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Civil Society Participation and Deliberative Democracy in the European Union

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JENS STEFFEK, MAR 21 2014

For more than two decades, the legitimacy of the European Union (EU) has been increasingly questioned – by academics, but also in the mass media. Many critics lament a democratic deficit of the Union, often depicted as an unaccountable technocratic empire that disempowers parliaments and patronizes citizens. In the course of this debate, scholars of political science have suggested a good number of measures to democratize the Union. Among them, proposals for rendering the political process of the EU more deliberative and participatory stick out. In fact, the conception of ‘deliberative democracy’ has become a prime point of reference in academic thinking about how to democratize the EU, and also global governance.

Although there is no uncontroversial textbook definition of ‘deliberative democracy’, conceptions converge on the importance of communicative processes of opinion and will-formation in which participants seek to convince each other by giving reasons for proposals, and are willing to revise their own opinion in the light of reasons given by others (Chambers 2003, 108-9). The popularity of deliberative democracy in the particular context of European governance is not an accident. First, advocates of the European integration project always highlighted the epistemic quality, problem-solving capacity and public interest orientation of the regulatory decisions produced at the European level. The quality of regulatory output depends on the quality of the procedures that generate it, and this is where deliberation comes in. Second, in practice it is obviously much easier to improve the deliberative quality of existing procedures than to re-design the entire institutional architecture of the Union. Especially for friendly critics of the EU, a model of deliberative democracy with its focus on procedures and quality of decisions is thus attractive.

An early framing in use was ‘deliberative supranationalism’, which was partly a diagnosis of how the EU worked and partly a strategy of improvement (Joerges/Neyer 1997). The ideal was, in a few words, to foster expert deliberation in committees to enhance the quality of regulatory decisions. Such proposals were criticized mainly for two reasons: the lack of citizen participation in such working groups; and the lack of parliamentary scrutiny and public accountability. Note that the critics did not need to go beyond the paradigm of deliberative democracy to formulate such criticism. Paternalism looms large when deliberative procedures involve only members of a functional elite shielded from public scrutiny. To political theorists, it did not seem plausible why functional experts should take exactly those considerations into account that matter most to citizens. And decision-making procedures that take place in cloistered bodies remain disconnected from the wider public, even if they are perfectly deliberative.

The participation by civil society actors in international governance has often been promoted as a potential cure for both these ills, but still linked to the paradigm of deliberative democracy (Bexell et al. 2010; Omelicheva 2009). On the one hand, civil society organizations (CSOs) are supposed to bring citizens’ points of view into transnational deliberations among experts and government representatives. In addition, it is expected that opening-up deliberations to civil society actors will enhance public awareness of the issues at stake in European governance and also create alternative political options and points of view. We can conceptualize civil society actors metaphorically as a form of ‘transmission belt’ that connects citizens to the remote venues of international and European governance; with lateral ramifications that point to the public sphere surrounding the governance institutions (Steffek/Nanz 2008: 9). The promise of participation in deliberative procedures is hence twofold: well-informed decisions and enhanced public scrutiny.

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Let us turn to the realities of participation: if we look at current political practice, we can see that civil society participation is in fact on the rise in governance beyond the nation-state. First, there is a remarkable discursive shift towards an appreciation of participatory governance in the self-legitimation strategies of these institutions. There is good evidence that participatory policy making is becoming an emergent norm of international governance, in the sense of a growing expectation that international organizations and the EU, once widely shielded from public scrutiny, have a duty to liaise with civil society groups and also with citizens more directly (Reimann 2006; Saurugger 2010). This discursive shift is, second, not merely rhetorical. It is accompanied by a proliferation of consultative practices that, in fact, bring more representatives of (organized) civil society into international governance. This is particularly true for the United Nations system, but also for the World Trade Organization, the World Bank and many other global and regional organizations (Tallberg et al. 2013).

The general trend towards more participatory international governance is also perfectly observable in the European Union (Heidbreder 2012). At the time of writing, about 6,500 organizations and individual lobbyists had signed with the 'Transparency Register' of the European Union but these figures include freelance consultants, law firms, universities and municipalities. According to more scrupulous estimates, some 3,700 NGOs and interest groups are active in Brussels (Wonka et al. 2010). Many of them, however, promote industry interests rather than representing citizen concerns. We should also stress that, especially for the European Commission, consultative procedures have become an important element in its self-legitimation strategy. The reasons are clear: unlike the European Parliament, the Commission cannot claim any direct electoral legitimacy; and unlike the Council it cannot point to a chain of representative democratic delegation from national parliaments. The Commission therefore strives to appear as a competent and impartial manager of common European concerns, a 'guardian of the community interest' that takes all relevant societal interests into account. The 2001 'White Paper on European Governance' and the 2002 'General Principles and Minimum Standards for the Consultation of Interested Parties' testify to the emphasis that the Commission places on public participation and consultation.

The Expectation – Practice Gap

As outlined in the first section, expectations are often high with regard to the legitimating effects of civil society participation in European governance. These high expectations are not only held by academics but also by representatives of at least some European institutions, in particular the Commission. To assess if, or to what extent, actual practices of civil society participation have contributed to a deliberative-democratic legitimacy of European governance is not an easy task and makes a combination of methods necessary, not least because there is not one single presumably beneficial effect of participation but several (Kohler-Koch/Quittkat 2013). In line with the two dimensions of the transmission belt model briefly sketched above, we can expect a number of advantages. The first set pertains to the internal dimension of governance, that is, the deliberative quality of the policy-making processes. We would also expect effects in the external dimensions, that is, the ability of citizens to control governance, and in their knowledge about the European political issues at stake and the options for decision. None of these expected effects are easy to measure, especially when we seek to take into account important variation across the vast territory that EU governance has come to cover. Empirical studies are often relying on proxies for the sake of feasibility. Let us scrutinize the evidence that empirical studies on these phenomena have produced. I will proceed in three steps. I first scrutinize findings about deliberation in European governance arrangements with a view to the role of civil society actors. I then turn to evidence pertaining to possible effects of participation on the European public sphere. In the last section I will discuss a number of pathologies of participation that EU scholars have identified.

Deliberation within the Institutions

The academic study of political deliberation has made significant progress over the last ten years. Analytical tools like the discourse quality index (DCI) facilitate the measurement of deliberative quality of political debate (Steiner et al. 2004). Yet they are not easy to apply in the field of international relations and European politics because they require a database of verbatim protocols that is rarely available there. What is more, it cannot cover informal and undocumented discussions on the sidelines, which might also have an impact on the progress of diplomatic negotiations. Studies that sought to track civil society contributions to such negotiations have identified a certain pattern in the impact that arguments originating from civil society. In particular in the first phases of the policy-cycle,

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when problems are defined and options for tackling them are debated, suggestions and criticisms by non-state actors are taken up. As the decision-making process draws to a close, points raised by non-state actors are more often ignored, or drop out of the draft document (Friedrich 2011). In the hot phase of negotiation, when preferences of governments are fixed and the pressure to reach diplomatic agreement mounts, arguments without a sponsor among the relevant parties to the negotiation fall by the wayside. Whenever political and economic power makes itself felt, the deliberative quality of the process suffers, along with the civil society influence on it. This is true for the EU and for other international negotiation settings (Dany 2013).

Deliberation in the Wider Public Sphere

The analysis of the emergent European public sphere has been thriving in recent years. Sophisticated empirical studies, based on sizeable datasets, allow for insights into the structure of the European public sphere, the topics discussed there and the speakers cited (Koopmans/Statham 2010). With regard to the strength of civil society voices in this public sphere the diagnosis is clear: compared to purely national media debate, civil society actors are heavily underrepresented in Europeanized public sphere (Koopmans 2007: 199/200). It has also become clear that many efforts of civil society actors to push their claims in public and to create a debate about them are, in the end, not taken up by the press and do not reach the intended audiences (Altides 2011). There is, hence, little evidence to show that the voices of civil society actors are crucial in creating a European public sphere.

Problems and Pathologies of Civil Society Involvement

A first quite general problem is a potential bias in the representation of societal interest through organized civil society. As we know, some societal interests are harder to mobilize than others. Concentrated interests, a small number of actors to coordinate and abundant financial resources facilitate the organization of interests. To give high numbers of actors a voice that have much less of a stake in the issue and avail of less resources is significantly harder. It cannot surprise us, therefore, that also the shape of transnational civil society reflects such imbalances (Piewitt 2010). Interest representation is not even, with industry interests often dominating in numbers over, for instance, environmental and human rights concerns.

It is also problematic to assume *a priori* that civil society organizations are representing citizens in any meaningful way. Many of the civil society groups active at the European level are associations of associations, rather than associations of citizens (Kohler-Koch 2010). Moreover, many civil society organisations, despite their name, do not have any societal basis. They are expert organisations, run by experts and mainly targeting experts in their advocacy. They are *de facto* think tanks, not membership organizations. Quite often, the influence of intergovernmental organizations is also felt here. IOs, and particularly the EU, are aggregating transnational civil society into platforms, alliances and caucuses, making outreach easier. The EU also instigates the emergence of a European civil society that is friendly towards its own organizational goals and political purposes. Figures about EU funding disbursed to civil society (mainly via the Commission) document not only that the sheer amount of money is significant enough to alter the civil society landscape in Brussels and in some member states, especially in the Eastern part of Europe where local civil society remains underdeveloped for historical reasons. It also shows that funding goes predominantly to organizations that promote the political goals of the community institutions (Mahoney/Beckstrand 2011).

Conclusion

To summarize, deliberative democracy has become a widely accepted ideal for reforming international organizations in general, and the EU in particular. In this context, institutionalized deliberation and civil society participation are often seen as natural friends. There is a gap, however, between high theory-driven expectations and the modest realities of civil society participation. Anecdotes aside, it is hard to show that direct civil society participation makes much of a difference in intergovernmental negotiation processes. Likewise, a “European public sphere” is in the making, but civil society actors are not key interlocutors in media debates on EU topics. The two phenomena may actually be related as journalists preferably approach and cite those who they believe to be crucial players on the political scene.

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Many of the civil society organizations, active in international politics, form part of a transnational functional elite. Grassroots or membership organizations that want to play the game of international politics successfully need to professionalize and adapt to expectations. The pressure to professionalize may lead to gradual emancipation of elites within the organization from their membership base (Saurugger 2006), or the foundation of think-tank like bodies that do not have much of a membership at all. It might hence be better to conceive of CSOs as professional advocates of certain political issues, indirectly supported by many citizens, than as representatives of citizens. Their influence is probably not to be measured in how they impact concrete formulations in international negotiation. It takes place before formal negotiations start and behind the scenes, through a (re-) framing of issues, public advocacy, silent lobbying and the brokering of coalitions.

It is thus apparent that CSO participation is not a panacea to democratizing European or global governance. Nor can it be taken for granted that the mere presence of CSO representatives will enhance the deliberative quality of international negotiation. Still, I would suggest that civil society participation is in many cases a democratic asset to European and global governance: they act as professional watchdogs, they enhance the transparency of the political process, and they contribute to the plurality of voices present in the political process. The probably greatest asset of professional CSO actors is that they are mediators, multipliers and information-brokers. Even if they do not reach out to every citizen and even if they are rarely cited in the mass media they contribute to the creation of a transnational public sphere and to the public accountability of European and global governance (Steffek 2010).

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