rights and at the Senate Standing Committee on Legal and Constitutional Affairs, in 2014, provided their views on the government's proposed legislation. More witnesses were called in favour of the legislation than opposed it (Johnson, Burns and Porth 2017), suggesting a lack of equity in terms of time and diversity of views. More troubling is the finding that witnesses who opposed the bill were more likely to have a disempowering experience. Members of the governing party that supported the bill asked questions of the bill's opponents that were sometimes disrespectful, combative and/or carried a negative tone. The questions were disrespectful in that their content included 'gratuitous or inflammatory language' that dismissed, diminished, or trivialized the experiences of witnesses (Johnson, Burns and Porth 2017: 931). Some questioners were combative; instead of attempting to deepen understanding or reach consensus, these questioners seemed to be driven by a desire to 'highlight disagreement', 'bring out contradictions', confuse a witness or 'to shut [the witness] down' (Johnson, Burns and Porth 2017: 933). Finally, some questions posed to opponents by the government's representatives were negative in tone, with questioners sounding 'irritated, dismissive, or discouraging'. Despite witnesses' stress at having exposed themselves to public embarrassment and participating before hostile members of a legislative committee, participants are not guaranteed that decision makers would act on the advice they had provided.

Advisory mini-publics are similarly ranked on this ladder. The best known mini-publics are Deliberative Polls, which were developed by James Fishkin, a political scientist, in the late-1980s (Tsuruoka 2012). Fishkin's polls use a random sample of citizens as a microcosm of the broader citizenry. Participants meet over the course of one or two days, engage with experts, deliberate among themselves, develop their understanding, and express their views. Participants receive balanced background information, listen to a diver-

sity of expert opinions, deliberate in small, moderated groups, and raise questions and make comments in plenary sessions.

Deliberative Polls have been employed in a number of countries on a variety of issues. Beginning in the United States in 1996, they have continued to grow both in the United States and in a diverse set of other countries, including the United Kingdom, Denmark, Bulgaria, Australia, China and Japan (Fishkin and Farrar 2005). National governments have used them to consult on the monarchy, membership in the European Union, adoption of the euro, reconciliation with Indigenous Peoples, democratic reform, foreign policy, the family, economics and energy (Fishkin and Farrar 2005). They have also been employed by community groups, municipal governments, public utilities and energy corporations (Fishkin and Farrar 2005, Johnson 2015). These events share the features of small-group discussion, plenary sessions and a particular method of facilitation. To support inclusion and encourage multilateral participation, moderators are trained to focus ‘on remaining neutral and not imparting information; encouraging broad participation’ (Fishkin and Farrar 2005: 75). They do not restrict what participants say or how they say it, and do not attempt to develop a shared understanding of a common good (Fishkin and Farrar 2005). Instead, as they encourage participation, they systematically canvass the group to surface the ‘various perspectives and concerns identified in the background materials and represented by individual group members’ (Fishkin and Farrar 2005: 74–75). Thus, multilateral communication and information sharing is given priority over consensus. Information sharing is designed to be inclusive and equitable, at least as far as all members have equal access to resources. In plenary sessions, participants can ask questions of expert panels, and in small groups of ideally no more than eighteen participants, a resource person is available to answer questions of fact. The process is designed so that participants can reflect on what they have learned, and exchange reasons and arguments. Some events are televised to encourage a broader public discussion on the topic, and participants are sometimes given the opportunity to express their views directly to policymakers.

A procedure that is somewhat similar to Deliberative Polls are Citizens’ Initiative Reviews (CIR). In an effort by state legislators to enhance public discussion and understanding of citizens’ initiatives, CIRs were established in Oregon to review statewide ballot measures (House Bill 2895). Passed in 2009, the law requires CIR panels to consist of a sample of 18 to 24 registered Oregonian voters; they meet for several consecutive days to collectively deliberate on the strengths and weaknesses of an initiative. The CIR process, developed on Ned Crosby’s model of a citizen jury (Crosby and Nethercut 2005), differs from other consultative processes in several important ways. The CIR is structured as a formal ‘pro- and con-’ debate. Two teams of petitioners and advocates compete to win the support of panelists, who ultimately articulate

their considered perspectives on the initiative in the Citizens' Statement. But while teams compete, the structure facilitates collaboration among panelists, creating opportunities for the productive expression of reasons for or against the initiative. This has the potential to create lasting and more subtle understanding of the policy options amongst panelists. Panelists deliberate in plenary sessions, during which there are presentations by petitioners, advocates and experts, and opportunities for panelists to ask questions and seek clarifications. They also participate in small 'break out' groups, which enable them to discuss issues in greater depth. Additional plenary sessions follow so that all panelists are able to express and exchange reasons.

Ultimately, the CIR panelists are tasked with producing the Citizens' Statement for the Voters' Pamphlet, which provides voters with pro and con assessments of the specific initiative. This statement comprises a 'pro' and 'con' statement, as well as a consensus statement, if one exists, and it is sent out to all eligible voters. Having completed 12 reviews since 2010 in not only Oregon, but also Arizona, Colorado and Massachusetts, the CIR has been well documented by researchers led by John Gastil and Katherine Knobloch who have carefully collected and organized reams of both quantitative and qualitative data (see Gastil and Knobloch 2010; Knobloch et al. 2012; Johnson, Black and Knobloch 2017).

In all of the above cases, collaboration is disempowered to the extent that their influence in decision-making and policy formulation is limited. Again, elites implementing these consultation mechanisms need not take heed of the opinions of participants. As we move up the ladder, we see a greater role for participants in both policy formulation and implementation, and in their ability to bind the actions of policy actors. We see this larger and more empowered role in participatory budgeting.

Participatory budgeting originated in Brazil in the late 1980s, emerging out of efforts to re-democratize political practices (Novy and Leubolt 2005). In 1988, the Workers' Party came to power in Porto Alegre with, as Graham Smith puts it, 'an explicit pro-poor commitment' (Smith 2009) and initiated participatory budgeting. Their goal was empowered consultation with citizens regarding decisions that most directly affected them, such as funding for schools, roads, water, sewers, health care and social welfare.

Today, participatory budgeting remains a collective effort to set spending priorities and redistribute public resources more equitably within a given community, using procedures and institutions established to encourage empowered participation. Here, citizens not only develop a policy position, but also implement and evaluate their decisions. Although the municipal council retains the legal authority to reject budget proposals, in practice, it has never changed the outputs of participatory budgeting (Novy and Leubolt 2005). While 10 per cent of the budget is technically allocated to popular assemblies (Pateman 2012),

according to Yves Cabannes, ‘100% of the budget is considered participatory, because the Participatory Budget Council (COP [*Conselho do Orçamento Participativo*] in Portuguese), made up of elected delegates, examines and comments on the complete budget (before it is sent to the Municipal Council)’ (Cabannes 2004: 40). Thus, an empowered form of consultation does not need to legally bind legislators to the decisions of participants, but when such bodies have legitimacy and popular support, their ability to influence policy outcomes can exceed their mandated authority.

Brazil’s participatory budgeting is founded on several normative principles similar to those of deliberative and collaborative governance. It is a process and system that strives for inclusion and equality for all who wish to participate in collective decision-making. It supports the principle that all who could be directly affected by collectively binding decisions should have a right to participate in those decision processes. It recalls the ancient principle that citizens should meet in regular public forums, honouring rules such as procedural equality, access to information, and reasoned discourse towards a shared interest or common good (Johnson 2015).

In Canada, the Metro Toronto Housing Corporation and the Toronto Housing Company were inspired by participatory budgeting and decided to implement it in the 1990s to address alienation and disenchantment among residents (Johnson 2015). After seeing the model at work in Porto Alegre, they drew on the ‘best practices’ developed there (TCHC 2003). This model was introduced into the Toronto Community Housing Corporation’s (TCHC) predecessor companies, and then in the early 2000s developed by TCHC staff and residents. Participatory budgeting within social housing communities in Toronto was one of the first experiments of its kind in Canada and the United States (Johnson 2009, 2011, 2015). Indeed, even the initial process was innovative. TCHC staff worked alongside tenants to design methods of direct participation in policy design and implementation. During the height of participatory budgeting within the TCHC, the process included thousands of tenants, allocating between \$7.2 and \$10 million per year (Johnson 2015).

Despite a strong commitment to the principles of participation, the TCHC’s system for resident participation developed a tension between procedural success and substantive shortcomings. The system was meaningful and empowering for residents, granting them regular opportunities to participate in political life of their communities. Their outputs fed directly into decisions authorized and implemented by the TCHC. However, there were troubling limitations that hint at the lack of scope and authority participants might have expected to enjoy. Ultimately, decision-making within the TCHC continued to have a distinctively ‘top-down’ tenor, with senior management in the corporate head office, middle managers in local offices, and residents dispersed among local communities across the city. Instead of residents addressing larger struc-

tural challenges or engaging in critical evaluations of the TCHC, they were limited to addressing issues unique to their own small Community Housing Unit (CHU). They were essentially isolated from residents in other CHUs, with few institutionalized opportunities to engage with each other. Moreover, their deliberations were confined to the distribution of limited funds for highly localized projects (Johnson 2015). Rather than a process of empowering consultation, resident participation within the TCHC appears to have been a tool for management to justify funding some basic maintenance and security projects over others (Johnson 2015). Thus, although empowered in policy development and implementation, and for this reason occupying the highest rung of our Ladder of Forms (Figure 3.1), participatory budgeting remains at a distance from an ideal of collaboration.

Our categorization of real-life procedures geared towards consulting or engaging, even collaborating with, the public is insightful because it exemplifies the conditions necessary for empowered consultation. Only if consultation is empowered does it have the potential to be collaborative. Features of empowered consultation include actors engaged in the consultation processes who are interdependent and seeking joint action; deliberations are consensus or agreement oriented; procedures of deliberation are inclusive, equitable, transparent, and consequential; communication involves multilateral flows of deliberation; and ultimately the views of those who deliberated are '*heeded by the powerful*' (Arnstein 1969: 217, italics in original).

LADDER OF ENDS

This empirical categorization of consultation procedures ties into a normative argument for empowered consultation. This argument holds that the more ethically demanding the goal or ends of the consultation, the more empowered the consultation ought to be. We thus propose a second ladder, this one of ends.

At the lowest rung of this ladder, we find Policy Education, that is, what Arnstein (1969: 217) described as 'non-participation', which is more driven by the goal of persuading. On this rung, government actors attempt to increase public support or legitimacy of a project rather than truly listening to what community members might say about their needs, interests and wants. At best, the goal is the imposition of policy from government actors who feel they are better equipped to determine a population's needs. At worst, the end is manipulation of participants and the larger public. Government actors and the processes they employ in Policy Education take place in the domain of public relations, rather than in any arena of discovery, development, or debate. These very often take place after an unpopular policy has been decided upon. For example, federal Republican Congress members held town halls to respond to angry constituents after passing a law that weakened provisions of the Affordable Care Act, often

Empowered Forms of Consultation

Disempowered Forms of Consultation

Figure 3.1 Ladder of forms

called Obamacare (see for example Fortin and Victor 2017). While angry community members might voice their outrage and vent some steam, the role of the government actor is more advocate – both for himself or herself and the policy.

Next up the ladder is the End of Policy Stability. Here, there is perhaps a greater desire for dialogue, but similar to policy education, the goal is to maintain a policy decision that has already been reached but to appear to still be considering options. By involving community members and stakeholders – through surveys and town halls meetings, for example – the goal is not to change policy *outcomes*, but to demonstrate *outputs* such as distributing numerous brochures, achieving high levels of attendance at meetings, and hitting the target number

of survey respondents. Arnstein (1969) points out two consequences of a Policy Stability goal: participants may not know all their options, and they remain powerless to choose even among the options presented to them. This is the political domain, where the performance of listening is more important than acts of learning and collaborating in collective decisions. We see this End most clearly illustrated above in the Canadian government's approach to prostitution law. It is hard to see how a brief survey that was minimally analyzed was designed with any intention other than political theatre.

With Policy Improvement, we move higher up this ladder. The End of Policy Improvement involves a genuine, if not necessarily successful, attempt to learn about stakeholder opinion. Ideally, government actors are also striving, from a place of humility, to expand their understanding of a community's needs and interests. In this epistemic domain, empowered consultation might be a genuine goal of those conducting the consultation. There might be an effort to ensure well-informed, equitable participation for all stakeholders. Such endeavours are also characterized by other activities we see at the higher end of the Ladder of Forms: multilateral discussions, and a preference for consensus and collaboration over combativeness. While this goal still runs the risk of stakeholders' views being interpreted through more powerful actors' lenses, there is the potential for governments to be held accountable. As we see in the example of the TRC, the Commission made efforts to ensure it could gather as much information as possible, and then attempted to convert that information into a significant programme of change via its Calls to Action. Both the process and the outcome were potentially empowering, in that knowledge was directly produced from participants' efforts, and those participants now have policy outcomes that they can use to hold the government to account.

Finally, at the highest rung of the Ladder of Ends (Figure 3.2), we have the goal of Policy Justice and Legitimacy. This is the ethical domain where the goals go beyond merely considering one policy or issue; the process itself is designed to achieve a larger social goal. The process of empowered consultation is supposed to *lead to* empowerment. Thus, the policy outcome, while important, takes a secondary role to larger ethical changes of redistribution of power. We see this in participatory budgeting in Brazil. The goal is not merely to allow citizens to determine their budget priorities. It is to create a system whereby elected officials and bureaucrats are responsive to the will and needs of a larger, formerly disempowered group of stakeholders.

CONCLUSION

When governments and corporations initiate public consultation, both they and their audiences must ask whether the consultation processes – its forms – are empowering. The Ladder of Forms provides indicators of when a consultation

More ethically demanding policy goals

Less ethically demanding policy goals

Figure 3.2 Ladder of ends

might be more or less empowering to participants. The methods of inclusiveness and equitability changes depending on the stakeholders and issue but is fundamentally more complex than simply identifying those with an interest. Instead, these criteria are met when we are confident that stakeholders are participating in a free and fully-informed way. Interdependence of participants, along with a desire to collaborate towards consensus are also required, but they rely on

transparent and multilateral methods of engagement to achieve a legitimate and meaningful conclusion. Finally, initiators of consultative processes must start with a two-way communication flow that allows participants to clarify and modify their positions; such processes must end with action by the initiators based on the decisions the participants have reached. Indeed, it can hardly be claimed that any consultation is empowering if the leaders who initiated it have no commitment to acting on the participants' findings.

We have not presented an exhaustive list of forms of consultation. Instead, we have shown examples that illuminate different facets of consultation, showing an imperfect, contingent and complex set of processes. We expect and welcome further investigation into a seemingly increasing number of forms of dialogue between powerful institutions and the people they affect. What we hope to have provided is a method by which to tie forms to ends. And to have demonstrated that we must not only examine how consultation is occurring, but what initiators hope to achieve, and what we should demand of consultations.

The forms of consultation thus hint at the ends the initiator of the consultation seeks. Very often, consultation by powerful actors is merely an attempt to build public support for policy that has already been developed. And while such efforts occur on a variety of stages, when the goal is to persuade, perform, or allow angry constituents to 'vent', we can recognize that both the means and ends are disempowering. But consultations can have the goal of empowering participants within the consultation process to achieve a substantial and consequential outcome. Again, the form of consultation tells us much about if the initiators intend to achieve such a goal. Finally, we see that some governments set as an end the empowerment of their people, not for one-time consultative processes, but as a political goal in and of itself. This suggests larger ethical goals on the part of the initiator.

Finally, if the initiator truly desires a consultative process that will guide policy decisions, the initiator must choose forms of consultation that will indeed be empowering. Thus, a more ambitious goal demands a greater role for stakeholders from the creation and adaptation of the consultation process, all the way through to implementation and evaluation of their policies. It is our hope that by clarifying and defining empowering consultation that leads to collaborative governance, we have provided senior leaders in government and industry with a clearer pathway to empowered consultation that strives for meaningful consultation. We also hope to have provided analysts and activists with a toolkit by which to assess consultations, to not only ask the right questions about the ends the initiator hopes to achieve, but by showing which methods are both likely to lead to empowered consultation, and which methods might be indicative of disingenuous efforts by initiators. When the latter occurs, both those outside and inside the consultation process must consider methods by which to empower themselves.