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Deliberative democratization across borders: participation and deliberation in regional environmental governance

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Abstract

This contribution is based on a set of reflections presented at the REGov Workshop. These reflections were offered as part of a panel discussion around the topic “Environmental regionalization, democracy, and civil society.” Additional presentations provided in the context of this panel discussion include those of Lorraine Elliott, Australian National University (this volume), and Nicolas Evrard, European Association of Elected Representatives from Mountain Areas (this volume). Webcasts of all presentations are available at <http://www.reg-observatory.org/outputs.html>.

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1. Introduction

Regional environmental governance across national borders is increasingly characterized by a shift from traditional political institutions to the emergence of new, horizontal and dialogue-oriented modes of governance. Within the Great Lakes-regime of the USA and Canada, deliberative and participatory transboundary water governance has been evolving. This new mode of governance produces democratic legitimacy and effectiveness through the inclusion of civil-societal and economic actors, argumentative procedures and common good-oriented problem solving. Thus a challenging research question can be raised: Is the participatory and deliberative governance within the Great Lakes-regime a model case, which allows drawing conclusions on institutional prerequisites and means how to “democratize” regional environmental governance across borders in similar issue areas?

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Guided by this research question I refer to a model of participatory and deliberative environmental politics, which serves as a normative-analytical framework in order to identify and appraise, generally speaking, the potential of democratization in transboundary environmental governance and, in particular, the participatory and deliberative potential within the Great Lakes-regime (Klinke, 2006, 2009a, b).

2. Participatory and deliberative regional environmental governance

The democratic legitimacy of deliberative governance is based on non-state actors' fair opportunities to have access to political influence on the political communication and decision making (Knight & Johnson, 1997; Bohman, 1999a). The accessibility to political processes for civil society and economic actors and the possibility of taking tangible influence make basic democratic principles such as equality, freedom, publicity, mediation of interests, transparency, and accountability operational. In light of unavailable participation possibilities for citizens in governance across borders, the fair access to political influence for collective non-state actors such as nongovernmental organizations (NGOs), associative networks and epistemic communities as speakers of the transnational public sphere becomes crucial. In international relations, NGOs are often considered as speakers of the public and thus as legitimate representatives of civil society and public interests because they are non-profit organizations, which orient their actions based on the common good. Therewith controversial and challenging issues such as inclusion, direct participation and the role of the gatekeeper in the political practice are evoked. Who concedes to whom, when and on which political-institutional level of access to political influence? In which situations is direct participation appropriate and in which interest representation? Which non-state actors will be selected for participation, and how? Who plays the role of the gatekeeper?

The democratic proceduralism and effectiveness of participatory and deliberative governance relies on a horizontal and dialogue-oriented political style between state and non-state actors and their collective approach aiming for an effective problem solving capability. Participatory procedures admit non-state actors to exert political influence that goes beyond mere voting, i.e. the participating actors have the opportunity to convince others by means of argumentative rationality. Therefore, on the one hand, transnational participatory and deliberative governance rests on the structural character of procedures that induces the participants to bring forward socially and publicly acceptable reasons to foster their interests and concerns. On the other hand, it also depends on the individual capability, willingness and reliance on the effective use of free public reason (Bohman, 1999b). The participants should be able "to distinguish good and convincing from bad and unpersuasive reasons" (Bohman, 1997, p. 337) and they should be willing "to 'translate' their claims into a mutually justifiable language and to distinguish between what they find good ... and what can reciprocally and generally be argued for" (Forst, 2001, p. 362). This enables a collective search of problem solving options that would be acceptable for the transnational public sphere. Theoretically and analytically speaking, the evolvement of the public use of reason in participatory mechanisms depends on the modality of the intentional actor behavior relating to communication and action, which ranges from arguing and persuasion to bargaining as well as from strategic to communicative action. The aim of participatory and deliberative governance is to overcome the individually bounded rationality and to dissolve interactive contradictions in order to generate collective preferences with regard to causal beliefs including a common problem definition, evaluation of consequences as well as issue- and common good-oriented problem solving options. A preference formation on normative and value-related levels regarding principal beliefs, worldviews and collective identities might be possible, but is not necessarily be expected.

3. The water governance on the US-Canadian Great Lakes

The Great Lakes and the St. Lawrence River in the border area of Canada and the USA are the largest fresh water system on Earth. Since 1909 Canada and the USA have been coordinating the use of the waters via the Boundary Waters Treaty. To implement the treaty they established the International Joint Commission (IJC) responsible for the administration, jurisdiction, investigation and mediation of the transboundary waters. The negotiation about the abatement of pollutions in the 1960s led to the Great Lakes Water Quality Agreement (GLWQA) in 1972. The agreement includes common water quality objectives and procedures for the monitoring and control of pollutants (IJC, 1989). The IJC, as a bi-national institution, is responsible for controlling the governmental programs regarding

the achievement of the objectives, to evaluate the progress, to support the implementation, and to put into practice the commonly agreed principles of cooperation, publicity, and participation. The IJC has established an expert advisory system, which politically and scientifically advises the IJC, prepares its decision making, and exerts all functions, powers and responsibilities assigned to the IJC under the GLWQA. The expert advisory system consists of four major advisory boards that are supported by task forces, subcommittees and working groups in order to compile and to ascertain the necessary data and information for the political and scientific assessments.

The expert advisory system is also responsible for organizing and aggregating different participation and deliberation procedures for the public at different political-institutional levels. The input from the public participation as well as data and information from scientific assessments on the status of the Great Lakes are compiled and aggregated based on a two-year-working cycle by the IJC and the expert advisory boards in biannual reports, which provide the basis for the Canadian and US environmental policymaking on the Great Lakes. For this purpose, the following participatory forms are institutionalized:

- *Biannual public hearings* are always organized at the bi-national level at the end of two-year-working cycle. These hearings are open to all residents in the Great Lakes basin. All participants are entitled to be heard and all issues and questions can be raised.
- *Ad hoc public hearings* are held whenever the IJC has to fulfill an investigative function according the Boundary Waters Treaty also including a scientific analysis by external experts.
- *Public workshops and meetings* are the most numerous and widespread participatory form addressing issue-oriented and specific topics concerning ecological, economic, socio-political and institutional problems, questions on implementation, the work and tasks of the expert advisory boards, communication and coordination as well as the review of the contracts.
- *Round tables, focus groups and consultations* are organized to involve those stakeholders that are not actively engaged in other participation. The goal is to search for collectively acceptable problem solving options for specific issues and their common recommendation.
- *Regional public advisory bodies* have been established due to one of the lakes' Lakewide Management Plans, which are in cooperation with sub-national and regional governments and address the definition of problems, plans of procedures for load reduction, selection of remedial action as well as monitoring and control.
- *Local public advisory committees* have been established in more than 40 "areas of concern" at the local level, which serve to develop and implement Remedial Action Plans in cooperation with local and regional governments and administrations. Areas of concern are local geographic areas, in which the objectives of the GLWQA fail to a greater degree than the rest of the Great Lakes.

4. Conclusion

The expert advisory system as well as the participation and deliberation across national boundaries in the regional water governance on the Great Lakes between the USA and Canada meets democratic claims with regard to legitimacy and effectiveness. The cornerstone is the contractual framework, in which democratic principles such as cooperation, publicity, participation, transparency, and dialogue-oriented conflict settlement reflect shared normative beliefs to protect and restore the integrity of the water basin and the environment.

The participating public and private actors are not the only dialog partners as economic and civil-societal actors also share the responsibility and accountability for policy making. For this purpose the public and political arenas include argumentative-oriented procedures as platforms, on which the public can channel its opinion and will formation - exerting political influence on processes of policymaking. The hierarchy between state and non-state actors has been dismantled; it now involves a horizontal dialogue with problem solving oriented forms of communication and interaction. Nevertheless, the different public participatory forms at the different political-institutional levels have both merits and shortcomings. On this account it is not a single participatory form, but the functional and structural combination of different procedures, which generates the quality with respect to legitimacy and effectiveness.

The political influence of the public is based on the degree to which reasons and proposals are powerfully convincing. The reasoning through publicly acceptable common good rationality is the political influence that motivates the political bodies to consider the proposed problem solving. If the decision-making and advisory bodies take into account and condense the public input in an unadulterated and reliable manner, then they (re)gain credibility and trustworthiness.

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