

**THE POLITICS OF DELIBERATIVE
DEMOCRACY. A COMPARATIVE
SURVEY OF THE “LAW IN ACTION”
OF CITIZEN PARTICIPATION**

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THE POLITICS OF DELIBERATIVE DEMOCRACY. A COMPARATIVE SURVEY OF THE “LAW IN ACTION” OF CITIZEN PARTICIPATION

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1. PRELIMINARY REMARKS

1.1 *What is Democracy?*

“Democracy is that set of institutions and procedures by which individuals are empowered as free and equal citizens to form and change the terms of their common life, including the nature and scope of democracy itself”². In more concrete terms, through democracy citizens stipulate who decides and how decisions are taken in pluralist and complex societies. This has become an extremely challenging task: indeed the difficulties arises for the elected politicians to have competences in very technical questions and to meet all the different needs of the popular will. The “model” of democracy based on political representation is experiencing a profound crisis, which the majority of the authors dealing with

¹ I am grateful to Dr. Matteo Nicolini for the helpful discussions and comments on the article.

² BOHMAN J. (2010). “Is democracy a means to global justice?” in KAHANE D., WIENSTOCK D., LEYDET D., WILLIAMS M., *Deliberative democracy in practice*, Vancouver-Toronto, UBC Press, 93.

issues related thereto report³. This is why decision-making processes need to be reconsidered in order to fit the demands of contemporary societies.

To this extent this article aims at analyzing the so-called “democratic innovations”: these are different instruments and procedures, which can revise the traditional decisional mechanisms based on representation⁴. Democratic innovations refer to different arrangements of procedures, through which citizens are involved in public decisional mechanisms and differ from the traditional representation models⁵. Nowadays decision-making processes are conceived as legally regulated procedures which have to enforce constitutional principles in order to create a permanent relation between laws, democracy and which kind of sovereignty can concretely produce democratic laws⁶.

Furthermore, the article will focus on “institutionalized” forms of participation in political-decision making. These are those democratic devices that provide citizens with a formal role in policy-making and at the legislative/constitutional decision-making level. As Graham Smith points out⁷, there is a wide range of different theoretical perspectives that delve into citizen participation in political decision-making: among others, *participatory democracy*, *direct democracy* and *deliberative democracy*. The concept of *participatory democracy* is related to forms of participation that directly include ordinary citizens into institutionalized representative procedures, in which decisions are the outcome of a consensual deliberative process⁸. In this sense, participatory democracy share some part of its identity with the concepts of *direct democracy*, i.e. all those democratic instruments (referendum, people’s legislative initiative and recall) through which citizens are empowered with the final decision over a specific public issue

³ See *inter alia*, ALONSO S., KEANE J., MERKEL W. (2011). *The Future of Representative Democracy*, Cambridge, Cambridge University Press; STORTONE S. (2010). “Participatory budgeting: heading towards a ‘civil’ democracy?” in FREISE M., PYYKKÖNEN M., VAIDELYTE E., *A panacea for all seasons?: Civil society and governance in Europe*, Baden-Baden, Nomos, 99-120; CASTELLÀ ANDREU J. (2014). “Las enseñanzas del tiempo transcurrido, o de como la democracia representativa sigue siendo imprescindible”, in GUTIERREZ GUTIERREZ I., *La democracia indignada: tensiones entre voluntad popular y representación política*, Granada, Editorial Comares, 143-157.

⁴ SMITH G. (2009). *Democratic Innovations. Designing Institutions for Citizen Participation*, Cambridge, Cambridge University Press, 4.

⁵ SMITH G. (2009). *Democratic Innovations. Designing Institutions for Citizen Participation*, Cambridge, Cambridge University Press, 2.

⁶ CHAMBERS S. (2003). “Deliberative Democracy Theory”. *Annual Review of Political Science*, 6, 310.

⁷ SMITH G. (2009). *Democratic Innovations. Designing Institutions for Citizen Participation*, Cambridge, Cambridge University Press, 5.

⁸ SMITH G. (2009). *Democratic Innovations. Designing Institutions for Citizen Participation*, Cambridge, Cambridge University Press.

and that are based on the majority principle⁹. In fact, in both cases there's the need of some kind of cooperation with representatives in order to make the final decisions effective¹⁰. Both participatory and direct democratic instruments represent complementary features of the representative system, the basic democratic structure on which contemporary constitutional states lean on¹¹.

1.2 *What is Deliberative Democracy?*

The concept of *deliberative democracy* is studied by heterogeneous disciplines and may be assessed from different perspectives. It is a very difficult task to deliver a clear definition of what deliberative democracy is, since a lot of attempts has been made in the last two decades¹², and the topic related thereto has become one of the dominant issues researches are dealing with in democracy studies¹³. Among the others, James Bohman defines deliberative democracy as “any one of a family of views according to which the public deliberation of free and equal citizens is the core of legitimate political decision making and self-government” that “consists of procedures by which rules and practices are subject to the deliberation of citizens themselves”¹⁴.

Others consider deliberative democracy as a way to affirm “the need to justify decisions made by citizens and their representatives. Both are expected to justify the laws they would impose on one another. In a democracy, leaders

⁹ FREY B., STUTZER A. (2004). “The role of direct democracy and federalism in local power”. *Center for Research in Economics, Management and the Arts working papers*, 25, 21; FINE T. (2010). “Direct democracy in the United States”. *Revista catalana de dret public*, 41, 2010.

¹⁰ GAMPER A. (2015). “Forms of democratic participation in multi-level systems”, in FRAENKL-HAEBERLE C. (et al.), *Citizen Participation in multi-level democracies*, Leiden/Boston, Brill Publishing House, 69.

¹¹ On that see: CASTELLÀ ANDREU J. (2014). “Las enenanzas del tiempo transcurrido, o de como la democracia representativa sigue siendo imprescindible” in GUTIERREZ GUTIERREZ I., *La democracia indignada: tensiones entre voluntad popular y representacion politica*, Granada, Editorial Comares, 2014.

¹² ELSTUB S. (2010). “The Third Generation of Deliberative Democracy”. *Political Studies Review*, 8, 291-307; GUTMANN A., THOMPSON D. (2004). *Why deliberative democracy?*, Princeton and Oxford, Princeton University Press; STEINER J. (2012). *The Foundations of Deliberative Democracy: Empirical Research and Normative Implications*, Cambridge, Cambridge University Press.

¹³ WEINSTOCK D., KAHANE D. (2010). “Introduction”, in KAHANE D., WIENSTOCK D., LEYDET D., WILLIAMS M., *Deliberative democracy in practice*, Vancouver-Toronto, UBC Press, 1.

¹⁴ BOHMAN J. (1998). “The coming age of deliberative democracy”. *Journal of Political Philosophy*, 6, 401. See also BIFULCO R. (2011). “Democrazia deliberativa”. In *Enciclopedia del Diritto, Annali*, IV, Milano, Giuffrè, 271-294.

should therefore give reasons for their decisions, and respond to the reasons that citizens give in return. [...] Deliberative democracy makes room for many other forms of decision-making (including bargaining among groups, and secret operations ordered by executives), as long as the use of these forms themselves is justified at some point in a deliberative process”¹⁵.

Nowadays deliberative democracy is conceived as both a normative philosophical theory and a scholarly movement, which is actively redesigning political processes which are complemented with deliberative experiments and procedures which tend to realize inclusiveness, popular control, considered judgment and transparency¹⁶.

The forms of democratic innovation we will analyze, highlight how deliberation might be embedded in institutions that hold concrete decision-making powers. A lot has been done, in the last years, in order to translate deliberative experiments into practice by introducing them into law-making process.

1.3 Aim and structure of the analysis

The paper scrutinizes the possible concrete implementation of what Hendriks calls an “integrated deliberative system”¹⁷, in which deliberative democracy experiments are not only isolated trials conducted by governmental authorities for some specific purposes. In this regard, deliberative democracy would have an additional relation with policy-makers with the intent of contributing to decision-making in the larger public arena¹⁸. The most common practical manifestation of deliberative experiments are the so-called mini-publics, such as citizen’s juries, planning cells, consensus conferences, deliberative polls. All these models share some design features: participants are selected using random sampling techniques, they are brought together for a period of time, facilitators are provided in order to ensure the fairness of proceedings;

¹⁵ GUTMANN A., THOMPSON D. (2004). *Why deliberative democracy?*, Princeton and Oxford, Princeton University Press, 3.

¹⁶ WEINSTOCK D., KAHANE D. (2010). “Introduction”, in KAHANE D., WIENSTOCK D., LEYDET D., WILLIAMS M., *Deliberative democracy in practice*, Vancouver-Toronto, UBC Press, 16; MANSBRIDGE J., PARKINSON J. (2012). *Deliberative Systems. Deliberative Democracy at the Large Scale*, Cambridge, Cambridge University Press.

¹⁷ HENDRICKS C. (2006). “Integrated deliberation: Reconciling Civil Society’s Dual Role in Deliberative Democracy”. *Political Studies*, 54, 499-502.

¹⁸ DRYZEK J. (2010). *Foundations and Frontiers of Deliberative Governance*, Oxford, Oxford University Press, 168.

evidence is provided by expert witnesses and citizens are given the chance to deliberate in plenary or smaller group sessions¹⁹.

For the reasons above illustrated, the research will focus on two different albeit complementary questions: how to accommodate law-making processes to deliberative standards and how to develop legal arrangements which can permanently regulate deliberative processes, like mini-publics²⁰. We will try to understand the degree to which deliberative experiments can fit into institutionalized decision-making processes through a legal regulation of such mini-publics. If it were the case, mini-publics could be considered as more than one-time experiments by becoming regular part of a public decision-making processes.

In the conclusions the article will also try to assess if Constitutions could have space for deliberative experiments, institutions and procedures. In other words, the focus will be set on the concrete possibility for classic parliamentary decision-making processes to be innovated by introducing new procedural phases, which endorse deliberative elements.

First we will analyze *ad hoc* experiences of law/constitution making which took place through deliberative mini-publics. We will then investigate the permanent legal regulation of deliberative processes by referring to some institutional and procedural examples and, in particular, by analyzing the laws of two Italian regions (Tuscany and Emilia-Romagna) and one Spanish Autonomous Community (Aragon) which adopted general regulations on deliberative mini-publics. The article oppose one-time deliberative experiments (par. 2) and long term deliberative arrangements (par. 3) in order to assess which option better fits the decision-making processes in contemporary constitutional systems. The comparative analysis between *ad hoc* and long-term experiences highlights different theoretical and practical aspects of democratic innovations. The purpose of this analysis is twofold: on one side, to demonstrate that democracy as a government tool might be concretely restructured in order to better match the modern needs and, on the other side, to help exploring the reality with the purpose to imagine what democracy might mean and might become in the future.

¹⁹ All see SMITH G., (2012). "Deliberative Democracy and mini-publics", in GEISSEL B., NEWTON K., *Evaluating Democratic Innovations. Curing the democratic malaise?*, London and New York, Routledge, 90.

²⁰ GOODIN R., DRYZEK J. (2006). "Deliberative Impacts: The Macro-Political Uptake of Mini-Publics". *Politics & Society*, 34, 219-244; GRÖNLUND K., BÄCHTIGER A., SETÄLÄ M. (2014). *Deliberative Mini-Publics Involving Citizens in the Democratic Process*, Colchester, ECPR Press.

2. DECISION-MAKING THROUGH AD HOC DELIBERATIVE MINI-PUBLICS: THE CASES OF ICELAND AND BRITISH COLUMBIA

In the last years attempts have been done in order to introduce mini-publics experiments in the institutionalized decision-making “processes”²¹.

Two recent examples of deliberative experiments in policy-making are, on the one side, the citizens’ assembly on the electoral system of the Canadian British Columbia and, on the other side, the Icelandic constitutional reform whose process started in 2010.

The 2004 British Columbia Citizens’ Assembly has been put in place by the provincial government in order to amend and reform the provincial electoral system through the direct involvement of citizens in the same process. The assembly comprised 160 citizens, half men and half women²².

The assembly had both to deliberate on the electoral reform and therefore to bring its recommendations to the electorate in a subsequent referendum. In particular, the assembly had to analyse the provincial electoral system and to propose a new one, if needed. A deliberative process has thus been undertaken, based on information, consultation and discussion. The methodology used in the citizens’ assembly rested on deliberation and consensus in order to sidestep the majority principle on which relies the ordinary decisional mechanism of representative bodies. After one year, the conclusions of the assembly had to pass through a referendum with a quorum set by the government on the limit of 60%. This experiment was lauded as innovative and alternative to the conventional legislative decision-making process²³.

²¹ See Footnote 13; SMITH G., (2012). “Deliberative Democracy and mini-publics”, in GEISEL B., NEWTON K., *Evaluating Democratic Innovations. Curing the democratic malaise?*, London and New York, Routledge, 90.

²² The 160 citizens have been randomly selected from the provincial voters’ list. The Chief Electoral Officer of British Columbia selected randomly 15,800 names from the voters’ list. Out of this sample, 200 people from each of the electoral districts received a letter asking if they would consider serving the province as a member of the Citizens’ Assembly. The numbers in each district were then evenly divided by gender and stratified within five age groups; see RATNER R. (2004). “British Columbia’s Citizens’ Assembly: The Learning Phase”. *Canadian Parliamentary Review*, available at: http://www.revparl.ca/27/2/27n2_04e_ratner.pdf; WARREN M., PEARSE H. (2008). *Designing Deliberative Democracy. The British Columbia Citizens’ Assembly*, Cambridge, Cambridge University Press, 1-19.

²³ WARREN M., PEARSE H. (2008). *Designing Deliberative Democracy. The British Columbia Citizens’ Assembly*, Cambridge, Cambridge University Press, 1-19.

The main outcome of the British Columbia Citizens' Assembly has been the electoral reform proposal and the referendum question. On May 17 of 2005, British Columbians were asked to answer "yes" or "no" to the following question: "Should British Columbia change to the BC-STV electoral system as recommended by the Citizens' Assembly on Electoral Reform?". The referendum got the majority of the votes, but it only won 57.4 percent of the total votes cast, falling a few points under the required 60 percent²⁴.

The case of British Columbia is interesting because it shows how deliberative decision-making and institutional design can complement each other. Indeed, the assembly model could be the starting point for a broader reflection on how to include such arenas in legislative processes in order to supplement and implement representative democracy with *ad hoc* deliberative bodies. Such carefully designed experiments might contribute to a renewal of representative institutions, involving ordinary citizens in the decision-making process on specific issues²⁵.

The Icelandic constitutional "experiment" can be mentioned as another example of how a legislative (in this case constitutional) process could be complemented by the use of deliberative mini-publics²⁶. After the 2008 economic crisis, different political parties and the Icelandic population felt the need of a profound constitutional renewal. Ms Sigurdadottir's government, which had been in power since 2009, decided to adopt the idea of a broad and deliberative constitutional reform characterized by three particular features²⁷. The first one

²⁴ PAL M. (2012). "The Promise and Limits of Citizens' Assemblies: Deliberation, Institutions and the Law of Democracy". *Queen's Law Journal*, 38, 259-294; RATNER R. (2004). "British Columbia's Citizens' Assembly: The Learning Phase". *Canadian Parliamentary Review*, available at: http://www.revparl.ca/27/2/27n2_04e_ratner.pdf

²⁵ SMITH G. (2009). *Democratic Innovations. Designing Institutions for Citizen Participation*, Cambridge, Cambridge University Press; PAL M. (2012). "The Promise and Limits of Citizens' Assemblies: Deliberation, Institutions and the Law of Democracy". *Queen's Law Journal*, 38, 292-294.

²⁶ Something similar happened — more or less in the same time frame — in Ireland in which a citizen assembly based on deliberative democracy principles (the so-called Constitutional Convention) have been established in order to discuss on a possible constitutional reform. In July 2012 the parliament established the structure of the convention by foreseeing the presence of 100 participants, 66 of which represented by ordinary citizens. They had the task of discussing on relevant constitutional issues and to bring their recommendations to the parliament. For more information on this experience see: SUTEU S. (2015), "Constitutional Conventions in the Digital Era: Lessons from Iceland and Ireland". *Boston College International and Comparative Law Review*, 3/2, 251-276.

²⁷ PALERMO F. (2015). "Participation, federalism and pluralism: challenges to decision-making and responses by constitutionalism", in FRAENKL-HAEBERLE C. (*et al.*), *Citizen*

was the setting up of the “national Forum”, a partially random-selected sample of 950 citizens that have been involved in an upstream consultation, starting from 2010. They had, in a one-day meeting, to list principles they wanted to be the fundamental values of the new Icelandic Constitution. After this first phase, an assembly of 25 common citizens (non-politicians) has been selected to be the constitution drafter (the so-called “advisory Constitutional Assembly set up with the Act no. 90/2010²⁸). The members have been selected from a pool of 522 citizens, in order to ensure equal representation in terms of gender, profession and age. The third and unusual feature was the direct involvement of social media in the process of constitutional drafting. Anyone who could have had an interest in the reform had the possibility to comment and send inputs via social networks. The crowdsourcing experiment collected about 3,600 comments²⁹.

In this way, the constitution could have had a direct (deliberative) legitimation from “we the people”. Normally constitutions are legitimated by the election of the legislative council that has to draft the constitutional text. In this case, the constitutional assembly not only was composed by non-politician citizens, but even the contents of the constitution have been elaborated by citizens through a crowdsourcing of ideas. As a consequence, the constitutional structure of Iceland could have had a different and more deliberative legitimation based on a long-lasting preparatory work of deliberative nature. The relation between the representative model and the sovereignty principle would have changed its direction by creating a more direct connection between the citizens, deliberative standards and the constitution. The resulting proposal of the citizen’s deliberative experiment was approved to be the basis of the constitution by two-thirds

Participation in multi-level democracies, Leiden/Boston, Brill Publishing House, 31-47; LANDEMORE H. (2014). “We, All of the People. Five lessons from Iceland’s failed experiment in creating a crowdsourced constitution”, available at: http://www.slate.com/articles/technology/future_tense/2014/07/five_lessons_from_iceland_s_failed_crowdsourced_constitution_experiment.html; FILLMORE-PATRICK H. (2013). “The Iceland Experiment (2009-2013): A Participatory Approach To Constitutional Reform”. *DPC Policy Note*, available at: <http://democratizationpolicy.org/uiimages/pdf/dpc%20policy%20note%20%20the%20iceland%20experiment.pdf>

²⁸ Available at: http://www.thjodfundur2010.is/other_files/2010/doc/Act-on-a-Constitutional-Assembly.pdf

²⁹ LANDEMORE H. (2014). “We, All of the People. Five lessons from Iceland’s failed experiment in creating a crowdsourced constitution”, available at: http://www.slate.com/articles/technology/future_tense/2014/07/five_lessons_from_iceland_s_failed_crowdsourced_constitution_experiment.html

of the voters in a popular referendum, but, the following spring, the bill based on it stalled in Parliament³⁰.

The two analyzed cases show some common features and can therefore be compared, even if they concern two different levels of government, the sub-national one, in the British Columbia Citizens' Assembly, and the national one, in the Icelandic case and two different sources of law, the electoral law, on the one side and the constitution, on the other.

Firstly they both demonstrate how deliberative experiments can become part — through a one-time experiment — of the law and constitution making processes for an *ad hoc* purpose. Moreover the two experiments did not concretely impact on policy making, even if they had a great popular success. In the case of Iceland, the political will blocked the “crowd sourced constitutional draft”, even though the proposed reform got a huge popular acceptance. Popular consensus did not help to avoid the collision between the representative principle and the deliberative logic. The same occurred in British Columbia, where the elevated 60% quorum stopped the electoral reform. The setting of the quorum could be interpreted as a political intent to control the outcomes of the experiment even if the population clearly showed the will to adopt the electoral model of the citizen assembly. In fact, such deliberative experiments can be seen from governing bodies as positive tools which can increase their political credibility but, at the same time, as dangerous instruments when their decisional power on specific issues is partly or completely transferred to deliberative assemblies. Hence, innovative forms of law-making should go further and include an additional step for their well-functioning: the crystallization of such deliberative procedures in the ordinary decision-making process in order to make them a regular part of public decisional mechanisms and policy-making which cannot be controlled by the political system.

³⁰ LANDEMORE H. (2014). “We, All of the People. Five lessons from Iceland’s failed experiment in creating a crowdsourced constitution”, available at: http://www.slate.com/articles/technology/future_tense/2014/07/five_lessons_from_iceland_s_failed_crowdsourced_constitution_experiment.html; see even: SUTEU S. (2015), “Constitutional Conventions in the Digital Era: Lessons from Iceland and Ireland”. *Boston College International and Comparative Law Review*, 3/2, 251-276.

3. PATTERNS OF LONG-TERM DELIBERATION

3.1 *Discursive Representation: Institutional Deliberation in a “Chamber of Discourse”*

Deliberative practices can fit into law-making processes, by blending them with the principle of representation either in the composition of the legislature or in the process of its formation. Hence, the involvement of different components of the society into the policy-making would be crystalized into the traditional representation models, fitting deliberative settings in the institutional architecture of the representative bodies.

Scholars with a background in deliberative democracy studies, theorized such a possibility, and tried to frame a model, in which representation does not rest on the majority rule but on discourse. Hence they imagined a possible institutionalization of a so-called “chamber of discourse”³¹.

A chamber of this kind should be conceived as a formal chamber with members selected as discursive representatives. The chamber relies on the concept of “discursive representation”, a structure in which representatives are legitimated through the transmission of discourses from the public sphere to empowered spaces. “Such representation respects individual autonomy by allowing for many aspects of the self to be represented (through all of the discourses one engages in), rather than only some of the interests and values that people hold (as happens through traditional forms of representation). Thus, it captures individual identities more comprehensively than alternative theories”³². A “Chamber of Discourse” could be conceived as a possible forum for representing discourses, whether formalized in political systems or not.

Such a chamber, as suggested from Dryzek, “could conceivably take its place in the institutional architecture of government in a variety of ways: as a house of review in a bicameral legislature, as an additional branch of government deliberating proposals generated by other branches, or as a way to discharge legislative mandates for public consultation”³³.

Already existing parliamentary chambers do, in some cases, feature different kinds of discourse and different kind of representation. Some comparative exam-

³¹ DRYZEK J. (2010). *Foundations and Frontiers of Deliberative Governance*, Oxford, Oxford University Press, 43-65.

³² AHLBERG J. (2011). “Review of Foundations and Frontiers of Deliberative Governance”. Available at: <http://ndpr.nd.edu/news/27889-foundations-and-frontiers-of-deliberative-governance/>

³³ DRYZEK J. (2010). *Foundations and Frontiers of Deliberative Governance*, Oxford, Oxford University Press, 167.

ples from the practice could help to understand how representation is interpreted in some systems and that deliberative democracy discourses could concretely fit in already existing representative structures. If second chambers traditionally serve as an integration of the general electoral will by mean of territorial or political representation, in specific cases — on an unsystematic base — they do not ground on the classical political and/or territorial selection. For example, in Ireland and Slovenia second chambers are composed, totally or partially, by different components of the society. In fact the members of these second chambers are representatives of social and vocational interests. In these countries, the pluralist interests of the society are directly introduced in the representative decision making structure bypassing — at least in one of the two chambers — the traditional representative rule³⁴.

In this sense the described elements of differentiation of such chambers do not make them proper “chambers of discourse”, but let us understand that the representation principle can be mixed with other features (such as economic and professional interests) in order to innovate traditional decision — making patterns.

Another interesting example can be drawn, again, from the Canadian sub-national experience. In Alberta the candidates of the provincial legislature have been selected by the citizens through a popular consultation process, implementing the principle of provincial citizen’s participation³⁵. In this way, the chamber would not properly be a “chamber of discourse” as theorized by deliberative democrats, but could be understood as a “meta-discursive chamber”, in which discourse is, at least, embedded in the phase of selection of its members.

The theorized possibility of a “chamber of discourse” with the support of the above mentioned examples make it possible to affirm, firstly, that deliberative democracy could nowadays fit governmental structures of constitutional states and, secondly, that traditional representative chambers could be concretely structured as discursive deliberative arenas. Nowadays there are no examples, worldwide, of legislative chambers which endorse mini-publics characteristics, but the above-mentioned theories and practical experiences let us understand that it would be in some way possible to concretely implement it.

³⁴ PALERMO F., NICOLINI M. (2013). *Il Bicameralismo. Pluralismo e limiti della rappresentanza in prospettiva comparata*, Napoli, Edizioni Scientifiche Italiane, 91.

³⁵ PALERMO F., NICOLINI M. (2013). *Il Bicameralismo. Pluralismo e limiti della rappresentanza in prospettiva comparata*, Napoli, Edizioni Scientifiche Italiane, 250.

3.2 *Procedural Deliberation in Italy and in Spain: Enacting Subnational Legislation on Deliberative Democracy*

In some specific cases deliberative democracy became part of the public decision making processes through a legal institutionalization: some very interesting examples are to be found in the regional experiences of some Italian subnational entities. Two regions — Tuscany and Emilia-Romagna — adopted, respectively in 2007 and 2010, laws on deliberative and participatory instruments, according to deliberative practices a permanent nature in order to make them a regular part of the law making process³⁶.

The Italian Constitution has been (courageously) defined by some scholars as a deliberative democratic constitution³⁷. This is due to the fact that the references to democratic participation of citizens are numerous and clear (art. 1, art. 3.2, art. 49 of the Republican Constitution)³⁸. According to these principles, some Italian subnational units enacted specific laws regulating deliberative democratic innovations: in some cases by making them mandatory and, in some way, by creating a legal framework for spontaneous deliberative processes.

First, it should be recalled that Tuscany and Emilia-Romagna have a specific tradition in terms of citizen participation, from a social, cultural and political perspective³⁹. This specific context made it possible for the two regions to develop a stable deliberative framework and to introduce deliberative instruments in the ordinary law-making process.

As Italian regions, even Spanish autonomous communities promoted, over the last few years, the introduction of instruments of civic participation into public decision making procedures⁴⁰. The experience of the Autonomous Com-

³⁶ ALBER E., VALDESALICI A. (2015). “Framing subnational “institutional innovation” and “participatory democracy” in Italy: some findings on current structures, procedures, and dynamics”, in PALERMO F., ALBER E., *Federalism as Decision Making: Changes in Structures, Procedures and Policies*, Leiden/Boston, Brill Publishing House, 448-478.

³⁷ ALLEGRETTI U. (2012). “Instruments of Participatory democracy in Italy”. *Perspectives on Federalism*, 4, 14-23.

³⁸ NICOLINI M., (2013) “Marco teórico y realidad constitucional: reflexiones sobre participación ciudadana en ámbito local en Italia”. *Deliberación*, 3, 81-98.

³⁹ FLORIDIA A. (2007). “La democrazia deliberativa, dalla teoria alle procedure. Il caso della legge regionale toscana sulla partecipazione”. *Le Istituzioni del Federalismo*, 5, 603-681.

⁴⁰ Almost all the Autonomous Communities adopted legislations regarding participatory democracy, on that see: CASTEL GAYAN S. (2014). “El nuevo régimen jurídico del derecho de participación ciudadana, un repaso a la reciente oleada legislativa”. *Revista Vasca de Administración Pública. Herri-Arduralaritzako Euskal Aldizkaria*, 99-100, 847-876.

munity of Aragon is a very interesting example to this regard, as it has developed a specific strategy in order to extend the spaces of active participation and to stimulate the elaboration of an own regional participatory democracy policy, with the ultimate goal to ensure to the citizens the power to influence public decisions⁴¹.

Before going into the details of these three experiences it is important to mention that both Italian regions and Spanish Autonomous Communities enjoy legislative powers and are allowed to legislate about participatory democracy and citizen's participation⁴².

3.2.1 The case of Tuscany

The first experience was the one of Tuscany, which began in 2007 with the adoption of the regional law no. 69⁴³. The law provided his automatic repeal after an experimentation of five years. The positive experience of deliberative processes at local and regional level made it possible to renew the law in 2013 (law no. 46/2013), year in which it became permanent⁴⁴.

First of all, the law was elaborated with the direct involvement of citizens through a deliberative process, concretely implemented with an Electronic Town Meeting (E-TM). In this sense, the law on deliberative democracy is born thanks to deliberative democracy itself. The process lasted two years and involved — in different citizens assemblies — nearly 1000 persons between ordinary citizens, civil servants, associations, local authorities and other stakeholders, through the implementation of innovative participatory digital instru-

⁴¹ In the activity of the Spanish Autonomous Communities we can recognize two paths of development of participatory democracy: one of juridification (e.g. Valencia and Canaria) and one of experimentation, as the one of Aragon. See CASTEL GAYAN S. (2011). "Descentralización política, participación ciudadana y renovación jurídica: hacia una democracia participativa?". *Revista catalana de dret public*, 43, 284.

⁴² CORSI C. (2010). "Chi disciplina la democrazia partecipativa locale?", in ALLEGRETTI U., *Democrazia partecipativa. Esperienze e prospettive in Italia e in Europa*, Firenze, Firenze University Press, 175-182; PEREZ ALBERDI M. (2014). "Democracia representativa y participación ciudadana en España". *Federalismi.it*, 10.

⁴³ Regional Law no. 46/2013, available at: <http://raccoltanormativa.consiglio.regione.toscana.it/articolo?urndoc=urn:nir:regione.toscana:legge:2013-08-02;46&pr=idx,0;artic,1;artic-parziale,0>

⁴⁴ NICOLINI M. (2013). "La nueva ley de la Región de Toscana sobre participación ciudadana en el ámbito regional y local". *Revista Catalana de dret public*, available at: <http://blocs.gencat.cat/blocs/AppPHP/eapc-rcdp/2013/10/21/la-nueva-ley-de-la-region-de-toscana-sobre-participacion-ciudadana-en-el-ambito-regional-y-local-matteo-nicolini/>

ments. In the law, citizens are treated as co-authors of participatory and deliberative processes: they are directly involved in the decision-making process through a set of legal regulations⁴⁵.

Two instruments of citizens' participation are foreseen and admitted by the law: the public debate, modeled on the French experience of the "*debat public*"⁴⁶, and the "open deliberative processes" which can be specifically proposed, designed and developed by groups of citizens or local entities.

The deliberative processes are organized, monitored and evaluated by a regional independent authority, regulated in the law.

The authority is composed by three members, appointed from the regional legislature for a period of five years. The selection is based on professional merits. As said above, the main task of the authority is to organize and manage the deliberative processes. It is responsible for financing them (the regional law allocates a certain amount of money per year to support the deliberative initiatives) and it has to guarantee the inclusive character of the mini-publics. That is why the independent authority, in charge of monitoring the participatory processes, normally opts for the "stratified random sampling" method for the selection of the participants. Finally, it has to check on the impartiality and transparency of the information that are needed for the correct development of the deliberative process.

The public debate and the "open deliberative processes" are regulated in two different parts of the law and differ profoundly in some features. The regional public debate is mandatory for public and private infrastructural projects, *ex art. 8*, which intervene in areas of regional competence and cost more than 50 million Euros. In this case, the regional independent authority has to set up the whole process and carry it over for no longer than six months. The law does not foresee a binding effect for the regional and local legislatures with regard to the results of the deliberative process — being this also unlawful; however, it forces the decision-makers to take into account the output of the process by requiring a clearly spelled out motivation if political decisions differ from the conclusions drafted from the deliberative body.

⁴⁵ ALBER E., VALDESALICI A. (2015). "Framing subnational "institutional innovation" and "participatory democracy" in Italy: some findings on current structures, procedures, and dynamics", in PALERMO F., ALBER E., *Federalism as Decision Making: Changes in Structures, Procedures and Policies*, Leiden/Boston, Brill Publishing House.

⁴⁶ FROMONT M. (2010). "Fondements de la démocratie participative en droit français", in ALLEGRETTI U., *Democrazia partecipativa. Esperienze e prospettive in Italia e in Europa*, Firenze, Firenze University Press, 53.

The so-called “open deliberative processes” may be proposed on an optional basis from local entities, stakeholders (e.g. schools), and citizens’ groups (both Italian citizens and foreigners residing permanently in the concerned area above the age of 16). All proposals of deliberative processes are evaluated by the regional independent authority, which in case of positive assessment provides for logistic and financial help in carrying out the deliberative process. The law specifies some rules for these processes (on the duration, on the inclusiveness and on the information that has to be provided to the participants), but it leaves room for the creativity of the interested subject when it comes to the design of the deliberative instrument. This is probably the most innovative aspect of the law. To this regard some authors point out that deliberative democracy needs flexibility in order to be capable to face all the different problems related to the policy making⁴⁷.

Even in the case of the “open deliberative processes” the results have to be handed out to the local authorities in form of a protocol (memorandum of understanding), which have only consultative effects⁴⁸.

The process of evaluation of the 2007 regional law demonstrated the relevance of an organic regional deliberative law and of its main principles: the promotion of instruments meant to effectively implement the citizens’ right to participate in the elaboration of local and regional policy making, and the enforcement of regional and local ‘quality-democracy’ by means of innovative practices. Tuscany served as a living laboratory for institutionalized deliberative law making processes. In Europe it has been the first case that tried to accommodate deliberative democracy into a legal procedural framework. This is why it can be affirmed that the Tuscan institutionalized right to participation in decision-making had, and still has, a concrete effect on policy making and is meant to become a permanent complementary tool for representative democracy⁴⁹.

⁴⁷ ALBER E., VALDESALICI A. (2015). “Framing subnational “institutional innovation” and “participatory democracy” in Italy: some findings on current structures, procedures, and dynamics”, in PALERMO F., ALBER E., *Federalism as Decision Making: Changes in Structures, Procedures and Policies*, Leiden/Boston, Brill Publishing House.

⁴⁸ FLORIDIA A. (2007). “La democrazia deliberativa, dalla teoria alle procedure. Il caso della legge regionale toscana sulla partecipazione”. *Le Istituzioni del Federalismo*, 5, 603-681.

⁴⁹ NICOLINI M. (2013). “La nueva ley de la Región de Toscana sobre participación ciudadana en el ámbito regional y local”. *Revista Catalana de dret public*, available at: <http://blocs.gencat.cat/blocs/AppPHP/eapc-rcdp/2013/10/21/la-nueva-ley-de-la-region-de-toscana-sobre-participacion-ciudadana-en-el-ambito-regional-y-local-matteo-nicolini/>; LEWANSKI R. (2013). “Institutionalizing Deliberative Democracy: the “Tuscany laboratory””. *Journal of Public Deliberation*, 9, 1-16.

3.2.2 The case of Emilia-Romagna

The positive experience of Tuscany has been followed in 2010 by another Italian region, Emilia-Romagna. The Region adopted a similar law on organic deliberative participation of citizens, which differs in some specific points from the above-described one.

The regional law no. 3/2010⁵⁰ of Emilia-Romagna does follow two different paths for deliberative processes; by contrast, ‘organized discussion paths’ are institutionalized. These paths are designed in order to give citizens the possibility to propose or elaborate projects regarding laws of regional or local relevance. The instruments are legally regulated, as in Tuscany, by means of duration (no more than 6 months) and purpose. This creates a framework for *ex ante* negotiations in the presence of conflicting interests. Stakeholders, citizens and institutions can propose these paths with regard to all sectors and to any level of government. The output is a proposal document, which has to be analyzed by the competent institutions, but does not have a binding effect. The authorities are thus obliged to motivate their decision if in contrast with the output of the deliberative path⁵¹.

In comparison to the Tuscan law, another difference is to be found in the authority in charge of managing the deliberative procedural system. Instead of an Independent Authority, Emilia-Romagna assigns the task to a civil servant of the regional legislature appointed by the president of the regional assembly. The civil servant is in charge of providing methodological and logistic help for initiating the deliberative discussion sessions and of exercising a sort of “substitutive power” in case the competent institutional authorities do not respond to the citizens’ request for establishing a discussion path⁵².

All the territorial authorities — regional legislature and government, municipalities and city quarters — are entitled with the right to propose such deliberative processes. The other public and private actors can propose deliberative paths only in accordance with the public authority competent on policy field related to the process.

⁵⁰ Regional law no. 3/2010, available at: <http://demetra.regione.emilia-romagna.it/al/monitor.php?vi=nor&urn=er:assemblealegislativa:legge:2010;3>

⁵¹ CIANCAGLINI M. (2011). “Tra democrazia partecipativa e concertazione. La legge regionale 3/2010 dell’Emilia-Romagna”. *Le Istituzioni del Federalismo*, 2, 251.

⁵² CIANCAGLINI M. (2011). “Tra democrazia partecipativa e concertazione. La legge regionale 3/2010 dell’Emilia-Romagna”. *Le Istituzioni del Federalismo*, 2, 237-238.

The law foresees that the regional legislature dedicate annually a whole session to the topic of deliberative democracy in order to evaluate the processes undertaken during the year and to plan how to develop further deliberative strategies. The 2014 general report on the status of deliberative democracy in Emilia-Romagna showed that in 2013, 114 deliberative paths were initiated in different policy fields but mostly in the field of “territorial and institutional reforms”, “socio-economic development” and “welfare”⁵³.

3.2.3 The case of Aragon

The Statute of Autonomy of Aragon does not offer a complete and unitary treatment of citizens’ participation, but regulates it in different parts⁵⁴. The most significant provision is included in Article 15.3 (“right to participation”): “the public authorities of Aragon will promote social participation in the design, execution and evaluation of public policies, as well as individual and collective participation in the civic, political, cultural and economic fields“. Here, two essential points must be highlighted. First, the imperative nature of this declaration must be noted, i.e., the authorities of Aragon will promote participation; and second, the definition of its recipients is broad -all the public authorities of Aragon —, not only the autonomous institutions, but also the local authorities⁵⁵.

On this statutory basis, the Government of Aragon encouraged — in the last two legislatures — a policy that could be described as: “a set of processes, institutions and strategic actions created [...] to pave the way for the promotion of active citizen participation in the decision-making processes that affect them. Therefore, its goal is to improve democratic quality by creating a new way of governing and managing public matters, listening to the citizens’ voice and opinion”⁵⁶.

Under these premises, Aragon has experimented, in the last years, participatory procedures regarding many different sectorial policies and involving citizens, on the one side, at the local level, on the other side, at the regional level.

⁵³ ALBER E., VALDESALICI A. (2015). “Framing subnational “institutional innovation” and “participatory democracy” in Italy: some findings on current structures, procedures, and dynamics”, in PALERMO F., ALBER E., *Federalism as Decision Making: Changes in Structures, Procedures and Policies*, Leiden/Boston, Brill Publishing House, 448-478.

⁵⁴ CASTEL GAYAN S. (2012), “Civil participation policy and democratic innovation in the autonomous community of Aragon”. *Perspectives on Federalism*, 4, 235.

⁵⁵ *Ibidem*.

⁵⁶ *Ibidem*.

After a long phase of experimentation of deliberative policy making⁵⁷, the Autonomous Community of Aragon adopted, in 2015, a law (n. 8/2015) regarding transparency in the Public Administration, Open government and participatory democracy.

For what concerns participatory democracy, the law lists the objectives that the government of Aragon wants to achieve through the implementation of deliberative and participatory procedures, such as stimulating new forms of collaboration between the government of Aragon and citizens, and guaranteeing the — equal, informed and accountable — right of participation in public decision-making. Then, it specifies that all the citizens of Aragon (meaning even the residents, and not only the Spanish citizens) and the “organized civil society” are the subjects allowed in taking part in the deliberative procedures. The law then, lists specific instruments of participatory democracy as tools for public consultation, such as citizens’ juries or citizens’ panels that the public administration can activate in order to introduce the voice of the citizens in the regional policy making. After that, the law foresees (art. 54), similarly as the one of Tuscany, such as “open deliberative processes”, which are mandatory for the elaboration of specific acts of the administrations, without defining their form or structure, leaving the administration free to elaborate it depending on the kind of decision it will relate to. An interesting aspect of this legal act, is that only the government can initiate deliberative processes, even if citizens or groups of them can suggest the implementation of such procedures (art. 51). The outcomes of the deliberative processes only have, as in most of the participatory experiences, consultative effects for the authority in charge of adopting the final decision (art. 52, co. 4).

Moreover, it is interesting to underline that the law foresees:

- a) An annual program on citizens’ participation, in which the competent governmental authorities will have to plan the development of participatory democracy policies for the next years;
- b) A regional on-line platform on participatory democracy;
- c) A register on citizens participation (*Fichero de participacion ciudadana*) which the citizens can subscribe and get all information regarding initiatives on participatory democracy and invitations to deliberative processes.

⁵⁷ On the aspect of experimentation of deliberative policy see even: CASTEL GAYAN S. (2011). “Descentralización política, participación ciudadana y renovación jurídica: hacia una democracia participativa?”. *Revista catalana de dret public*, 43, 289.

An interesting aspect, in which the law of Aragon differs from the one of Tuscany is the lack of an independent authority on citizens' participation. It decides not to introduce such an authority but states that the competent authorities are the governing institutions of Aragon.

We cannot evaluate the effectiveness of this a law, due to the fact that it's still too new and hasn't been applied on a regular basis. Nevertheless, the fact that the government of Aragon elaborated and followed a deliberative and participatory experimentation policy before adopting the law, suggests its likely positive implementation.

These three experiences (Tuscany, Emilia-Romagna and Aragon), if compared to the theories of deliberative democracy and the development of instruments for translating these theories into practice, show us one of the possible procedural ways that can be undertaken to implement deliberative democracy in public policy-making, at least at sub-national level⁵⁸.

In all these cases, decentralization of legislative powers and administrative responsibilities served as a propeller for the development of good practices in the decision-making process and in the traditional mechanisms of representative democracy. Moreover, normally participatory procedures work much better on the government levels that are closer to the citizens where citizens are closer to the decision-makers and the law making processes normally refer to more concrete and tangible policies⁵⁹.

As it has already been argued, multi-level states offer a greater range of possibilities for democratic participation by offering "a multitude of territorially rooted and democratically organized entities [that] allows differentiated opinion-forming processes and mechanisms of vertical checks and balances"⁶⁰.

4. CONCLUDING REMARKS

The paper aimed at comparing different cases of concrete implementation of deliberative democratic experiments in order to understand how deliberative

⁵⁸ PALERMO F. (2015). "Participation, federalism and pluralism: challenges to decision-making and responses by constitutionalism", in FRAENKL-HAEBERLE C. (et al.), *Citizen Participation in multi-level democracies*, Leiden/Boston, Brill Publishing House, 31-47.

⁵⁹ COLINO C., DEL PINO E. (2008), "Democracia participativa en el nivel local: debates y experiencias en Europa", *Revista catalana de dret public*, 37, 2008, 247-283.

⁶⁰ SOMMERMAN K. (2015). Citizen participation in multi-level democracies: an introduction, in FRAENKL-HAEBERLE C. (et al.), *Citizen Participation in multi-level democracies*, Leiden/Boston, Brill Publishing House, 8.

processes work in different political structures, with different institutional designs and in different time frames.

The attention has been drawn, mainly from an institutional perspective, at two key questions: how to introduce “one-time” deliberative elements in the public decision-making process and how to give them a general and stable regulation in a long-time perspective.

With regard to “one-time” deliberative experiments two different cases has been considered: The crowd sourced Icelandic constitution-making process and the British Columbia citizens’ assembly on the provincial electoral reform.

Both cases demonstrated the great popular acceptance of such deliberative experiments and — at the same time — the lack of any concrete impact on policy-making. We can draw the conclusion that without a stable legal framework, these kind of deliberative experiments cannot have a concrete impact on policy-making because of the too easy manipulation from the political actors. As matter of law, they are the ones who propose, design, implement and control the course of such experiments. This is why we focused on the attempts that have been done in order to integrate stable deliberative frameworks in the constitutional systems.

First, we deepened the institutional perspective of regulating deliberative democracy practices by analyzing the institutions, which could accommodate, in some way, deliberative experiments in a “permanent” way. We took the case of those legislative chambers, which include different types of representation going in the direction of the theorized concept of a “chamber of discourse”⁶¹.

The article focused then on the question of the procedural frameworks for deliberative democracy. In this regard I analyzed the case of two Italian regions (Tuscany and Emilia-Romagna) and one Spanish Autonomous Community (Aragon) that adopted — in the last years — general laws on deliberative democracy.

The deliberative patterns that emerged from the comparative analysis could help in trying to answer the questions formulated in the introduction: How to make law making processes adequate to deliberative standards and how to create legal arrangements which can permanently regulate deliberative processes — such as mini-publics?

In order to avoid the control of the political will on deliberative democratic experiments, innovative forms of law-making need an additional step for their well-functioning. The crystallization of such deliberative procedures in the

⁶¹ DRYZEK J. (2010). *Foundations and Frontiers of Deliberative Governance*, Oxford, Oxford University Press, 43-65.

ordinary decision-making process, as it happened in Tuscany, in Aragon and in Emilia-Romagna could be one step in the right direction. To this regard, some authors point out, that a well-designed flexible and open regulation of deliberative procedures can be capable of facing the problematic issues related to contemporary policy making⁶². In fact, in these three experiences the regulation of deliberative procedures created the conditions to apply such procedures to policy making on a regular basis, giving — at the same time — effectiveness to the constitutional principles of participation and popular sovereignty. To this regard, the three described experiences showed that is possible to elaborate regulations that can accommodate deliberative procedures and are, at the same time, tailored on a case by case basis in order to correspond the concrete needs of each single territorial entity or specific policy field⁶³.

Moreover these experiences demonstrate that deliberative democracy can be easily regulated on a subnational basis, where citizens are closer to the decision-makers and the law making processes normally refer to more concrete and tangible policies⁶⁴.

In fact, only decentralized governmental systems, in which subnational entities are entitled with law making power, could apply the same model but only after positively answering the question on what ought to be in constitutions to endorse deliberative phases in the law making process⁶⁵.

Our analysis showed that, as an example, the Italian Constitution has space for deliberative and participatory democracy practices as, probably, all contemporary constitutions — based on popular sovereignty — do⁶⁶. A new interpretation of the popular sovereignty principle could be useful to create a connection between all the elements at the base of a democracy in order to justify a deliberative interpretation of the constitutions and, at the same time, push deci-

⁶² ALBER E., VALDESALICI A. (2015). “Framing subnational “institutional innovation” and “participatory democracy” in Italy: some findings on current structures, procedures, and dynamics”, in PALERMO F., ALBER E., *Federalism as Decision Making: Changes in Structures, Procedures and Policies*, Leiden/Boston, Brill Publishing House.

⁶³ LEWANSKI R. (2013). “Institutionalizing Deliberative Democracy: the “Tuscany laboratory””. *Journal of Public Deliberation*, 9, 1-16.

⁶⁴ VALASTRO A. (2012). *Le regole della democrazia partecipativa. Itinerari per la costruzione di un metodo di governo*, Napoli, Jovene.

⁶⁵ NINO CARLOS S. (1996). *The constitution of deliberative democracy*, New Haven, Yale University Press.

⁶⁶ NICOLINI M. (2013). “La nueva ley de la Región de Toscana sobre participación ciudadana en el ámbito regional y local”. *Revista Catalana de dret public*, available at: <http://blocs.gencat.cat/blocs/AppPHP/eapc-rcdp/2013/10/21/la-nueva-ley-de-la-region-de-toscana-sobre-participacion-ciudadana-en-el-ambito-regional-y-local-matteo-nicolini/>

sional mechanisms toward a less majoritarian and a more consensual system. In fact, deliberative democratic instruments would not overturn Constitutions and their classical representative decision making model, instead they would only implement (and complement) the decisional procedures by means of a direct involvement of citizens in specific (legally regulated) decisional processes.

The major difficulty, as clearly stated in my analysis, is to translate principles into practice or rather creating instruments that can both cohabit with representative structures and accommodate deliberative theories. One-time experiments are easy to develop but can be even easily manipulated by the politicians who later decide how to put the results of the deliberative experiments into practice. In the few cases in which deliberative arrangements are fixed into institutions or procedures, deliberation can become a regular part of the decision making process. General regulations on deliberative democracy can become an effective safeguard from political intrusions.

Furthermore, from the comparison emerged another interesting aspect: in Anglo-Saxon areas the trend is to experiment “*ad hoc*” experiences of participatory democracy, whereas in European countries, with legal positivist tradition, there’s the tendency to regulate institutions and procedures before having applied them at all. Both patterns present, as already seen, some institutional dysfunctions and that is why we can affirm that the policy of Aragon to experiment deliberative procedures and only then elaborate a law regulating them, could be interpreted as a best practice. In fact, even if the law is too recent to estimate its effectiveness, the followed procedure is to be positively evaluated for its experimental nature.

In this outline it can be affirmed that representative democracy is not at an end point but its mechanisms and procedures urgently need to be revised and rethought. Democratic innovations could be one efficient way not only to achieve better decision making and more effective legal measures, but even to reengage citizens into the political arena. To this extent participation and deliberation of citizens will become more and more key-elements of the traditional decision-making procedures by means of an increment of pluralism and legitimacy in the contemporary constitutions. This is why a lot of comparative research is needed, in particular in legal and constitutional studies, in order to try to understand how to efficiently fit deliberative studies and theories to the contemporary constitutional structures⁶⁷. To this regard, comparative public law could help to build learning paths on participatory and deliberative democ-

⁶⁷ PALERMO F. (2015). “Participation, federalism and pluralism: challenges to decision-making and responses by constitutionalism”, in FRAENKL-HAEBERLE C. (*et al.*), *Citizen Participation in multi-level democracies*, Leiden/Boston, Brill Publishing House, 31-47.

racy. In fact, in most of these cases, lessons drawn from other experiences could have been useful in order to develop more effective institutional designs and regulations. Creating a stable dialogue between different experiences could build a “deliberative democratic expertise”, which might improve the concrete impact of democratic innovations on policy making.

BIBLIOGRAPHY

- AHLBERG J. (2011). “Review of Foundations and Frontiers of Deliberative Governance”. Available at: <http://ndpr.nd.edu/news/27889-foundations-and-frontiers-of-deliberative-governance/>
- ALBER E., VALDESALICI A. (2015). “Framing subnational “institutional innovation” and “participatory democracy” in Italy: some findings on current structures, procedures, and dynamics”, in PALERMO F., ALBER E., *Federalism as Decision Making: Changes in Structures, Procedures and Policies*, Leiden/Boston, Brill Publishing House, 448-478.
- ALLEGRETTI U. (2012). “Instruments of Participatory democracy in Italy”. *Perspectives on Federalism*, 4, 14-23.
- ALONSO S., KEANE J., MERKEL W. (2011). *The Future of Representative Democracy*, Cambridge, Cambridge University Press.
- BIFULCO R. (2011). “Democrazia deliberativa”. In *Enciclopedia del Diritto, Annali*, IV, Milano, Giuffrè, 271-294.
- BOBBIO L. (2013). *La qualità della deliberazione. Processi dialogici tra cittadini*, Roma, Carocci editore.
- BOHMAN J. (1998). “The coming age of deliberative democracy”. *Journal of Political Philosophy*, 6, 400-425.
- (2010). “Is democracy a means to global justice?”, in KAHANE D., WIENSTOCK D., LEYDET D., WILLIAMS M., *Deliberative democracy in practice*, Vancouver-Toronto, UBC Press, 92-112.
- CASTEL GAYAN S. (2014). “El nuevo régimen jurídico del derecho de participación ciudadana un repaso a la reciente oleada legislativa”. *Revista Vasca de Administración Pública. Herri-Arduralaritzako Euskal Aldizkaria*, 99-100, 847-876.
- (2012). “Civil participation policy and democratic innovation in the autonomous community of Aragon”. *Perspectives on Federalism*, 4, 231-251.
- (2011). “Descentralización política, participación ciudadana y renovación jurídica: hacia una democracia participativa?”. *Revista catalana de dret públic*, 43, 279-316.
- CASTELLÀ ANDREU J. (2014). “Las enseñanzas del tiempo transcurrido, o de cómo la democracia representativa sigue siendo imprescindible”, in GUTIERREZ GUT-

- IERREZ I., *La democracia indignada: tensiones entre voluntad popular y representación política*, Granada, Editorial Comares, 143-157.
- CHAMBERS S. (2003). "Deliberative Democracy Theory". *Annual Review of Political Science*, 6, 307-326.
- CIANCAGLINI M. (2011). "Tra democrazia partecipativa e concertazione. La legge regionale 3/2010 dell'Emilia-Romagna". *Le Istituzioni del Federalismo*, 2, 215-254.
- COLINO C., DEL PINO E. (2008). "Democracia participativa en el nivel local: debates y experiencias en Europa", *Revista catalana de dret public*, 37, 2008, 247-283.
- CORSI C. (2010). "Chi disciplina la democrazia partecipativa locale?", in ALLEGRETTI U., *Democrazia partecipativa. Esperienze e prospettive in Italia e in Europa*, Firenze, Firenze University Press, 175-182.
- DRYZEK J. (2010). *Foundations and Frontiers of Deliberative Governance*, Oxford, Oxford University Press.
- ELSTUB S., MCLAVERTY P. (2014). *Deliberative Democracy. Issues and cases*, Edinburgh, Edinburgh University Press.
- ELSTUB S. (2010). "The Third Generation of Deliberative Democracy". *Political Studies Review*, 8, 291-307.
- FILLMORE-PATRICK H. (2013). "The Iceland Experiment (2009-2013): A Participatory Approach To Constitutional Reform". *DPC Policy Note*, available at: http://democratizationpolicy.org/uimages/pdf/dpc%20policy%20note%202_%20the%20iceland%20experiment.pdf
- FISHKIN J. (2009). *When the people speak. Deliberative democracy and public consultation*, Oxford, Oxford University Press.
- FLORIDIA A. (2007). "La democrazia deliberativa, dalla teoria alle procedure. Il caso della legge regionale toscana sulla partecipazione". *Le Istituzioni del Federalismo*, 5, 603-681.
- FINE T. (2010). "Direct democracy in the United States". *Revista catalana de dret public*, 41, 2010, 1-16.
- FREY B., STUTZER A. (2004). "The role of direct democracy and federalism in local power". *Center for Research in Economics, Management and the Arts working papers*, 25.
- FROMONT M. (2010). "Fondements de la démocratie participative en droit français", in ALLEGRETTI U., *Democrazia partecipativa. Esperienze e prospettive in Italia e in Europa*, Firenze, Firenze University Press, 47-64.
- GOODIN R., DRYZEK J. (2006). "Deliberative Impacts: The Macro-Political Uptake Of Mini-Publics". *Politics & Society*, 34, 219-244.
- GRÖNLUND K., BÄCHTIGER A., SETÄLÄ M. (2014). *Deliberative Mini-Publics Involving Citizens In The Democratic Process*, Colchester, ECPR Press.

- GUTMANN A., THOMPSON D. (2004). *Why deliberative democracy?*, Princeton and Oxford, Princeton University Press.
- HENDRICKS C. (2006). "Integrated deliberation: Reconciling Civil Society's Dual Role in Deliberative Democracy". *Political Studies*, 54, 486-508.
- LANDEMORE H. (2014). "We, All of the People. Five lessons from Iceland's failed experiment in creating a crowdsourced constitution", available at: http://www.slate.com/articles/technology/future_tense/2014/07/five_lessons_from_iceland_s_failed_crowdsourced_constitution_experiment.html
- LEWANSKI R. (2013). "Institutionalizing Deliberative Democracy: the 'Tuscany laboratory'". *Journal of Public Deliberation*, 9, 1-16.
- MANSBRIDGE J., PARKINSON J. (2012). *Deliberative Systems. Deliberative Democracy at the Large Scale*, Cambridge, Cambridge University Press.
- NICOLINI M. (2013). "La nueva ley de la Región de Toscana sobre participación ciudadana en el ámbito regional y local". *Revista Catalana de dret public*, available at: <http://blocs.gencat.cat/blocs/AppPHP/eapc-rmdp/2013/10/21/la-nueva-ley-de-la-region-de-toscana-sobre-participacion-ciudadana-en-el-ambito-regional-y-local-matteo-nicolini/>
- (2013). "Marco teórico y realidad constitucional: reflexiones sobre participación ciudadana en ámbito local en Italia". *Deliberación*, 3, 81-98.
- NINO CARLOS S. (1996). *The constitution of deliberative democracy*, New Haven, Yale University Press.
- PAL M. (2012). "The Promise and Limits of Citizens' Assemblies: Deliberation, Institutions and the Law of Democracy". *Queen's Law Journal*, 38, 259-294.
- PALERMO F. (2015). "Participation, federalism and pluralism: challenges to decision-making and responses by constitutionalism", in FRAENKL-HAEBERLE C. (et al.), *Citizen Participation in multi-level democracies*, Leiden/Boston, Brill Publishing House, 31-47.
- PALERMO F., NICOLINI M. (2013). *Il Bicameralismo. Pluralismo e limiti della rappresentanza in prospettiva comparata*, Napoli, Edizioni Scientifiche Italiane.
- PEREZ ALBERDI M. (2014). "Democracia representativa y participación ciudadana en España". *Federalismi.it*, 10.
- RATNER R. (2004). "British Columbia's Citizens 'Assembly: The Learning Phase". *Canadian Parliamentary Review*, available at: http://www.revparl.ca/27/2/27n2_04e_ratner.pdf
- SMITH G. (2009). *Democratic Innovations. Designing Institutions for Citizen Participation*, Cambridge, Cambridge University Press.
- (2012). "Deliberative Democracy and mini-publics", in GEISSEL B., NEWTON K., *Evaluating Democratic Innovations. Curing the democratic malaise?*, London and New York, Routledge, 90-111.

- SOMMERMANN K. (2015). Citizen participation in multi-level democracies: an introduction, in FRAENKL-HAEBERLE C. (et al.), *Citizen Participation in multi-level democracies*, Leiden/Boston, Brill Publishing House, 1-14.
- STEINER J. (2012). *The Foundations of Deliberative Democracy: Empirical Research and Normative Implications*, Cambridge, Cambridge University Press.
- STORTONE S. (2010). "Participatory budgeting: heading towards a 'civil' democracy?", in FREISE M., PYYKKÖNEN M., VAIDELYTE E., *A panacea for all seasons?: Civil society and governance in Europe*, Baden-Baden, Nomos, 99-120.
- SUTEU S. (2015). "Constitutional Conventions in the Digital Era: Lessons from Iceland and Ireland". *Boston College International and Comparative Law Review*, 3/2, 251-276.
- TUDELA ARANDA J. (2013). "Participación en el procedimiento parlamentario de elaboración de la ley". *Monografías de la Revista Aragonesa de Administración Pública*, 93-119, available at: http://www.aragon.es/estaticos/gobiernoaragon/organismos/institutoaragonadministracionpublica/areas/03_revista_aragonesa_formacion/05%20jos%c3%a9%20tudela.pdf
- VALASTRO A. (2012). *Le regole della democrazia partecipativa. Itinerari per la costruzione di un metodo di governo*, Napoli, Jovene.
- WARREN M., PEARSE H. (2008). *Designing Deliberative Democracy. The British Columbia Citizens' Assembly*, Cambridge, Cambridge University Press.
- WEINSTOCK D., KAHANE D. (2010). "Introduction", in KAHANE D., WIENSTOCK D., LEYDET D., WILLIAMS M., *Deliberative democracy in practice*, Vancouver-Toronto, UBC Press, 1-18.

Título:

La política de la democracia deliberativa. Un estudio comparado del "Derecho en acción" de la participación ciudadana.

Sumario:

1. Consideraciones preliminares. 1.1 ¿Qué es democracia? 1.2 ¿Qué es la democracia deliberativa? 1.3 Propósito y estructura del análisis.
2. Toma de decisiones a través de "Mini-Publics" *ad hoc* deliberativos: Los casos de Islandia y la Columbia Británica.
3. Modelos de deliberación a largo plazo. 3.1 Representación discursiva: deliberación institucional en una "cámara de discurso". 3.2 Deliberación procedimental: promulgación de leyes subnacionales en la democracia

deliberativa. 3.2.1 El caso de la Toscana. 3.2.2 El caso de Emilia-Romagna. 3.2.3 El caso de Aragón. 4. Observaciones finales.

Key Words:

Deliberative Democracy, Democratic Innovations, Mini Publics, Chamber of Discourse, Laws on Deliberative Democracy.

Palabras clave:

Democracia deliberativa, Innovaciones democráticas, “Mini Publics”, Cámara del discurso, Regulación de la democracia deliberativa.

Abstract:

The article analyzes different forms of democratic innovation. On the one side, it highlights how deliberation is embedded in institutions that hold concrete decision-making powers; on the other side, it explores possibilities for the concrete implementation of an “integrated deliberative system”, in which mini-publics are not only isolated experimentations of the governmental authorities conducted for some specific targets.

It then focuses on two different albeit complementary features of deliberative democracy. The first regards how to accommodate law-making processes to deliberative standards; the second feature develops how legal arrangements can permanently regulate deliberative processes, such as mini-publics. The paper aims to ascertain whether it is possible to fit permanent deliberative experiments into constitutionally regulated decision-making processes.

Primarily, the essay shed light on the above mentioned question by analyzing *ad hoc* experiences of law- and constitution-making processes, which took place through “deliberative mini-publics”. The article then investigates permanent legal regulations for deliberative processes by referring to some institutional and procedural examples, in general, and by analyzing the experience of two Italian regions (Tuscany and Emilia-Romagna) and a Spanish one (Aragon), in particular, which adopted general regulations on deliberative mini-publics. The article opposes one-time deliberative experiments and long-term deliberative arrangements in order to assess which option better fits the decision-making processes in contemporary constitutional systems.

The objective of the comparative analysis of different theoretical and practical examples of democratic innovations is twofold: on one hand, it demonstrates that democracy —as a government tool— might be concretely restructured in order to better match the modern needs; on

the other hand, it helps exploring the reality with the purpose to imagine what constitutional democracy might mean and might become in the future.

Resumen:

El artículo analiza diferentes formas de innovación democrática. Por un lado, pone de relieve cómo la deliberación se incrusta en las instituciones que tienen poderes de decisión concretos; por otro lado, explora posibilidades para la aplicación concreta de un “sistema deliberativo integrado”, en el que los “mini-publics” no son sólo experimentos aislados de las autoridades gubernamentales para algunos objetivos específicos. Luego se centra en dos funciones diferentes, aunque complementarias, de la democracia deliberativa. La primera considera como acomodar los procesos legislativos a los standards deliberativos; la segunda característica se refiere a cómo las disposiciones legales pueden regular de modo permanente los procesos deliberativos, como “mini-publics”. El trabajo pretende determinar si es posible desarrollar experimentos deliberativos permanentes en los procesos de toma de decisiones regulados constitucionalmente.

Sobre todo, el ensayo arroja luz sobre la cuestión mencionada, analizando experiencias ad hoc de procesos de elaboración de la ley y la Constitución, que se llevaron a cabo a través de “mini-publics” deliberativos. El artículo investiga entonces regulaciones legales permanentes para procesos deliberativos, con referencia a algunos ejemplos institucionales y procedimentales, en general y mediante el análisis de la experiencia de dos regiones italianas (Tuscany y Emilia-Romaña) y una española (Aragón), en particular, que aprobó el Reglamento general sobre “mini-publics” deliberativos.

El artículo compara a los experimentos deliberativos de una sola vez y los acuerdos deliberativos a largo plazo, con el fin de evaluar qué opción se adapta mejor a los procesos de toma de decisiones en los sistemas constitucionales contemporáneos.

El objetivo del análisis comparado de distintos ejemplos teóricos y prácticos de estas innovaciones democráticas es doble: por un lado, demuestra que la democracia —como una herramienta de gobierno— podría ser reestructurada en aspectos concretos, para adaptarse mejor a las necesidades modernas; por otra parte, ayuda a explorar la realidad con el propósito de imaginar lo que la democracia constitucional puede significar y podría ser en el futuro.