Stepping carefully between powerful users: An incremental approach to system development in political mine fields

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Abstract

The development of e-Government projects often takes place in contested spaces, with a large numbers of stakeholders and in the tensions between conflicting, yet important values of the community. ICT-systems sometimes intervene in these conflicts because to distribute information in new ways may potentially mean to distribute power in new ways. In such cases we may not expect that a formally explicated method of user participation will ease the tensions. The steps taken to be able to introduce a new system may then have to be incremental and ad hoc-strategic rather than following a rational procedure. These claims will basically be underpinned empirically, by reference to an investigation of a Norwegian trial project known as the Electronic Mail Journal.

Introduction

Nation states are big, powerful institutions. They allocate great powers, such as the right to kill, and crucial values, such as the liberal rights of its citizens and their rights to be different from each others and to disagree. The development of e-Government projects often takes place in contested spaces, with a large numbers of stakeholders and in the tensions between conflicting, yet important values of the community. Some e-Government projects will intervene in these conflicts and tensions. The general points of this paper is, first, that ICT-systems sometimes will intervene in these conflicts precisely because ICT is a technology to *move information*. Information is knowledge, when it is understood by humans, and knowledge is power (more on this further down). Distributing information in new ways means, potentially, to distribute what Foucault termed power/knowledge (Foucault 1980) in new ways, and that often meets resistance.

The second general point concerns user participation, in cases where the "users" include many user groups (internal as well as external users), and where many of these user groups are also stakeholders. In such cases, and especially where ICT distribute power/knowledge, we can not expect that a formally explicated method of user participation will ease the tensions. Conflicts are sometimes objective, and social engineering will not solve them. The steps taken to be able to introduce a new system may then have to be incremental and *ad hoc*-strategic rather than following a rational procedure.

This paper will present the development of an e-Government service that exists in a contested space of various stakeholders and interests. The case in question is a trial project to let the general public have web-access to the mail journals of the central Norwegian state

administration. The system is called the *Electronic Mail Journal* (subsequently the "EMJ").[3] The contested stakes of the EMJ-project, in short, are these: The EMJ is explicitly made to promote an open and accessible state administration. This is broadly accepted as an important side of all democracies. Against this value of openness stands the need of any administration not to be unduly disturbed in their work. A critical press – or a scandal oriented one – with too much access to works in progress may hamper necessary preparation of cases and due processes. The need for indisturbance may be of both legitimate and illegitimate kinds, and there is a large gray zone between legitimate peace of work and illegitimate concealments, where the press and various kinds of governmental bodies will draw the boundaries between them quite differently.

Against the value of openness also stands the obligation of the state to safeguard the legal rights and privacy of the individual. The state is obliged to keep some of the information it collects about individuals away from the public eyes.

Trapped between these values, the establishment of an EMJ-service has succeeded (so far) due to the following reasons:

- The system has been developed "bottom up", by small and politically insignificant actors.
- The system was initially developed with very few users (end users as well as internal users). This limited the numbers of stakeholders, and made the system less dangerous.
- Numbers of users (internal as well as external) have gradually increased, through a series of small and seemingly "insignificant" steps.

EMJ has been developed incrementally, but only partly by an explicit strategy to do it incrementally. To a large degree the proponents of the system have done what they can to develop the system, leading them by necessity rather than by strategy to take one step at the time.

Information and communication technology works by moving and changing information. Introducing it where it was not before is seldom a mere rationalization of the previous flow of information. It is a *change* in the flow of information. It is the making of new knowledge by the reorganization of (possibly the "same") bits of information. Thus when ICT moves or reorganize information it possibly change power relations. This may make the introduction of it dangerous to those liable to loose power, and it may make *non-communication – not* to speak or make public a given item – preferable to some, because non-communication can mean the preservation of differences that are also differences of power.

The following story about the Electronic Mail Journal exemplify this.[4]

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[3] A mail journal is a list of the officially recorded incoming an outgoing letters to a given governmental body (Note: The word "electronic" does not refer to the nature of the mail, as in "E-mail". The Electronic Mail Journal is an "electronic" list (a database) of all kinds of letters, including old fashioned letters, faxes and formal E-mails). The journal contains the title of the letter, its date and the receiver and sender of the letter, and some technical data (notably the subject number, linking relevant documents together).

[4] This paper is based upon an empirical investigation of the EMJ-case, published in a lengthy report in Norwegian (Risan 2004). I have read all relevant and available documents in the case and interviewed central actors. I have learned to use the EMJ by having "trial access" to the service. Due to this trial access I also have been able to use the EMJ-service to search for documents concerning the EMJ, and thus to have a very good insight in where the relevant documents are, and to whom they have been sent. In the following I will not refer to the documents that supports my claims, as this would fill this short English paper with Norwegian footnotes (except when I refer to a quote that is not mentioned in the report). The interested reader is referred to the report.

The Actors of the EMJ-process and their Stakes

Here is a list of the major institutions and stakeholders in the EMJ-process.

1. **The Ministry of Modernization.** Owns the EMJ-project. As owners they are formally responsible for the fate of the EMJ-project. They support the system both principally and in practice, but have also acted in ways that strongly indicate a resistance to the project. The Ministry have to be an mediator between external actors of different opinions. In addition, there are probably both supporters and critics of the EMJ within the Ministry, but it has not been possible to get anyone to speak about these internal differences. Their effects can only be observed in ambivalent actions, an ambivalence that has resulted in the very long trial period.
2. **The Central Information Service ("SI", now part of "Statskonsult")**. The daily maintainer of EMJ. They have been a directorate placed under The Ministry of Modernization during most of the process (recently privatized as a state owned company), and have little formal power. They have always been enthusiastic promoters of EMJ, and have seen it as their cause to "effectuate the nice words about openness and democracy that the Ministry talked so much about", as one SI-person working with EMJ expressed it.
3. **The Press and its organizations**. Enthusiastic supporters of a system that they see as a most effective instrument to promote an open state and to ensure good conditions for a critical and informed journalism.
4. **The Data Inspectorate**. A governmental body with quite broad authorities concerning personal privacy. Fears the possibility that EMJ mat be used in order to systematically collect personal information, notably personal contact with the state administration. They fear that if people starts to believe (rightly or not) that their correspondence with governmental bodies may be used in commercial or political ways, they may not want to make otherwise necessary contact with governmental bodies.
5. **The Ministry of Finance and The Office of the Prime Minister**. The purpose of the EMJ is to make the inner workings of the state administration more available to the public. However, several institutions and people have been worried about the possibility that EMJ can also be used to produce information about documents that are (legitimately) exempted from public disclosure. This is a possibility because the search engine of the EMJ makes cross-departmental/ministerial searches possible, thus enabling the coupling together of information that isolated is meaningless and/or harmless. Many actors fear this possibility. The Ministry of Finance and The Office of the Prime Minister is only the most explicit advocates of a careful line in relation to possibilities of leakages.
6. **The Minister of Justice currently in office**. In June 2005 the Minister of Justice proposed a new *Freedom of Information Act*. During the last 6 years, defenders of EMJ have worked in the committee that has written the proposal. In the proposal, EPJ is at last legally authorized, and the law is likely to be approved by the Parliament.

The institutions in point 4 and 5 are both critical to the EMJ-project, but none of them explicitly rejects the entire project. They just want some limitations and some assurances against what they see as possible misuse. Moreover, their skepticisms share one factor: Both The Data Inspectorate and The Ministry of Finance/The Office of the Prime Minister want to secure "privacies", respectively the privacy of individuals, and the privacy of certain inner workings of the State administration. They want to achieve this "privacy" by putting limits on the flow of information. That is, they want to preserve and establish certain kinds of non-communications, certain kinds of "taboos". Some things are better not said, not

communicated. I'll return to the politics of non-communication further down. First I need to present, in a very brief outline, the story of the Electronic mail Journal.

The story of EMJ

Just to give an idea of how EMJ has been developed, here is a list of the major events in its history.

1990: A temporary Norwegian governmental body – The "information committee" of the Government in office – takes the initiative to develop an Electronic Mail Journal.

1993: The first version of EMJ is launched, with five ministries/ departments delivering their mail journals to the system, and with five newspaper offices as end users. The usability is awkward and in need for serious rethinking.

1995: A Web based version is launched. EMJ has hit the "desktop" of Windows 95 and Mac. The number of end users and content providers are increased. The end users express their great satisfaction with it.

1995 and onwards: New users (eagerly waiting to get access, lined up in a queue) and content providers are gradually included.

1999: The owner (the Ministry of Modernization) takes an initiative to consider the possibility of unrestricted public access. The externally produced report recommends such public access. However no action is taken, except for the continued gradual increase in number of users and providers.

2002: The Ministry of Modernization (MOD) slowly (and tacitly) acts in a way that suggests that they try to demolish the project. The daily maintainer (SI, now Statskonsult) arranges a broad meeting where the owner get to meet the users (the press), and is forced to explicate their plans. The press writes about the coming "scandal". One week later the political leadership of the Ministry promises the permanent continuation of the EMJ-project.

2003, winter: The Ministry of Modernization publishes a report that outlines the permanent, public EMJ. Some restrictions are suggested implemented, to preserve personal and ministerial privacy.

2003, spring: Statskonsult produces a requirements specification for the permanent service. The plan is to have a permanent service ready by the end of the year. The owner of the project receives this document, but does nothing but prolonging the trial project through 2004.

2004, spring: A bureaucrat at the Ministry of Modernization let it shine through to me, in a phone call, that the requirements specification is not likely to be used, but no explicit reason is given, and no letter (public or exempted from disclosure) exists that describes the reason for this.

2005, spring: The Minister of Justice proposed the new *Freedom of Information Act.* EPJ is about to get its legal authorization. All Ministries and central state departments will *have* to deliver their mail journals to the EMJ.

There are many delays in this story. There are steps leading in the direction of a new service and steps leading away from it, sometimes taken by the same institution (notably the Ministry of Modernization). I cannot explicitly discuss all of them, but I will make some general sense

of them by giving an outline of what I think is the three major arguments and positions in the EMJ-case.

The major positions in the EMJ-case

Openness. All the involved parts of the EMJ-process agree on the following: An open state administration, where the press as well as the public in general have access to as much as possible of the inner workings of the administration is seen as a democratic good. No one questions this explicitly. Furthermore, no one questions that EMJ is a truly helpful tool in achieving a more open state. This gives the EMJ-project an unquestionable strong position, used for what it is worth by its supporters and acknowledged by its critics. In line with this argument, it is also argued with authority that a future EMJ must be open to the general public, not only to the press. The "information privilege"[5] of the press in the current institutionalized trial version cannot be upheld.

Personal privacy. Since the 1999-report, this has been the most controversial theme, at least the argument most explicitly discussed. Personal privacy has a quite strong position in Norway, much due to the work and the strong position of *The Data Inspectorate*. Ideologically, all actors in the EMJ-process recognize the value of a strong protection of personal privacy. In practice most of the actors also support the Data Inspectorate in their cautious line of reasoning. Notably, the departmental 2003-committee followed this line, repeating the conclusions made in the 1999-report, made by the external lawyers and based on the arguments of the Data Inspectorate.

The press organizations, however, strongly rejected this cautiousness. They argued that the measures to protect personal privacy would become a great hindrance to critical journalism (because the suggested protection of personal privacy will take the form of tagging and making invisible of personal names, including the names of public persons). Moreover, they claimed that the feared misuse was not actually possible to do. Thus, the measures taken were not only harmful, but unnecessary. Their position where registered but not taken into account.

Ministerial non-communication. I use this term to cover both legitimate concealment of information and more or less legitimate secrecy. Most documents and actors in the EMJ-process recognize the importance of legitimate concealment, also the press. However, the ways in which different kinds of concealment is talked about in the EMJ-case documents is different from the ways in which openness and personal privacy is talked about. Both these two values stand on moral high ground. They are normatively celebrated. Not so with concealment, not the legitimate one, and certainly not the informal one. Non-communication is barely mentioned, even if always recognized, and very seldom *more* than barely mentioned.

When reading the documents of the EMJ-case, and when talking to people in the administration, I have often been struck by a "sense" or "feeling" of the importance of concealment rather than confronted by explicit knowledge of its importance.

There have been many turns and many delays in the history of EMJ. They are mostly undocumented. That is, there exist no explicit and publicly available document to explain events like the silent attempt by the Ministry of Modernization to close down the EMJ-service in 2002. Obviously, something that is not documented and written down has been going on. I have reasons to believe that some of this "invisible" activity involves strategic maneuvers by

5This phrase is used in several documents, see (Arbeids- og administrasjonsdepartementet 2003).

EMJ-skeptics, taken in order to preserve non-communication. The following case provides us with a glimpse of such strategic, non-explicit maneuvers.

The Ministry of Finance and the Office of the Prime Minister are still (as the only ministries) not taking part in the EMJ. The explicit reason for this is a known leakage through the EMJ of sensitive information. The case runs as follows.

"Governmental notices" are political documents made by the ruling party/parties, often circulated between The Ministry of Finance and the Office of the Prime Minister, in the making of the next year budget. They are widely acknowledged as exempted from public disclosure. The political opposition has no rights to know them, not even by their title. Some years ago such a title, or some of the title, was leaked through the EMJ. It was possible to trace the title of one such document, because it, apparently, had reappeared in another non-secret document. The electronic possibility to link series of documents across departments and ministries through their subject numbers made this leakage possible.

The Ministry of Finance and the Office of the Prime Minister will not take part in it before they are assured that cases like the one mentioned above will not – and *cannot* – recur.

Now, as part of my investigation into the EMJ case I conducted a quantitative survey of the possibility to systematically use the service to produce "personal profiles" about individuals (in ways that the Data Inspectorate fears). I tested the presence in the EPJ-base of 1768 accidental persons and got some strong indications. Only 41 persons had one entry or more in the base, and I interpreted our findings to include only 4 persons with entries that possibly could be used to build person profiles. I concluded that it does seem very unlikely that these few occurrences (0.23%) will legitimate any systematic attempts to build person profiles (Risan 2004).

In April 2005 I was invited by Statskonsult to present these results, at a one-day conference where many of the involved parties of the EMJ-project were present. One person persistently and fiercely questioned the validity of my quantitative investigation of the (im-)possibility of making "person profiles". This person was not – as one might perhaps have expected – the person from the The Data Inspectorate, but the archive leader of the Ministry of Finance, the Ministry most concerned about protecting its own non-communication. This person also sat in the 2003-committee that suggested the protective measures to ensure personal privacy.

Can it be the case that the "politically correct" argument to protect personal privacy is being used to promote the case of ministerial non-communication? This may at least be a *possible* strategy. The proposed measures to protect privacy can probably not be implemented at the already available (10 years old) database. This database may have to be closed down, in the name of personal privacy, something that will also protect Ministerial privacy, including an assurance that possible but not discovered links to reconstruct titles of Government-notices will also be removed.

One may question the scientific validity of the case here presented. After all, I am speculating about hidden intentions of a single person. I may be wrong about it. This is true, but I want to defend the necessity of speculating about silent strategies. There is little doubt that strategies of this kind do exist, and that they are at work in cases like the EMJ-trial project. The promoters of personal privacy and the promoters of ministerial privacy have good reasons to join their forces. But such strategic alliances are hard to study explicitly, because people tend to avoid talking to inquiring social scientists about such strategies. (The person from the Ministry of Finance has denied to be interviewed by me). Yet, alliances and strategies of such kind do undoubtedly exist, and their very existence is important to the argument presented in this paper. This leads me to the concluding remarks.

Conclusion

The EMJ service is a tool to give the press and the public in general *real* and *substantial* insight into the workings of the state administration. The service is not a top-down, politically driven and politically correct celebration of openness and democracy, like the Email address "president@whitehouse.gov", just to take a small but well known example. It is not a project that any politician has ever used in order to win votes or promote him- or herself as a promoter of democracy, not to say "E-democracy".

This links up to the generalization I initially made about the relation between power, knowledge and information- and communication technology. The EMJ database and its search engine is a machine to distribute knowledge and power in new ways. That makes it dangerous to some people and some places.

The party to lose control of knowledge (and thereby to lose power) by the introduction of the EMJ is the central state administration, notably the Ministries. In the last case I presented, it is a representative for the Ministry of Finance, a powerful institution in Norway, who, seemingly, acts strategically to preserve control of knowledge. This ministry is under pressure to denounce this power for the sake of openness. The pressure comes from three sides: "bottom up" from Statskonsult (formerly SI), who has worked enthusiastically and slowly to build up the EMJ-service during the last 12 years, "externally" from the press, who has lobbied and used its media power to support Statskonsult, and more recently, "top down" from the current political leadership, notably the current minister of Justice.

I am quite certain that it has become possible to put pressure on old, powerful institutions like the Ministry of Finance and the Office of the Prime Minister because the EMJ-project has been driven "bottom up", by less powerful institutions, slowly and through a series of small steps and alliances.

As Følstad is discussing elsewhere in this collection, user involvement may be a device in order to increase user acceptance of new solutions (Følstad 2005). In the EMJ-process the main challenge has been to achieve the acceptance of the internal users, the content providers of the service. These users have been involved, and their involvement has been of vital importance to the project. Mostly this user involvement has taken the form of bilateral negotiations between Statskonsult and the potential content providers. Statskonsult has been in contact with the archive leader of a given governmental body. When, as often has been the case, the archive leader has been sympathetic to EMJ, this person has pushed the service internally in her organization, and EMJ has won another content provider.

However, user involvement does not necessarily minimize resistance to a new system, and we should not think of this involvement as a technocratic means to speed up user acceptance. The Ministry of Finance (and other hesitating actors) have been highly involved future users of EMJ, albeit not through formalized procedures of user involvement. Some of the major obstacles of the EMJ-service are *due to this involvement*. This, however, is not a problem that could have been avoided. The Ministry of Finance has good reasons – as they see it – for not wanting certain kinds of openness. The press disagree. They accuse the Ministry for protecting information that should be public. Who is right? Could a formalized procedure of user involvement – applied by an external change consultant – settled this question rationally, or earlier in the process? I doubt it. It may even have resulted in someone in the right position to call the whole project off in an early phase of it. Conflicts are often not solved rationally. When the Ministry of Finance (and other hesitating actors) will accept the EMJ – as they may have to do when it becomes legally compulsory – it may not be because they have rationally bought the *content* of an argument. There may be no rationally achievable synthesis between two values (such as democratic openness versus more and less legitimate concealment of due

processes). It may be that the Ministry of Finance keeps on having good reasons for not wanting certain kinds of openness. Thus it may be that the Ministry becomes forced to acceptance of the EMJ by a constellation of actors that slowly and tactically have built up a *position* from where to enforce this change, despite the resistance. Power/knowledge is context dependent, and sometimes the *con*-text is more important than the text.

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