

# The downside of participatory-deliberative public administration

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This article provides an empirically grounded critique of ‘Participatory-Deliberative Public Administration’, based on an in-depth study of three participatory fora in South Africa: the National Economic Development and Labour Council, the Child Labour Intersectoral Group and the South African National AIDS Council. Drawing freely on Habermas’ *Between Facts and Norms*, the article argues that coordination through deliberation is unlikely to occur in formal settings, where discourses are mostly about the accommodation of existing interests, and is more likely to be found in the informal public sphere, where the preferences of citizens are still malleable and where it is possible for civil society groups to build communicative power by articulating moral arguments that motivate and mobilize the public. This form of power can then be used by civil society groups to counterbalance other forms of (non-communicative) power that impinge on the formal decision-making sphere.

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*A practical goal that does not rise to opportunity is unworthy; but one that ignores limitations invites its own corruption.* (Selznick, 1966, p. xi)

This article addresses a stream of literature on the combined benefits of participatory policy-making and deliberation. We call it ‘participatory-deliberative public administration’ (PDPA).<sup>1</sup> PDPA is both advocatory and empirical. Its main goal is to promote a rejuvenation of democratic institutions and progressive

<sup>1</sup>The PDPA label seeks to capture some of the features shared by a number of intellectual projects going under different names: ‘associational democracy’ (Hirst, 1994; Cohen and Rogers, 1995), ‘direct deliberative polyarchy’ (Cohen and Sabel, 1997; Sabel and Zeitlin, 2008) and ‘empowered participatory governance’ (Fung and Wright, 2003b). However, there are specific differences among them and none of them is exactly identifiable with the ideal type laid out here.

politics by favouring direct civil society involvement in public policy-making. It makes two basic claims: first, that a broadly participatory approach to policy-making, involving a wide range of social actors in addition to public actors, produces not just a richer texture of democracy but also more effective public policy; second, that the various actors participating in policy formulation coordinate (or end up coordinating, given sufficient time) by exchanging arguments based on principles or appeals to generalizable interests. To the extent that the institutional design allows all potentially affected groups to have equal opportunities to become involved in the process, propose topics and formulate solutions, PDPA presents itself as deliberative democracy in action.

The article critiques PDPA's normative prescriptions and empirical generalizations based on an analysis of policy developments in South Africa. Post-apartheid South Africa provides a good opportunity to examine empirically the plausibility of the PDPA institutional blueprint. It had once raised (and, *malgré tout*, continues to raise) many hopes among radical democrats because of the explicit commitment of the government, stated in official documents, not to limit democratization to periodic elections and to strengthen it with robust doses of participatory and direct democracy, including, *inter alia*, the establishment of policy-making fora open to civil society's participation and influence. In this paper, we examine the functioning of three of these fora: the National Economic Development and Labour Council (NEDLAC), the Child Labour Intersectoral Group (CLIG) and the South African National AIDS Council (SANAC). These were selected to cover different types of policies in the labour and social fields.

The evidence from the case studies shows that, in circumstances that are likely to hold in many polities, the results are opposite to those the PDPA model would predict: inter-group consensus is not to be regarded as the outcome of a successful deliberative process but as a worrisome sign of group cooption; participation solely based on the force of one's better arguments is likely to be sidelined; and the most effective civil society organizations, i.e. those with the greatest influence on the policy-making process, are not those that commit themselves to a strategy of institutional collaboration, but rather those that keep a credible exit option open and, associated with it, strong grass-roots mobilization capacities. In the circumstances outlined in this article, protest and litigation seem more effective than discourse.

It should be noted that when we embarked on this project, we expected to confirm and deepen the insights of PDPA. Our expectations, as stated in a previous publication, were different from the empirical conclusions just summarized.<sup>2</sup>

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<sup>2</sup>Baccaro (2006) argued that what was referred to therein as the 'associational democratic' project was, with some caveats and provisos, empirically plausible as well as normatively desirable.

Admittedly, the participatory institutions examined here imperfectly match the list of normative prescriptions contained in the PDPA literature about the way such institutions should be structured and run. Hence, one could legitimately argue that what we have observed was not the real PDPA by invoking some sort of Type 1 error (that is, the error that is made in statistics when a null hypothesis that is true is rejected) and ignoring the empirical findings and associated arguments. This would be a mistake because the evidence presented here has important implications that, we would argue, go well beyond the specific empirical material examined. In particular, these cases could contribute to the explanation of the apparent ease with which the notion of societal participation has been incorporated into the mainstream policy discourses of several international organizations, from the World Bank to the European Union and the IMF, as well as several national and regional policy-making organizations, and how, in the process, it has lost much of its transformative connotation and potential.<sup>3</sup>

In discussing the limitations of the PDPA model, the article highlights the importance of adequately conceptualizing the role of the state. The state does not just benevolently devolve, as PDPA theory often assumes, but rather in many circumstances has very clear preferences about the kind of policies it wants participatory fora to adopt, generally as a result of international macroeconomic pressures. In these cases, participatory processes run a serious risk of being used to provide support for predetermined options (Hirst, 1995, p. 106), unless civil society organizations are able to back their arguments with power. Also, the notion of deliberation embedded in PDPA accounts—which centres on the transformative potential of *face-to-face* discourse within institutionalized settings—not only is an empirically inadequate characterization of what goes on in the participatory fora we studied, where powerful participants fail to be persuaded by even the best arguments, but also seems to restrict unduly the notion of deliberative policy-making.

The view of deliberation advanced in this article differs drastically from most PDPA characterizations. Drawing freely on Habermasian concepts (Habermas, 1996), the article argues that in many common political circumstances, deliberation is not to be found in the discourses taking place in the formal sphere of decision-making but rather in the informal discourses occurring in the public sphere. In South Africa, civil society organizations like the South African Treatment Action Campaign (TAC) and the Congress of South African Trade Unions (COSATU) build *communicative power* for themselves (Flynn, 2004). This form of power is communicative because it is based on nothing other than the articulation of a morally compelling discourse and on concerned

<sup>3</sup>See Papadakis (2005) for an analysis of the crucial role played by the notion of ‘participation’ in the policy documents of all major international organizations.

citizens' acceptance of its validity claims. Communicative power is first accumulated in the informal public sphere and then expended in the institutionalized sphere of policy-making, where it is used to counter other sources of (non-communicative) power that impinge on the extended bureaucratic apparatus.

The remainder of the paper develops the argument laid out above as follows: Section 1 summarizes the PDPA programme. Section 2 contrasts it with Habermas' 'two-track' theory of deliberative politics (Habermas, 1996, p. 287ff.). Section 3 examines the functioning of the three participatory fora mentioned above. Section 4 discusses the central role of discourse and mobilization in the public sphere. Section 5 concludes by reconsidering the clearest case of success in the PDPA literature, participatory budgeting (PB) in Porto Alegre, in light of the South African evidence.

## 1. An outline of PDPA theory

PDPA shares with other contemporary theories (mostly of conservative political orientation) a sceptical attitude to the problem-solving capacities of the state (for critiques, see Sanyal, 1994; Tendler, 1997). This sceptical attitude leads it to advocate the devolution of as many decision-making prerogatives as possible from centralized public bureaucracies to policy-making fora in which citizens participate either directly or (more frequently) through their membership in intermediate social groups or 'secondary associations' (Hirst, 1994; Cohen and Rogers, 1995; Fung and Wright, 2003*b*). The rationale for group involvement is in the groups' (assumed) knowledge of the problems they are faced with and of possible solutions. Groups are also considered to have greater capacities to promote voluntary compliance with public policy than public institutions (Bobbio, 2002). At a time in which public policy increasingly concerns issues and situations whose heterogeneity, complexity and volatility tend to escape the cognitive and problem-solving capacities of central bureaucracies, these group features become important assets for public policy-makers.

The state participates in the participatory policy-making process (including in the fora themselves) with a different role than in the past. It no longer provides direct solutions to regulatory problems, but it makes four other contributions: (a) it lays out the broad objectives of regulation, often through 'soft law' instruments (Kirton and Trebilcock, 2004; Trubek and Trubek, 2005); (b) it redresses representational asymmetries by promoting the organizing of those interests that lack adequate expression in the existing associational structure; (c) it selects from the universe of groups those whose qualitative features (e.g. 'encompassingness') make them amenable to the incorporation of some notion of the 'common good' in their demands and actions; and (d) it encourages groups to come together and deliberate about their common problems and experiment

with different solutions, and then provides incentives for them to confront and learn from (e.g. through structured processes of measuring and benchmarking) the experiences of other units faced with similar regulatory problems (Dorf and Sabel, 1998; Sabel, 1999).<sup>4</sup> This new regulatory framework seeks to mimic a series of organizational innovations which have emerged in the private sector in the last 20 years, where, as a result of the crisis of large, vertically integrated firms, the boundaries between producers and suppliers have become increasingly blurred and decentralized entities now collaborate as well as compete with each other to come up with the most effective technical solutions to practical problems (Helper *et al.*, 2000).

Coordination in these fora is assumed to be done by deliberation, that is, 'a dialogical process of exchanging reasons for the purposes of resolving problematic situations that cannot be settled without interpersonal coordination and cooperation' (Bohman, 1996, p. 27). The mechanisms by which deliberation should ultimately carry the day in these fora, as opposed to alternative modes of coordination and types of action (for example, bargaining), are generally not very clearly spelled out in this literature. Some works hint that the practice of deliberation eventually creates its own preconditions (Pateman, 1970; Abers, 1998, p. 527), that is, it produces an anthropological transformation from self-serving actors to ethical ones (i.e. other-regarding *vis-à-vis* a specific reference community) and, at the limit, even moral actors (i.e. other-regarding *vis-à-vis* humanity as a whole). In this regard, the deliberative fora act as Tocquevillian 'schools of (deliberative) democracy' (Cohen and Rogers, 1995; Fung and Wright, 2003*b*).

Others emphasize incomplete information, bounded rationality and radical uncertainty. This particular line of argument features prominently in the literature on direct deliberative polyarchy (DDP; Sabel, 1994; Cohen and Sabel, 1997; Dorf and Sabel, 1998; Sabel, 2004; Sabel and Zeitlin, 2008). There are important differences between DDP and the rest of the PDPA literature. For example, at least in the most recent DDP production, there is no presumption that civil society actors have systematically richer knowledge than public bureaucracies (Sabel, 2004, p. 9; Sabel and Zeitlin, 2008). More important than civil society involvement for the DDP literature is the establishment of an institutional architecture that maximizes social learning by allowing lower-level units to experiment with solutions to commonly felt problems and to learn from each other. Central elements of this experimentalist architecture are the devolution of decision-making prerogatives to lower-level units, recursive framework goal-setting by upper-level units, lower-level engagement in decentralized problem solving and public justification of discretionary choices in light of the experience of similarly situated peers.

<sup>4</sup>A similar logic seems to inspire the EU's Open Method of Coordination: see Zeitlin *et al.* (2005).

Another difference between DDP and the rest of the PDPA literature is the way it conceives of deliberation. DDP provides an elegant justification and a clear mechanism for the emergence of deliberation in pragmatic problem solving fora—a mechanism which, unlike other PDPA strands, does not require actors to strip themselves of self-interested concerns and embrace the disinterested pursuit of higher-order goals (Sabel, 2004). For DDP, the impetus for deliberation is strictly self-interested, even though the determination of exactly what it is that actors are interested in, and of the means to achieve it, is cooperative and dialogical.

The argument for the emergence of deliberation centres around radical uncertainty: faced with unfamiliar problems, whose contours they are unable even to spell out clearly, actors do not know exactly how their values, interests and preferences are going to be affected by future developments. They only know that the solution to these novel problems depends on collaboration with others, or sometimes they just perceive a heightened sense of interdependence.

In these circumstances, deliberation both ensures accountability in a situation in which traditional principal–agent relations collapse and provides an opportunity for collective learning. Radical uncertainty makes actors unable to write down their utility function or to rank future states of the world according to their preferences. These actors are so information-constrained that prior specification of goals is impossible for them except in the most general terms (Sabel, 2004). It follows from these premises that principal–agent accountability (assurance that the agent's action conforms to the principal's preferences) has no meaning because radical uncertainty prevents both principal and agent from defining their preference priors. Deliberation enables a new kind of accountability by requiring actors to provide reasons, both to their principals and to their peers, for the discretionary choices they make. At the same time, deliberation is also a way of jointly exploring alternative ways to proceed, in trial-and-error fashion.

The *veil of radical uncertainty*—which, unlike Rawls' veil of ignorance (1971), is not conceived of as a thought experiment, but is supposed to be an empirically accurate characterization of the situation in which decision-makers find themselves under current circumstances—does wonders for this theory as it allows it to rid itself, by the stroke of a pen, of two tenacious problems that generally get in the way of cooperation and joint problem-solving: distributive conflict and power differences. Radical uncertainty eliminates distributive conflict because if actors do not know their preference distributions then they have no reason to perceive that such preference distributions conflict with others'. It also makes power differences irrelevant: if actors do not know what they want or how to achieve it (Sabel, 2004, p. 10), they have no reason to use power to impose their preferences on others. Obviously the validity of these conclusions depends on the empirical adequacy of the radical uncertainty assumption.

If the assumption is invalid, distributive conflict and power differences are bound to taint the supposedly deliberative process, even though the analyst may not perceive them as significant factors.<sup>5</sup>

The three South African fora examined below lack some of the key elements of experimentalist governance. In particular, the institutional architecture underlying the three cases is not one of multi-level governance: autonomous problem-solving by lower-level units and recursive goal setting between upper-level and lower-level actors are not there. In this respect, the lessons that can be drawn from the case studies are more relevant for those strands of the PDPA literature, like associational democracy (Hirst, 1994; Cohen and Rogers, 1995), for which the sharing of policy-making prerogatives between the state and civil society is key than they are for DDP. However, the case studies are also relevant for DDP because they clearly illustrate what happens when the crucial assumption of radical uncertainty is violated and actors, particularly state actors, far from perceiving themselves to be under severe informational deprivation, know exactly what they want and how to achieve it.

The section on the South African policy-making fora will discuss these issues in concrete terms. Before moving to empirics, however, the next section draws on Habermasian concepts to articulate an alternative view of deliberation and of the role that civil society organizations play in it. The idea of deliberation as self-government through unconstrained communication among citizens owes much to the thinking of Jürgen Habermas. There are, however, significant differences between the PDPA and Habermasian intellectual projects, particularly with regard to the conflict-resolving and consensus-generating potential of face-to-face dialogue and the specific role attributed to civil society organizations in the polity. The next section explores these differences.

## 2. Habermasian views on deliberation and civil society

The theory of deliberative politics articulated in Habermas' *Between Facts and Norms* (1996) is one in which 'deliberative' is *not* an attribute of particular consensus-generating conversations but rather a systemic attribute of a well-functioning constitutional democracy, in which a myriad of discourses taking place at different levels are woven together. In fact, Habermas is (correctly, in our opinion) sceptical about the capacity of communicative action alone [i.e. action oriented to reaching understanding (Habermas, 1984)] to resolve differences in interests and values under current conditions of societal complexity.

<sup>5</sup>For a sobering reconstruction of the European occupational health and safety policy process (whose institutional architecture should be more in line with PDPA and DDP theoretical preconditions than the South Africa fora), see Smismans (2008).

Social coordination through communicative action is possible, Habermas argues, in societies characterized by 'strong archaic institutions' and 'small and relatively undifferentiated groups' (Habermas, 1996, p. 25). This is because communicative action always takes place against the backdrop of a shared lifeworld, which in traditional societies provides 'a reservoir of taken for granted, of unshaken convictions that participants in communication draw upon in cooperative processes of interpretation' and from which 'processes of reaching understanding get shaped' (Habermas, 1987, pp. 124 and 125, respectively). However, coordination through communicative action becomes improbable in post-traditional societies, due to the emergence (strictly related to rationalization and modernity) of self-centred action based on strategic calculations. In these societies, 'in which *unfettered* communicative action can neither unload nor seriously bear the burden of social integration falling to it' (Habermas, 1996, p. 37), law emerges as a functional necessity exactly to 'lighten the tasks of social integration for actors whose capacities for reaching understanding are overtaxed' (Habermas, 1996, p. 34).<sup>6</sup>

Since strategic action is unavoidable and since Habermas, following a long tradition in social theory, does not believe that a social order can be established through strategic action only, the normative regulation of strategic interactions through law provides a way out of the predicament. Law comes to play a dual role. For strategically oriented actors, it influences the calculations of costs and benefits. From this point of view, the law fulfils the function of social coordination by providing rewards and sanctions that enter into the actors' objective or utility functions and shape the process of strategy selection (a process well captured by game theory). For communicatively oriented actors, law is binding because it is inter-subjectively recognized as embodying valid social norms, i.e. maxims that the actors would collectively give themselves as free and equal persons. The willingness to comply with law is therefore based both on the law's *facticity* and its *validity*. These two aspects are closely related, but the validity aspect is pre-eminent because the binding power of law is legitimate only insofar as members of a legal community are able to consider the norm to which they are subject as something they would have authorized in 'a free process of political opinion- and will-formation' (Habermas, 1996, p. 38).

This process of (counterfactual) authorization operates through a network of discourses, taking place at different levels. Some of these discourses are located in the sphere of institutional politics and are highly structured and proceduralized. They are specialized in 'will-formation', that is, in the production of collective decisions. Others are more informal and dispersed in the public sphere.

<sup>6</sup>Discussing the work of Joshua Cohen (1989), Habermas argues explicitly that deliberation is not a model 'for all social institutions' (1996, p. 305).

Their function is that of ‘opinion-formation’. A system of constitutional rights guarantees and enables both kinds of discourses, structured and unstructured, and makes possible the exercise of popular sovereignty. Habermas’ concept of deliberative politics is thus ‘two-track’ and ‘lives off the interplay between democratically institutionalized will-formation and informal opinion-formation’ (Habermas, 1996, p. 308). It should be noted that some of the discourses which are produced in the informal public sphere conform poorly to the ‘gentlemen’s club’ model featured in some theories of deliberation (i.e. rational, poised and articulate), which, according to critics, ‘involves communication in the terms set by the powerful’ (Dryzek, 2000, p. 70), and resemble much more the ‘agonistic’, partisan discourses of a trial setting. Groups do not seek to persuade each other but seek to influence the court of public opinion by forcefully asserting the issues, values and interpretations that they believe should be binding for everybody, sometimes even through ‘sensational actions, mass protests, and incessant campaigning’ (Habermas, 1996, p. 381). The most important normative requirement for this kind of agonistic discourses is that of authenticity. In other words, given their novel character, some discourses may not be immediately recognized as factually true or morally appropriate by the public but, especially when they walk on the legs of thousands of men and women, they can be easily recognized as expressing authentic commitment to particular values.

Many of the normative expectations in Habermas’ model of deliberative politics rest on the informal public sphere composed, among other things, of vibrant and independent civil society organizations and the mass media. Actors operating in this sphere act as *issue innovators* and *democratic vigilantes* but, in stark contrast with the PDPA view articulated above, do not – and should not, according to Habermas – get directly involved in the pragmatic resolution of problems. They should not for two reasons: first, because the functional requirements for effective problem resolution exceed the limited problem-solving capacities of these organizations, and, second, because the functions of civil society organizations in a democratic system are different from those of institutional actors. Civil society is released from the task of taking decisions. Consequently, it can regard issues from the point of view of their non-instrumental desirability and propose new, unlikely conceptions of the good life. Its role is that of thematizing new issues as well as checking on the broad consonance between the collective decisions issuing from the institutional system (specialized in law-making) and a mobilized public opinion (Habermas, 1996, pp. 371–372).

This point about the appropriate role of social actors in deliberative policy-making is perhaps where the strongest disagreement between Habermasian and PDPA views lies (see Cohen, 1999). PDPA theorists are puzzled by Habermas’ confidence in the ‘systematic inner logic of public bureaucracies’ (Habermas, 1992, p. 452), a confidence which appears unjustified to them in light of the

growing difficulties that these public bureaucracies face in solving a variety of public-policy problems. They are also dissatisfied with a democratic project that limits itself to stating the possibility for ordinary citizens to exercise indirect influence ‘from the periphery of the system’ rather than from within the system’s policy-making core (Cohen, 1999, p. 410).

In PDPA views, civil society has much greater problem-solving capacities than Habermas attributes to it, and the opposite holds for public bureaucracies: the functional prerequisites for effective problem resolution are changing rapidly and public bureaucracies, like private organizations, are all the more effective at doing their job the less they act like closed systems. Specialist knowledge, a clear distinction of tasks and hierarchical lines of bureaucratic accountability are neither necessary nor sufficient for problem-solving efficiency (Sabel, 1994; Helper *et al.*, 2000).

It is probably true that, as implied by PDPA theory, administrative rationality currently has a greater need to incorporate, as a condition for its pragmatic success, the information and expertise as well as the commitment and compliance capacity of civil society actors than Habermas’ blanket distinction between ‘system’ and ‘lifeworld’ allows (Habermas, 1987). The popularity of catchwords such as ‘partnership’, ‘participation’, ‘governance’—all pointing to the need for societal involvement in the policy-making sphere—testifies to this. Even in these circumstances, however, the second of Habermas’ arguments for non-engagement remains relevant. This argument points to the risk that, by responding to public authorities’ demand for involvement, civil society organizations compromise their capacity for effective problematization and critique.

Aside from the possibility of sheer cooption, there is a more fundamental reason for non-engagement that has to do with the different logics of action regulating the various spheres. As articulated in the *Theory of Communicative Action* (Habermas, 1987, p. 301ff.), the public administration operates within systemic constraints (both its own and those of the capitalist economy) that exceed the social actors’ capacities for conscious collective control. This does not necessarily mean that social actors are unaware of these constraints; rather, that they are willy-nilly pushed to take them into account and internalize them. As soon as a social group starts engaging in the practical resolution of public-administration problems, such systemic requirements and pragmatic considerations (particularly stringent at a time of economic globalization) forcefully assert themselves, and the horizon of what is possible and feasible dramatically shrinks. The polity may perhaps gain in efficiency (although, in light of the evidence presented below, even this is debatable), but its deliberative quality, intimately linked with the public sphere’s capacity for the thematization of (temporarily) impractical alternatives, dramatically deteriorates.

To mark this point, let us consider PDPA’s recommendation that empowered participatory fora focus pragmatically on the resolution of well-defined problems

(see Fung and Wright, 2003*b*). We would argue that even in the case of technically defined and localized problems, discussions on public policy have to take some basic parameters for granted, concerning for example the role of public and private actors in the provision of services, the amount and type of taxation, the extent of cost-recovery, the stance of macroeconomic policy, the role of international financial markets and other external constraints. This kind of structural distortion, linked with the necessary acceptance of certain pragmatic presuppositions for effective problem-solving, derives neither from excluding particular voices from discourse nor from unequal access to power and resources among participants in discourse, and therefore could not be addressed by institutional design targeted at the latter, short of planetary inclusion in the universe of discourse and global levelling of inequalities. In these circumstances, while deliberation in public-policy fora may lead to Pareto-improving outcomes compared with the *status quo*, it often implies accepting a macro framework of policy that is likely to be path-dependent—in the sense that some of the constitutive choices will already have been determined in the past, in non-deliberative fashion (Barthe, 2002)—and is sure to reflect specific interest constellations and power distributions. In this respect, the fact that Habermasian civil society organizations are ‘under no pressure to decide’ (Flynn, 2004, p. 440), which PDPA considers a diminution (see Cohen, 1989), could be regarded as a blessing, because this condition permits the formulation of systemic challenges (Mouffe, 2000) and the formulation of moral alternatives to the status quo, alternatives that do not need to worry about their practicality (yet).

By examining the South African experience, specifically the functioning of three policy fora, NEDLAC, CLIG and SANAC, the next section turns to an empirical illustration of the theoretical issues laid out above. Our approach shares some features with Michael Burawoy’s ‘extended case method’ (1998). In line with this approach, our main goal is theory development. Our ambition is to use the in-depth analysis of particular cases as an opportunity to advance a much broader theoretical discussion. However, we regard social theory not simply as a (more or less adequate) representation of social reality but also as a theory–practice nexus, which provides a blueprint for social intervention and change and which is bound to correspond to some interests and power constellations better than others, independently of whether or not theorists are aware of the linkages. Thus, by engaging in empirical research, we do not simply look for empirical anomalies in the theory and, by resolving them, seek to enrich the theory’s empirical content (along the lines of Lakatos, 1970). Our search for empirical anomalies is aimed at bringing the connection between theory, interests and power into the open. As argued above, many PDPA elements, and especially the notion of participatory policy-making, fit comfortably into mainstream policy discourse. We need to understand why.

### 3. The evolution of participatory governance in South Africa

About 15 years ago, the South African transition from apartheid to democracy (1990–94) raised many hopes among radical democrats and reformed socialists around the world. It seemed that a new model of associational democracy, and perhaps even a new variant of socialism, participatory and anti-bureaucratic, was emerging in that country (see for example Swilling, 1992; Klug, 1995). The new government appeared committed to a process of radical democratization. Periodic elections would not be sufficient, the new ruling elite argued, to redress the legacy of discrimination and inequality that the country had inherited from the apartheid period. The institutions of representative democracy needed to be complemented by participatory fora at all levels, in which civil society organizations would play a key role, if not the leading one. These intentions were incorporated in the 1994 Reconstruction and Development Programme [RDP; African National Congress (ANC), 1994], the policy manifesto of the new democracy (see also Republic of South Africa, 1995). It is worth quoting from the RDP document, because it is from passages like the one below that our interest in South Africa as a test case first stemmed:

Democracy for ordinary citizens must not end with formal rights and periodic one-person, one-vote elections. Without undermining the authority and responsibilities of elected representative bodies (the national assembly, provincial legislatures, local government), the democratic order we envisage must foster a wide range of institutions of participatory democracy in partnership with civil society on the basis of informed and empowered citizens (e.g. the various sectoral fora like the National Economic Forum) and facilitate direct democracy (people's fora, referenda where appropriate, and other consultation processes). (ANC, 1994, p. par. 5.2.6.)

In this section, we take a close look at the functioning of some of these participatory institutions. Our goal is to understand whether the fora have lived up to their promise and whether they have produced more effective public policy and deeper democratic participation.<sup>7</sup>

<sup>7</sup>Due to space constraints, we limit the analysis of the three policy fora to a minimum. For much more detailed analyses we refer to Papadakis (2006) and Baccaro and Papadakis (2008). Field research in South Africa was carried out in two waves: in Spring 2002 we conducted 74 semi-structured interviews with government officials, representatives of employer organizations, trade unionists and members of NGOs and other civil society organizations. In Spring 2005, we followed-up with an additional 50 field interviews more narrowly focused on the inner working of the three participatory institutions. We cover the period between 1994 and 2005. To protect the confidentiality of the sources, we refer to informants by interview number. A complete list of informants (with names) is available from the authors upon request.

### 3.1 Participatory economic policy: the case of NEDLAC

NEDLAC, the most important policy-making forum in South Africa, was established in 1995 as a consultative body in which the main social actors negotiate specific parts of the national economic policy with government. If consensus emerges among NEDLAC constituents it is very difficult for Parliament to alter its terms.

NEDLAC is somewhat different from the traditional tripartite institutions (involving labour, capital and government) found in Western Europe and elsewhere because several civil society organizations (representing women, cooperatives, the disabled, youth, civics and a financial sector coalition) are institutionally represented in one of its four chambers, the one on development issues.<sup>8</sup> Overall, NEDLAC seems to work quite well. In particular, its Labour Market Chamber has *de facto* produced the most important pieces of labour legislation in South Africa. However, what works well in this institution is its corporatist (tripartite) core, *not* its post-corporatist extension. Indeed, the civil society organizations participating in NEDLAC have so far played a purely symbolic role (Keller and Nkadameng, 2005).

According to several interviewees, the development chamber is 'toothless and sidelined' (interview no. 14) or 'a dumping ground for any issue' (interview no. 17). There are various reasons for this lack of effectiveness, including financial problems. The most important, however, is that the participating civil society organizations are insufficiently independent from the ruling ANC. Consequently none has articulated a clear agenda on the various issues, distinct from that of government and the ruling party. Nowhere is this lack of independence more evident than in the reaction to the government's adoption in 1996 of a neo-liberal macroeconomic framework, the Growth, Employment and Redistribution programme (GEAR).

The adoption of GEAR marked a transition from the left-Keynesian macroeconomic policy approach which characterized the early years of democracy to a neoliberal policy stance, involving disinflation, privatization and cuts in public expenditures (Michie and Padayachee, 1998; Fine and Padayachee, 2001). What interests us here is not assessing the significance and impact of this particular macroeconomic stance but gauging the range of reactions to GEAR from civil society organizations. The associations in NEDLAC's development chamber had little to say about it, even when the restrictive macroeconomic policies had clear negative consequences on their constituencies (e.g. Black women or poor people in the townships). This lack of critical voice contrasts with completely different attitudes from other civil society organizations that did not participate

<sup>8</sup>The other three chambers deal with labour markets, trade and industry and public finance and monetary policy issues.

in NEDLAC. The South African NGO coalition (SANGOCO), for example, an umbrella organization coordinating about 4000 NGOs, demanded a radical redefinition of macroeconomic policy and joined COSATU, the major trade union organization, in mass mobilizations against deregulation and privatization (interview no. 20; interview no. 62; interview no. 70).<sup>9</sup>

There have been several in-depth studies of associations involved in the community chamber at NEDLAC, and they all come to similar conclusions concerning the incapacity of these associations to exert real influence on policy developments (Gershater, 2001; Heller and Ntlokunkulu, 2001; Reitzes and Friedman, 2001; Mayekiso, 2003, p. 64; Zuern, 2004). The studies focusing on the South African National Civics Organization (SANCO), arguably the most important civil society organization, are particularly telling in this regard. The civics movement had shown remarkable mobilization capacities during the period of transition (1990–94), when they had orchestrated a series of highly successful series of rent- and tariff-boycotts in the townships. Later, however, with their consolidation into a national organization and inclusion in NEDLAC, SANCO chose to move from ‘protest’ to ‘development’ and to become a ‘transmission belt’ between the ANC government and the poor people in the townships, contributing to citizens’ compliance with the government’s policy of privatization of utilities and cost-recovery. SANCO never seriously contested these policies and publicly distanced itself from the union movement when it resorted to confrontational tactics (strikes and mass mobilizations) to fight privatizations.

Even at the local level, whatever political capital the civics still possess seems largely parasitic on the mobilization capacities of local social movements. In the early 2000s the government’s policies on service delivery led to the emergence of several oppositional social movements in the townships, which used remarkably similar tactics to those used by the civics in the apartheid years (e.g. illegal reconnections of households to the electricity power network, boycotts, civil disobedience, etc.), but directed them at the ANC government (Banda, 2003; Ballard *et al.*, 2005; Buhlungu, 2005). Faced with a popular uprising, the utility companies often brought SANCO in to negotiate a peaceful solution to the crisis. Hence, SANCO was able to carve out a broker role for itself. However, everyone in the community knew well who was really to thank for the write-offs of outstanding arrears that were eventually negotiated (Zuern, 2004, p. 20; interview no. 113).

The one civil society actor that uses the NEDLAC process effectively is the union movement, particularly the major union confederation COSATU—not

<sup>9</sup>However, SANGOCO’s strategy later changed. The change was linked to a turnover in leadership as well as to a serious financial crisis that threatened the organizations’ survival. As a result, around 2002, SANGOCO decided to seek direct involvement in NEDLAC as opposed to exercising influence from outside through campaigning (interview no. 119).

surprisingly, an organization with a clear membership base and an independent source of funding. COSATU does not limit itself to institutional participation in NEDLAC but always uses a multiplicity of tactics to push its agenda, e.g. mass mobilizations to build pressure on the bargaining counterpart, 'hard' negotiations and direct lobbying of Parliament via the direct access that COSATU unionists have to members of parliament by virtue of the Tripartite Alliance that links the ANC, COSATU and the South African Communist Party. In some cases, COSATU even bypasses the NEDLAC process entirely and engages in direct negotiations with the top managers of large, international firms.

### 3.2 *Participatory policy-making and child labour: the case of CLIG*

The problem of child labour is not as extensive in South Africa as in other Asian or African countries. There is little or no child labour in the formal sector of the economy, specifically in manufacturing (interview nos. 58, 8, 82, 62, 66). Also, South African legislation is among the most advanced and comprehensive in the world. Rates of primary school completion are very high in comparative perspective (around 90 percent in 2000). Nonetheless, a number of children do engage in work activities. In 1999, 12.5% of children between 5 and 17 were found to be engaged in at least 12 h of economic or school maintenance activities, or 14 h of household chores [DoL (Department of Labour), 2002]. The history of how these and other indicators came to be produced and diffused is worth telling, as it clearly shows that the production of quantitative indicators (which, according to PDPA theory, are indispensable for benchmarking and organizational learning) is not just a technical feat but a heavily politicized process.

In the first years of the democratic transition, civil society organizations operating in the field of child labour actively contributed to the post-apartheid agenda on these themes by participating in international campaigns and national awareness-raising events. A few years later, many of these organizations became formally involved in policy-making. Indeed, as in many other policy fields, a consultative policy-making structure, CLIG, was established in 1998 to coordinate the actions of public administration departments, social partners (unions and employer associations) and NGOs operating in this area, particularly the Network Against Child Labour (NACL) and the National Children's Rights Committee (NCRC)—both umbrella organizations.

Initially, the CLIG seemed a successful initiative. In the first few months of its existence, it organized a series of highly participatory national meetings, involving more than 50 different organizations, supplemented by additional meetings at the provincial level. These events were generally considered beneficial by participating NGOs (interview nos. 77, 98, 103, 115, 82). While they did not produce any concrete policy, they did favour the emergence of networks of like-minded

people operating in the field, who could refer to each other when dealing with particular cases of working children (interview no. 111).

Early on it was decided within CLIG that a sensible programme of action on child labour needed in-depth knowledge of the phenomenon at hand. Consequently, a household survey was designed and administered with the technical assistance of Statistics South Africa and of the International Labour Organization. However, this survey ran into a series of political problems that brought the CLIG process to a halt (interview nos. 82, 98, 115). In the words of one informant, the numbers that emerged from the survey were 'shocking' (interview no. 95) and painted a picture of much larger size than anyone (including the NGOs operating in the field) had expected. Were they to be presented as such, the figures would not only embarrass the government but even risk being used by foreign countries, and especially by the USA, as a pretext for punitive measures in bilateral trade relations. Hence, the public release of the survey results kept being delayed. As a result, the activities of the CLIG *de facto* ceased, not just at the national level, but also at the provincial level.

The policy process started again in the fall of 2002, when the government decided to authorize the publication of the survey after introducing a series of definitional changes, which clarified that the survey data could not be immediately interpreted as evidence of child labour because it was not clear which working activities, and to what extent, could be considered detrimental for the child. This distinction was in line with international labour standards. Determination of what counted as child labour became one of the purposes of a new participatory exercise, known as the Child Labour Action Programme (CLAP). The CLAP process was much more top-driven than the former. A discussion document was produced by consultants and then extensively 'workshopped' in the first half of 2003 through a series of provincial-level meetings open to civil society participation. Finally, the draft document was consolidated into a draft National Child Labour Action Programme [(DoL (Department of Labour), 2003)].

At the end of 2005, this document was still waiting for the assessment of its cost implications by the Department of Labour, and a series of organizational issues that were still to be resolved made it doubtful that it would be translated into policy any time soon. Overall, it does not seem that the participatory structure of policy-making produced significant results. The Action Programme was certainly a comprehensive policy paper that called upon a series of actors and structures, mostly from the public administration but also from civil society, to take responsibility for particular actions. However, it is unclear whether these features of the document reflected civil society participation or simply the skills and ability of the consultants who drafted it. According to one informant, many of the ideas contained in the document had been around for many years (interview no. 98).

The civil society organizations we interviewed were rather cynical about the whole process, including their own role in it (interview nos. 8, 82, 25, 44). They seemed to believe that participation had ended up co-opting rather than empowering child-rights NGOs:

We've now been driven into the government's agenda instead of driving our own agenda of what is possible, and that creates a problem because in the current South African situation the ANC government is [...] not amenable to criticism – which is a problem across government in various departments [...] We're acquiescing formally. (interview no. 82)

There seems to be a diffuse perception among South African elites that child labour is a surrogate problem—one that stems from poverty and can only be addressed through economic growth (interview no. 66). Consequently, economic policies aimed at attracting foreign direct investment, or at least preventing the flight of domestic capital, take precedence over action targeted at child labour *per se*. In this context, organizations like Molo Songololo (interview no. 62), the Nelson Mandela Children's Fund (interview no. 4) or Sithabile (interview no. 44) prefer to stay outside of participatory processes. This is not to say that these organizations do not believe in the value of engaging in dialogue with government: raising the awareness of labour inspectors is crucial for these NGOs. Yet they believe that the risk of being trapped in long, unproductive and costly discussions ('talk shows'), or of being co-opted, is greater than the potential benefits and does not warrant direct involvement.

### 3.3 *The fight against HIV/AIDS: the case of SANAC*

HIV/AIDS is the biggest policy priority for South Africa (Nattrass, 2003). South Africa has more people living with HIV/AIDS than any other country in the world. From the perspective of Western medicine it looks strange, given the magnitude of the problem, that public policy in this field has not included (at least until recently) a 'treatment action' plan. By 'treatment' we refer to a cocktail of anti-retroviral medications (ARVs) that are believed to decelerate the progress of AIDS by improving the immunization system of the HIV-positive. In some cases it has been observed that such therapy may even eradicate the HIV virus or at least reduce it to levels undetectable in the patients' blood. Research has also shown that a single dose of nevirapine can reduce the risk of mother-to-child transmission of HIV at birth—a huge problem in Africa—by almost 50% (Guay *et al.*, 1999).

The government generally justifies its position on anti-retrovirals by reference to both medical and practical considerations (Butler, 2005). It underscores the

toxicity of these medications when administered without close medical supervision. Also implicit in the government's position, at least until recently, is the problem of the high cost of a treatment campaign given the high number of patients that would be potentially involved. The alleged 'denialist' views of key Cabinet members concerning the causal link between HIV and AIDS probably play a role as well (Mbali, 2005).

It is beyond the scope of this paper to evaluate what counts as effective policy in the field of HIV/AIDS.<sup>10</sup> Our purpose here is to analyse the policy process. In 2000 the government established a participatory forum to advise government on all matters related to HIV/AIDS. This was SANAC, and it included 15 representatives from government and 16 representatives from civil society speaking on behalf of various 'sectors': faith-based organizations, trade unions, women, youth, traditional healers, disabled people and others. The most important NGO participating in SANAC was the National Association of People Living with AIDS (NAPWA).

Many interview informants stated in unambiguous terms that South Africa's AIDS figures could have been much lower if the state had embraced a treatment policy early on. They criticized SANAC for its silence on key aspects of government policy concerning, in particular, the issue of mother-to-child transmission, the link between the HIV virus and the disease, and in general treatment and drug distribution (interview nos. 91, 112, 104, 84, 95). In the eyes of many, SANAC had dealt with none of the issues that really count in the fight against AIDS but had spent instead an inordinate amount of time discussing inessential topics like virginity testing and the health hazards associated with it.

One of the staunchest critics of SANAC is the TAC, the most influential and effective NGO in the HIV/AIDS field. It was formed in 1998 to lobby for cheaper and more easily available ARVs.<sup>11</sup> The impetus for its establishment was provided by a 1997 legal case in which a Brussels-based organization representing pharmaceutical manufacturers sued the South African government for passing an amendment allowing the purchase of ARVs from foreign suppliers at cheaper prices than from local subsidiaries. The amendment was viewed as a violation of existing WTO rules on intellectual property. TAC sat with the government in court. It also engaged in a series of demonstrations outside the pharmaceutical companies' buildings. Some of its tactics were highly spectacular. For example, it brought patients dying of AIDS to testify in court. The pharmaceutical association eventually dropped its charges.

<sup>10</sup>For an accessible overview of some of the medical and policy issues, see Munjanja (2000).

<sup>11</sup>The reconstruction of TAC's development is based on field interviews (nos. 66, 21, 32, 91, 87) and Friedman and Mottiar (2005).

Relationships with the government quickly deteriorated, however, due to the government's policy on treatment and AIDS. In August 2001, TAC, whose campaign had received the official support of COSATU and other organizations, launched a court case demanding government provision of nevirapine to pregnant women to limit mother-to-child transmission (Heywood, 2003). While awaiting a final verdict, in collaboration with Médecins sans Frontières (an international medical NGO), TAC started its own private treatment plan by importing ARVs illegally from low-cost producers abroad. The chairperson of the organization, Zackie Achmat, himself HIV-positive, refused to take ARVs until they became generally available to all South Africans that needed them.

In April 2002, the Constitutional Court ruled that failure to provide treatment violated the constitutional rights of women and babies. When the Department of Health continued to delay the rolling out of a distribution plan (now a legal requirement as a result of the court ruling) claiming inadequate or insufficient infrastructural capacities, TAC responded by launching a civil-disobedience campaign and pressing manslaughter charges against the government in connection with AIDS deaths. In November 2003, after a failed attempt at negotiating a consensual solution to the impasse, the government gave in to pressure and issued an 'Operational Plan for Comprehensive HIV and AIDS Care, Management and Treatment for South Africa' [(DoH (Department of Health), 2003]. This plan aimed to reach 1.4 million people in five years. Although TAC complained that the roll out of the plan proceeded much more slowly than would have been desirable, thousands of people (especially in the Gauteng and Western Cape Provinces) benefited from access to treatment after the adoption of the plan. TAC's mobilization was also responsible for the introduction of changes in SANAC's institutional structure in 2003: participants in the new SANAC were to be chosen by the sectors themselves rather than being hand-picked by the government. Also, the composition of the various sectors was modified to include other important societal actors, including a national representative of TAC.

TAC's strategy and tactics contrast sharply with those of NAPWA, whose positions on HIV/AIDS are essentially those of government (interview nos.104, 83, 91, 116). NAPWA argues that South Africa 'still lack(s) basic infrastructure which is conducive to effective administration of antiretrovirals' [(NAPWA (National Association of People Living with AIDS), 2001]. It focuses 'on the provision of care and support for people living with AIDS', on the 'facilitation of co-ordination' and the establishment of 'support groups for counselling' and on the 'enhancement of HIV/AIDS awareness through seminars and workshops throughout South Africa', but not on treatment. NAPWA has accused TAC of promoting a hidden 'anti-governmental' and 'racist' (anti-Black people) agenda and has officially distanced itself from TAC.

NAPWA is widely perceived by the informed public as a close ally of government in the fight against TAC and treatment. As for SANAC as a whole, the consensus emerging from field interviews is that the institution helps to legitimize the government's highly controversial stance on HIV/AIDS and on the effects of anti-retroviral treatment. The overall assessment of the usefulness of civil society participation inside SANAC can be summed up by the declaration of Executive Director of the HIV/AIDS, TB, Malaria Fund: '[in the field of HIV/AIDS] SANAC is certainly not an example of good practice'. While the 'collective voices of civil society, private sector and the church need to be heard' (Deane, 2003), these voices are not heard within SANAC but more easily outside of it.

#### 4. Civil society, deliberation and communicative power

The case studies presented above were preceded by a theoretical contrast between two alternative conceptualizations of deliberative policy-making and of the role of civil society organizations within it: PDPA theory, which recommends that civil society groups engage with the state for the resolution of public-policy problems, assuming that the joint exercise of reason would lead to more equitable and efficient policy outcomes than alternative mechanisms of policy formulation; and Habermas' theory of deliberative politics, which emphasizes the role of moral discourse in the informal public sphere and which is sceptical of civil society's ability to influence the official circles of power by participating directly in them.

The empirical evidence presented above cannot be considered a test of competing theories for two reasons: first, it is unclear how one would go about testing a normative theory; second, none of the South African fora fully conforms to the full list of institutional features and preconditions of PDPA theory. Nonetheless, the cases help evaluate the empirical plausibility of several key statements in the PDPA literature. For example, we found no evidence in our case studies that the social groups sitting in the various participatory structures really had more information and greater problem-solving capacities than public bureaucracies, and no evidence *a fortiori* that societal involvement in policy-making permitted the mobilization of these additional resources. Steven Friedman, a student of the various participatory structures, told us that none of the fora he had studied had ever been unable to produce a single concrete policy outcome (interview no. 19). Only one of them had produced a policy, on housing, and it had been a disaster: the civics had participated in the forum to represent the homeless, but the whole consultative process had entirely misread the problem and had spent five years trying to work out how to get mortgage financing to the poorest among the poor. As research later showed (Tomlinson, 1997), though, the poorest of the poor did not want mortgage financing. They preferred small

loans to buy materials and improve their dwellings themselves. Their argument was, 'These guys lock us into things we can't pay for or that only last until you have a job. Then you lose your job and they come and take your house away'.

Also, the case studies suggest that the emergence of inter-group consensus in participatory policy-making is not necessarily the outcome of successful deliberation but may simply be a sign of group co-option, or of the inability of less powerful actors to articulate a position which is at odds with the position of dominant actors. All South African fora (except NEDLAC) are dominated by government and usually underwrite government approaches to the resolution of public problems. Within NEDLAC, civil society organizations like SANCO are unable to articulate original positions about almost anything. In particular, they have failed to take a critical stance against GEAR, the highly controversial neo-liberal macroeconomic framework, which by promoting fiscal restraint and the commercialization of public utilities has had a negative impact on poor people's access to basic services. Within CLIG, the NGOs participating in the forum seem to have bought into the dominant approach that child labour is a surrogate problem, one that derives from poverty and needs to be addressed through pro-growth policies. Child labour lacks a social constituency that could mobilize to create a sense of urgency around the problem. Consequently, policy development proceeds haltingly in this field. Within SANAC, the state and its major NGO allies, including a national association of HIV/AIDS-infected people, share the same view that the causal links between HIV and AIDS are unclear, that the country is, from the point of view of infrastructure, unprepared for large-scale treatment, and that the distribution of anti-retrovirals, besides being economically unaffordable in many respects, would also have seriously undesirable side effects for poor people's health.

The quiescence and acquiescence of participating organizations contrasts sharply with the activism and the effectiveness of organizations that do not lock themselves into a strategy of institutionalized collaboration. The case of TAC is perhaps the clearest. TAC managed eventually to alter the government's policy stance on HIV/AIDS and to get it to issue an Operational Plan on treatment. It did *not* do so through dialogue but through protest and litigation. All the most effective organizations, especially TAC, behave like social movements. They pressure official power from outside in a siege-like manner and then try to reap the benefits of such mobilizations at the bargaining table. Their tactics include mass demonstrations, boycotts, and, in the case of TAC, shame campaigns and legal litigation.

One could draw at least two lessons about the plausibility of the PDPA normative model from the South African case studies examined above. These have to do with the role of the state and the conceptualization of deliberative policy-making. PDPA theory assumes that social groups have informational and problem-solving

advantages over the public bureaucracy and conceives of the state as a benevolent and politically neutral actor, one that is aware of its technical limitations and therefore willingly shares its policy-making prerogatives with civil society organizations as a way of remedying its information gathering and processing deficiencies. Alternatively, what we have referred to above as *the veil of radical uncertainty* prevents the state (the principal) from clearly spelling out what it wants its agents to achieve and encourages both devolution and experimentation. In the case studies examined above, though, the state appeared to have very clear preferences about the kind of policies it wanted, possibly as a result of the international macroeconomic constraints impinging on it. These constraints led to a constant preoccupation with pleasing international financial markets and forced the government to maintain tight control both on fiscal policy and more generally on the scope and depth of public intervention in the economy. This macro stance in turn had a deep impact on the range of issues that could be meaningfully discussed in the policy fora.

PDPA theory seems to assume that, in a time of declining systemic and ideological differences, it is possible to carve out areas of local consensus and to transform political issues into technical problems awaiting efficient solutions. Yet this carving-out strategy does not go very far, even today. The South African cases show that even the apparently most technical issues, having to do with effective HIV/AIDS or child labour policies, are deeply intertwined with South Africa's position in the international economy. One of the primary reasons why government may want societal involvement in policy-making in these circumstances is because it needs 'buy-in' from societal actors to facilitate compliance with potentially controversial or unpopular policies. In these circumstances, participatory processes run a serious risk of manipulation and co-option. In the South African case, this risk is heightened by the domestic strength of the ruling ANC party and the insufficient separation between civil and political society (Friedman, 1992; Shubane, 1992, p. 37; Reitzes and Friedman, 2001, p. 9).

Also, in light of the evidence presented above, PDPA's particular understanding of deliberation, which is centred on the transformative potential of *face-to-face* discourse within institutionalized settings, seems empirically inadequate as a characterization of coordination within participatory fora. The fora we examined are (at best) bargaining fora, in which arguments are taken into consideration only to the extent that there is power to back them; otherwise, they are ignored. Indeed, powerful actors are unlikely to be persuaded even by the best rational arguments. The evidence from deliberative polls (Fishkin, 1995) supports this point by showing that preferences are less likely to change when the issue is particularly salient and when participants enter the debate with highly structured preferences (Farrar *et al.*, 2003, p. 17). Principal-agent considerations reinforce this conclusion: the actors who participate in policy fora represent

particular group views. Even admitting a transformative effect on the preferences of agents, it is not clear what the impact on the principals, i.e. the constituencies at large, would be.

The notion of deliberative policy-making advanced in this article is one in which action aimed at reaching mutual understanding is unlikely to be found among the formal discourses taking place in the formal sphere of policy-formation. We place deliberation among those discourses that mobilize the public sphere to act on particular problems. According to PDPA theory, rational discourse is the mechanism that adjudicates among competing positions once power differences have been bracketed through appropriate institutional design (or can be assumed not to matter much because interests are *a priori* aligned). The view we outline here, drawing on Habermas (1996), begins by acknowledging that power differences are unlikely ever to be bracketed, except perhaps in laboratory settings or quasi-experiments (on this see also Cohen and Rogers, 2003). Yet even in the presence of power asymmetries, discourse is not necessarily inane but can itself become a source of power, which can be used to counterbalance or even neutralize other sources of non-communicative power. We interpret the *modus operandi* of South Africa's most successful civil society organizations as aimed at building *communicative power* (Flynn, 2004). This form of power is first accumulated in the informal public sphere and then expended in the institutionalized sphere of policy-making to counter other sources of power impinging on the extended bureaucratic apparatus. It is 'communicative' because it is based on nothing other than the sheer acceptance of particular validity claims by citizens and the motivational force of argument. It is 'power' because it forces other policy-making actors to reconsider their strategic options and alter their course of action accordingly.

The strategy of the civil society organizations that have the greatest impact on policy, like TAC and COSATU, is in many respects a communicative strategy (see Friedman and Mottiar, 2005) because it centres on persuading as many citizens as possible of the moral appropriateness and binding character of the particular policy options that these organizations advocate. Like all communication, this too involves performative contradictions and consistency constraints. For example, the rationale of TAC's court case against government is that its HIV/AIDS policy has violated the commitments solemnly made by adopting the South African Constitution, which states that 'everyone has the right to have access to health care services' and that 'the state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realization' of this right (Art. 27). An example of consistency constraint is the refusal of TAC's Zachie Achmat to assume ARVs until they are made available to all. Unlike standard PDPA views of deliberation, communication is not limited to verbal utterances but also involves more dramatic forms of action, from marching

to civil disobedience. Perhaps more importantly, this type of communication does not seek to change the views of the organizations' counterparts (a change which seems unlikely to take place) but instead seeks to build pressure on the counterpart by winning consensus among the public at large.<sup>12</sup> The mechanisms through which such pressure is exercised may be multiple but rely primarily on the impact that electoral competition has on policy-makers, making it highly unlikely that they will endure large-scale manifestations of dissent without taking the appropriate policy remedies. This logic is articulated in the following excerpt from a COSATU strategy paper:

[Politicians are subject to] all sorts of pressures, and sometimes you get the feeling that certain individuals are battling in the light of these pressures. But that's where your mass struggles outside parliament come into play because if a person only gets pressure from one side, from the IMF, the World Bank, from John Major and Thatcherite economists – then for a few months with that sort of pressure on an individual, he will then begin to soften up and follow. But, if there is equal pressure which is coming from left sources outside parliament on the same issues that he is getting pressure from the IMF, then he begins to think as an individual instead of thinking on behalf of other forces. (COSATU document cited in Webster, 1996, p. 6)<sup>13</sup>

## 5. Concluding remarks

Based on an analysis of three South African participatory policy-making fora, NEDLAC, CLIG and SANAC, this paper has critically examined some of the assumptions underlying what we refer to as PDPA theory and proposed a different characterization of deliberative policy-making and of the role of civil society within it. This characterization shares with critics of deliberation, in particular with Carl Schmitt's *Crisis of Parliamentary Democracy* (1985), and Habermas' own earlier work (e.g. 1989), a stance of low expectation about the possibility of deliberation in formal settings, and it sees action aimed at reaching understanding as more likely to occur in the informal public sphere, where the preferences of ordinary citizens are still malleable, pragmatic constraints as to what is possible and feasible are less pressing, and the possibility for civil society groups to build communicative power by articulating moral alternatives to the

<sup>12</sup>Note the similarity with the 'boomerang effect' analysed in Keck and Sikkink (1998).

<sup>13</sup>As noted by an anonymous reviewer, there is unfortunately no guarantee that communicative power will always be used for noble and progressive causes: civil society organizations and NGOs may use moral arguments to build support for causes that some of us may not like.

status quo that motivate and mobilize the public is open (Habermas, 1996). This communicative power can then be used in the formal sphere to counterbalance other forms of power.

In conclusion, we need to address the question of why PDPA theory seems dramatically inadequate when faced with an account of South African developments, while it has been claimed to describe remarkably well other experiments with participatory governance in other parts of the world. What is different between the South African multistakeholder fora and, for example, PB in Porto Alegre, the most celebrated case of success? While a full comparison is beyond the scope of this paper (and perhaps not even entirely appropriate, since the South Africa multistakeholder fora are national institutions, while the PB is a local phenomenon), the preceding discussion suggests that we look at the role of the state.<sup>14</sup>

Porto Alegre's PB experiment combines grassroots meetings at the neighbourhood and regional level, in which citizens are called upon to discuss, propose and prioritize particular actions, with a complex bureaucratic process, involving public servants and technocrats as well as citizen representatives from different regions and thematic areas. While the portion of the budget that is decided upon in participatory fashion is limited albeit growing—from 3.2 percent of revenue in 1989 to 17 percent in 1992 (Dos Santos, 1998, pp. 476–477)—one of the most important outcomes of the PB is that it seems to have solved the problem of imperfect representation of the citizenry by elected politicians. Especially where there are pervasive clientelistic networks, electoral incentives often do not ensure correspondence between the preferences of voters and the policy choices of elected representatives. In fact, even though the median voter is poor, public policies are generally not pro-poor (Keefer and Khemani, 2003). In Porto Alegre, the introduction of PB has greatly increased the allocation of public funds to poor people. Consequently, all indicators of poor people's access to basic services have improved: home access to clean water increased from 80 to 98% between 1989 and 1996, and the number of people with access to sewerage increased from 46 to 85% in the same period (Vaillancourt-Laflamme, 2005, p. 40).

While participation remains confined to a minority of the population (<8%) and there are concerns about a possible bureaucratic involution and co-optation of participating organizations (Gret and Sintomer, 2002), PB has successfully involved the least well-off: most participants in the process are from poor neighbourhoods. Coordination, scholars seem to agree, is not by deliberation properly speaking. Indeed, in the words of Rebecca Abers (Abers, 2003, pp. 205–206):

In Porto Alegre . . . people are not drawn into the process because they wish to deliberate, but because they wish to get infrastructures for their

<sup>14</sup>What follows draws from the literature review on Porto Alegre by Vaillancourt-Laflamme (2005).

own neighbourhoods, to improve their lives. Typically, new participants have almost no perception and little concern for other neighbourhoods' needs... The participatory process has an extremely competitive component which is precisely what gives it its vitality: if it did not provide the prospective of providing returns to their specific needs or concerns, most people would not go to the meetings... I doubt very much that purely deliberative processes ever occur in participatory fora, except where issues are not particularly contentious. (Abers, 2003, pp. 205–206)

The ruling party, the *Partido dos Trabalhadores* (PT), was firmly committed to the process, which was for all purposes its own creation. This commitment did not proceed solely from the party's historical and ideological emphasis on autonomy, devolution, self-organization and its opposition to clientelism, but also from organizational self-interest (Abers, 2000, p. 101). From 1989 on, the PT has never been able to count on an electoral majority in the legislative assembly, i.e. in the locus where the budget needed legally to be approved. The PB process helped the PT by activating an alternative mechanism of consensus mobilization: once the budget went through the PB process, it became virtually impossible for the legislature to object to it. The contrast with South Africa could not be starker. With no credible electoral competition and a solid grasp on the popular vote, the ANC does not need societal participation to the same extent as the PT does (Heller, 2001; Lyons *et al.*, 2001; Habib, 2005).

The contrast between Porto Alegre's PB and South Africa's participatory fora suggests that participatory institutions may work in particular circumstances, but also that, in the absence of those circumstances, they may fail dramatically. While specifying the conditions in which PDPA institutions may deliver on their promise would require a separate article, the evidence presented above suggests that, for participation to work, the state and the political parties that control the state apparatus must be genuinely interested in promoting societal participation, out of ideological orientation, political expediency, or (as in Porto Alegre) both. In this regard, the fact that the ANC government faced no credible electoral alternative lowered its interest in genuine participation. Alternatively, as proposed by the direct-deliberative polyarchy strand discussed above, radical strategic uncertainty in the face of novel, complex and interdependent problems could lead actors, including state actors, to engage genuinely in a cooperative search for innovative solutions. Perceived radical uncertainty, however, cannot be simply assumed but should be verified case by case. Our hunch is that the assumption of radical uncertainty is more likely to hold in the case of, say, food safety than in tax policy, i.e. when issues are less politically salient and require a higher degree of technical knowledge. When, as in the South African

cases, the actors think that they know exactly what they want, preference and power differences will reassert themselves and actors will try to bend the participatory process to serve their interests.

It follows from the preceding discussion that the notion that real actors coordinate with one another by deliberation in participatory fora should be used sparingly, if at all. Methodological prudence (see Kant, 1983, p. 34; Berlin, 1998) and empirical observation suggest that what happens in multistakeholder institutions is bargaining, not deliberation, even though this could be a particular form of bargaining (integrative or mixed-motive; Walton and McKersie, 1991) in which actors have a lot in common and are required to communicate truthfully to solve problem and push out the Pareto frontier that both parties face. Even in this type of bargaining, however, there is an inevitably distributive phase, linked to the problem of apportioning the benefits (and the costs) of cooperation. Success in this distributive phase is likely to depend on the parties' bargaining power. Even the extent to which the parties' arguments are taken into serious consideration may depend on the power they bring to bear.

By insisting on the transformative potential of face-to-face discourse within institutionalized settings, PDPA may give progressive civil society organizations the wrong kind of advice. If the evidence provided in this paper is to be trusted, participation solely based on the hope that the force of the better argument will eventually prevail rests on weak and naïve foundations. At the same time, splendid isolation is not a viable strategy either: every social movement has at some point to engage with the state if its wants to achieve policy change.<sup>15</sup> Such engagement seems most productive when civil society organizations maintain strong mobilization capacities and when they keep an exit option open for themselves.

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<sup>15</sup>The problem of backing an argument with power is not unknown to the PDPA literature. For a distinction between 'adversarial' and 'collaborative' power and a discussion of the imperfect channelling of the former into the latter, see Fung and Wright (2003a, b) and Cohen and Rogers (2003).

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