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Institutionalizing Deliberative Democracy: the 'Tuscany laboratory'

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Institutionalizing Deliberative Democracy: the ‘Tuscany laboratory’

Abstract

Although deliberative theory has attracted increasing attention from many quarters, a relevant question that has not yet received adequate consideration is whether it should be institutionalized (Fung et al. 2005), and how that might be done. Although there have been many successful ‘one shot’ experiences of deliberative participation, there are few examples of institutionalization as a routine practice. This raises several issues including the relationship of deliberative processes with representative institutions and processes. Compared with other developed nations, Italy has not traditionally been a leader in the application of public participation practices. However, several regional administrations have ventured into this field in recent years. At the end of 2007 the Region of Tuscany passed Law no. 69 defining Rules on the Promotion of Participation in the Formulation of Regional and Local Policies, an innovative legal provision explicitly aimed at pro-actively promoting citizen engagement in local and regional decision making. This law, by incorporating features explicitly derived from deliberative theory, institutionalizes citizen participation; that is, the involvement through group dialogue of citizens and stakeholders in decision-making about issues or problems of public interest. Tuscany has become a remarkable ‘laboratory’ for empirically testing the validity of deliberative participation in the real world, for verifying the effects and possible benefits of its institutionalization, and for applying a specific model which enables representative government and mini-publics to co-exist (and to become complementary and mutually reinforcing). The results from this laboratory will be of relevance to scholars, practitioners and politicians who are interested in such democratic innovations. Law no. 69/07 might well inform the uptake of citizen engagement well beyond Tuscan borders, both in Italy and internationally. An analysis of the approach adopted by the Law offers an opportunity to reflect on how authorities might go about actively promoting and institutionalizing citizen participation. This paper examines the impetus for the Law and the participatory process through which the Law itself was designed; it illustrates the goals of the Law and how these have been operationalized into legal provisions, with specific attention to the role of the administrations (including an ad hoc independent Authority) who were entrusted with the implementation of the Law; it highlights the deliberative features of the Law; and finally it offers a preliminary discussion of the outcomes of the Law – both successful and less so – during its first three years of existence.

Keywords

institutionalization, deliberative participation, Italy, Tuscany, Regional policy

The future of deliberative democracy also depends on whether its proponents can create and maintain practices and institutions that enable deliberation to work well

(Gutmann and Thompson 2004, 59)

Introduction

Although deliberative theory has attracted increasing attention from many quarters, a relevant question that has not yet received adequate consideration is whether it should be institutionalized (Fung *et al.* 2005), and how that might be done. Though there have been many successful experiences of deliberative participation, there are few examples of its institutionalization as a routine practice. This raises other issues such as the relationship of deliberative processes with representative institutions and processes.

Compared with other developed nations, Italy has not traditionally been a leader in the application of public participation practices;¹ participation in Italy is historically 'shallow' and *top-down*, often a symbolic exercise ratifying decisions already taken elsewhere. However, several regional² administrations have ventured into this field in recent years. At the end of 2007 the Region of Tuscany passed Law no. 69 defining 'Rules on the Promotion of Participation in the Formulation of Regional and Local Policies'³ (henceforth the Law or Law no. 69/07). This legal provision is remarkable insofar as it institutionalizes citizen participation decision-making about issues of public interest, and does so by enhancing features explicitly derived from deliberative theory.⁴

Thus Tuscany has become an interesting 'laboratory' testing institutionalized deliberative participation, and offers a specific model which enables representative government and empowered citizen engagement to co-exist and become mutually reinforcing. The results from this 'laboratory' will be of relevance to scholars, practitioners and politicians who are interested in such democratic innovations. Law no. 69/07 might well inform the uptake of citizen engagement even beyond Tuscan borders. An analysis of the approach adopted by the Law offers an opportunity to reflect on how the polity might go about actively promoting and institutionalizing citizen participation.

This paper examines the impetus for the Law, the goals it pursues and how these have been operationalized into legal provisions, with specific attention to the role of the *ad hoc* independent Authority who is entrusted with the implementation of the Law; it highlights the deliberative features of the

¹ A recent overview of significant participation practices is offered in Dipartimento della Funzione Pubblica 2007.

² Though Italy is not a proper federal system, its Regions with some approximation can be considered as equivalents of U.S. or Australian States, Canadian Provinces, German Länder, or Spanish Comunidades Autonomas.

³ The text of Law no. 69/07 can be found at www.consiglio.regione.toscana.it/partecipazione/documenti/l_r69_2007_English.pdf

⁴ According to Carson and Lewanski (2008), 82, it is possible to relate the Law to the four core principles of the Brisbane Declaration, considered a best practice description of deliberative democracy: integrity, inclusion, deliberation, influence.

Law; and finally it offers a preliminary discussion of the outcomes of the Law during its first five years of implementation (October 2008 - March 2013).⁵

Institutionalizing participation

In the face of the growing disaffection towards representative democracy as well as the decline of political participation in many Western countries (Dogan 2005; Torcal and Montero 2006), there has been growing interest in new modes of citizen engagement. Interestingly, this has occurred in different polities and cultures on many continents (see for example Sintomer and Allegretti 2009; Bobbio and Lewanski 2007; Hartz-Karp 2007, 4). New approaches have been proposed, tested and developed by professionals, political leaders, public administrations, academics, civil society organizations and ordinary citizens alike, often fruitfully collaborating in the endeavor. However, interest in citizen engagement is one thing, but institutionalization – i.e. clearly spelling out rules and procedures that imply both opportunities and limitations – is another matter.

The institutionalization of public involvement, and its consequent regulation, is favored by some and feared by others on the basis of arguments that appear to mirror each other. Opponents fear that the effective co-opting of participatory initiatives will suffocate societal spontaneity, silence dissent and perhaps offer opportunities to cynically manipulate participants, processes and outcomes. Those who support institutionalization maintain that it can enhance qualitative standards of participatory processes as well as upgrade opportunities to exert some actual influence on choices and policies. While both views probably hold some truth, in order to understand the effects of institutionalization, it is useful to examine empirically specific contexts.

Participatory institutionalization has been carried out on different scales: cities (e.g. Montreal⁶), regions (e.g. Catalunya⁷) and nations (e.g. the U.S. Office of Public Engagement⁸) for example have created *ad hoc* offices, departments, or independent authorities (such as the French *Commission Nationale du Débat Public*, CNDP), which are usually - albeit not always - symptomatic of institutionalization. Also, citizen engagement processes have been institutionalized as a routine practice at the local level as in the case of participatory budgeting or even at the national level (as in the case of the Brazilian 'national conferences').

Although citizen engagement has become a widespread policy in many parts of the world, ad hoc legislation legitimating and regulating public engagement clearly represents a strong form of institutionalization. This is the case in the Tuscany Region where Law no. 69 was passed in 2007;⁹ the Law is

⁵ The author is the independent Authority for participation of the Tuscany Region since October 2008.

⁶ *Office de Consultation Publique*; www.ville.montreal.qc.ca/consultation.

⁷ www.gencat.cat/drep

⁸ www.whitehouse.gov/ope

⁹ This has since been followed by Law no. 18 of February 9, 2010, passed by the Emilia-

remarkable for a number of features, further discussed in the following pages:

1. It is the first law in the world passed at the *regional* level¹⁰ of government to pro-actively promote citizen engagement in general (rather than on a specific topic such as budgeting or urban planning).
2. The Law itself was formulated through a (meta-) participatory process that, alongside the formal procedures typical of regional legislation, also involved deliberative public participation.
3. The implementation is mainly entrusted to an independent Authority.
4. Participation is spelled out according to deliberative democracy; it is one of the first attempts to translate the normative principles of deliberative theory into institutional practice (Florida 2008).

The process: institutionalizing participation through meta-participation

Tuscany¹¹ has historically been one of the best invested regions of Italy in terms of social capital and civics¹² (Putnam 1993; Cartocci 2007). It presents a distinctive and solid political culture inspired by the values of democracy and solidarity, very high levels of political participation and a rich grass-roots network of associations (Florida 2007). Established mechanisms of social cohesion and a complex architecture of negotiations between the government and major interest groups have been essential components of the ‘Tuscan way’.¹³

Starting in the late 1980s the Region underwent major transformations of its left-wing political subculture, within the context of an overall upheaval of the Italian political system. Though the Left has continued to gain sufficient electoral support to govern the Region, Tuscany has not escaped the erosion of traditional forms of civic participation, nor the mistrust of its citizens towards political parties and institutions (EMG 2011), as shown by the declining voter turnout rates.¹⁴ Symptomatic of these changes is the emergence also in Tuscany, as elsewhere in Italy, of new resident actions such as *ad hoc* citizen committees focused on specific local issues, mainly concerning the environment and urban safety. These groups are strongly critical of political parties and public authorities, and are sometimes able to exert an effective

Romagna Region; in Italy engagement has been promoted by several other Regions through policy initiative (Puglia) and resource allocation (article 50 of Law no. 4/06 of Latium promoting participatory budgeting in municipalities).

¹⁰ There are however examples of legislation at the national level, as the ‘Framework Law on participatory budgeting’ passed in 2003 by Peru requesting local governments to carry out participatory budgeting.

¹¹ Tuscany has some 3.5 million inhabitants.

¹² According to Cartocci 2007, Tuscany has the second highest social capital among Italian regions.

¹³ This governance approach is tightly connected with regional development based essentially on industrial districts of small and medium size enterprises (Demos & Pi 2008).

¹⁴ On this turnout see

http://www.cattaneo.org/index.asp?11=pubblicazioni&12=comunicati_stamp.

veto power.

In proposing the Law on participation, policy makers were aware¹⁵ of these changes, and chose to respond by creating 'spaces' where the participative and civic potential of Tuscan society could re-emerge. In particular the Law was intended to offer an alternative, institutionalized channel to these 'committee phenomena', resident action groups and local conflicts (Della Porta 2004) promoting the interaction between citizens and institutions.

Law no. 69 was passed after a protracted two-year process.¹⁶ Claudio Martini, the President of the Region at the time, had originally proposed the idea of legislation to enhance citizen involvement in his 2005 election campaign. Martini was supported by advocacy groups such as the association *Rete Nuovo Municipio* (the 'Network for a new municipality'), which is committed to citizen participation in local government. He was joined by the *Assessore* (Minister) responsible for local government and institutional reform, Agostino Fragai. Martini and Fragai's political influence ensured the successful approval of the Law. However, many members of the Regional Government¹⁷ and Assembly, including members of the same majority party (*Partito Democratico*, previously the Italian Communist Party or PCI), remained skeptical. There were lingering doubts about the efficacy of public participation coupled with the belief that representatives were after all elected to take responsibility for making decisions. Sustaining the Law was always going to be a political challenge.

The innovative character of the Law lies not only in its specific content, but also in its original formulation process in which, starting January 2006, a large number of local authorities, professionals, members of grassroots groups, associations and interest groups, as well as academics and ordinary citizens across Tuscany contributed significantly to defining the goals, contents and features of the Law itself. It was an original route, later defined as 'an interesting case of meta-participation, i.e. of citizens deciding how citizens should participate' (Lewanski 2006, 9). In fact, some one thousand individuals are estimated to have, in various occasions, contributed to the legislative text as it was being drafted, thus allowing it to be influenced by the manifold participation experiences that were taking or had taken place throughout the region and elsewhere. The discussion was framed by considerations around theories of deliberative democracy and influenced by

¹⁵ As clearly stated by A. Fragai at the kick-off meeting in January 2006 <http://ius.regione.toscana.it/partecipazione>.

¹⁶ http://www.regione.toscana.it/regione/export/RT/sito-RT/Contenuti/sezioni/diritti/partecipazione/rubriche/piani_progetti/visualizza_asset.html_174_6852500.html; the section on participation also contains all the documents regarding the process undertaken for the formulation of the Law, including texts and video recordings of events to which reference is made in this article.

¹⁷ Personal communication to Lyn Carson by C. Martini, Sydney, March 1, 2008, in Carson and Lewanski 2008, 74.

foreign experiences such as Brazilian participatory budgeting, the French *débat public*, British models of participatory planning and deliberative experiences with randomly selected citizens.¹⁸

The Region concluded this phase by putting theory into practice, i.e. using a deliberative method¹⁹ to discuss and decide the contents of the bill itself by means of a large-scale 21st Century Town Meeting²⁰ that took place in Carrara in November 2006 (Bobbio 2007; Freschi and Raffini 2008). The event was more than a perfunctory exercise of public engagement as the Region's President in front of the 408 participants explicitly committed to participants' recommendations being included in the Law. Since participants requested to continue to monitor subsequent development of the bill, a delegate from each of the 48 tables in the TM was elected by the participants to advocate their views, to maintain links with the Regional Administration and to feed back developments to the other participants. Noticeably, there was systematic reflection at each stage of the process; all the documents of the process pertaining to the bill were 'made available to participants ... for discussion and assessment' on the participation section of the Region's website, creating new 'opportunities for reflecting on the critical events and aspects of the deliberative process' (Lanzara 2005, 67). In the end the process linked participatory democracy with the mechanisms of representative democracy, as the Law was passed by the Regional Assembly on December 19 with broad support (it obtained the votes of the centre-left majority, whereas the majority of the centre-right opposition abstained; only one councillor of the right voted against).

The Law thus took an unusual route, eschewing the typically opaque path through executive and stakeholder doors: coherently, the public was transparently empowered to engage with institutions in the design of the Law.

Law no. 69/07

Law no. 69/07 aims at pro-actively promoting citizen involvement 'as an ordinary form of administration and government ... in all sectors and at all levels' (article 3.1 b; it asserts its legitimacy in this by referring directly to the Regional Statute articles 3 and 72). More specifically it aims (article 1) at renewing democracy and its institutions by integrating it with practices, processes and instruments of participatory democracy, increasing and

¹⁸ The influence of deliberative theory came in particular from an international conference held in May 2006, the first and most comprehensive official meeting held in Italy on the topic, and attended by major experts in the field such as L. Bobbio, L. Carson, Y. Mansillon, E. Negrier, Y. Sintomer, N. Wates; their speeches are available at www.regione.toscana.it/partecipazione.

¹⁹ In this respect, it is interesting to note that the large majority of those attending, as the final questionnaire showed, appreciated the novelty of the event they personally experienced, also confirming that many are by now weary of traditional forms of participation such as assembly-type meetings: 74% were 'very' or 'quite satisfied', the most appreciated aspect being the 'discussion in small groups'.

²⁰ The event followed the AmericaSpeaks model: www.americaspeaks.org

regenerating social capital and cohesion (Florida 2007), empowering citizens to contribute to public policy formation (participating in local and regional policy making is declared to constitute a right of Tuscan citizens), improving the relationships between the Government and society, giving voice to powerless interests.

Two types of processes: regional and local

The Law introduces two distinct types of participatory processes, one concerning large infrastructure projects having a significant environmental or social impact on a regional scale, the other enhancing citizen engagement in relation to local policies, decisions and issues.

In the first type, the Region aims at dealing pro-actively with the siting of projects that typically give rise to considerable conflict, spawning angry ad-hoc citizen committees. Existing decision-making procedures (such as environmental impact assessments) proved to be insufficient to deal with such intractable conflicts.

The Law responds to this problem by introducing (articles 7-10) a process somewhat along the lines of the French *débat public*. In order to avoid the DAD syndrome (“Decide, Announce, Defend”) at the start of the project when options are still open, proponents, local authorities or citizens (at least 0.5% of all Tuscans above the age of 16) can ask the Regional Participation Authority to set up a public debate. Thus, rather than taking place ‘behind closed doors’, the discussion occurs in the public sphere. The Law does not specify the minimum financial or physical thresholds for the projects that are the object of such processes, leaving a large (excessive? Ciancaglini 2008, 9) discretion to the Authority, who must decide on the actual relevance of the project. Once the process is complete (normally lasting six months, except when there are grounds for an extension), the person in charge of the process (nominated by the Authority) publishes a report on the process and its outcomes. The public debate does not entail any obligation for the proponent who, within three months of the publication of the report, faces three options: a) cancel the project entirely or present an alternative; b) modify the project, detailing how this will be done; or c) pursue the initial project, justifying the reasons for this choice. In any case, the Region in defining its programs for the construction of public infrastructure, gives priority to those projects that have undergone such a process.

Since the Law’s approval, no request to carry out a public debate about infrastructure development has been forwarded to the Regional Authority.

The second type of process aims at promoting participation at the local level; such processes are available to four categories of proponents:

- a) local authorities;
- b) residents above the age of 16 (both Italian citizens and foreigners residing permanently within the affected area); in such cases signatures of a percentage of the population (from 0.5 to 5%, depending on size) are required;
- c) schools;

d) firms, in the case of new projects having relevant social, economic or environmental impact.

To the proponents, Law no. 69/07 offers various forms of support: financial (the main form), methodological and logistical (such as the possibility of using the website and technology of the Region). The Law here is more than just symbolic, as it has allocated 700,000 euro per year to support such processes.²¹ The relevance of this provision cannot be overestimated since sources such as foundations and donations for funding participatory processes are less accessible in Italy as compared to other Western countries; funding by the public sector is essential if 'high quality' participation is expected.

The Regional Authority for Participation: a pivotal role

Neutrality is fundamental for the credibility of participation processes in the eyes of both participants and society at large. To this end, the implementation of the Law has been entrusted to an *ad hoc* independent Authority, modeled on the French CNDP.²² However the Authority in Tuscany is a 'monocratic' body, i.e. both an individual and an entity, rather than a commission as with the CNDP. The Authority is appointed by the Regional Assembly according to a complex nomination procedure aimed at reaching a bi-partisan agreement.²³ Candidates for the position must be experts in the field of political science or public law, or have established experience in the field (interestingly, Italian citizenship is not required). Thus, the prevailing criterion is professional competence rather than political affiliation. The 'independence' of the Authority guarantees its neutrality and avoids suspicions that political parties might distort or manipulate the participation to their advantage. This is a relevant difference as compared to the model adopted by other European Regions (such as Puglia and Catalunya) that govern public participation through offices within the regional governments, thus depending on the political majority of the moment.²⁴

The Authority is entrusted with a number of tasks, the main being assessing and deciding on funding of participatory processes and offering methodological advice to the proponents. In making such decisions, the Authority must abide with a number of criteria and priorities listed by the Law, while avoiding defining too precisely the features of the processes. Thus the Authority enjoys considerable discretion in making decisions based on professional judgment and plays a pivotal role in developing criteria for

²¹ In fact, at present the compensation and some minor costs of the Authority are subtracted from the 700,000 euro budget meant to support local participatory processes.

²² On the French experience of the CNDP, see: www.debatpublic.fr.

²³ In fact the Authority was voted by the Assembly almost unanimously, eight months after the approval of the Law; he took office on October 1, 2008.

²⁴ In this the Tuscan Authority is similar to the Federal Deliberation Commission 'independent as possible from the ruling party or government at any particular time' Morrell (2010: 190) proposes for the U.S..

participatory processes to be funded (article 5.1 c), offering methodological advice (article 14.6 b), and negotiating the content and design of processes with the proponents (article 17).

On this basis, the strategy pursued by the Authority has been to gradually (it is, after all, an on-going learning process by all actors involved and as such requires time) steer process design towards features that further enhance the dialogic-deliberative quality of the processes. These are discussed in the following section.

The deliberative traits in the provisions of the Law and in its implementation

Law no. 69/07 is probably the first instance in which the normative principles of deliberative democracy have been transposed into a legislative framework, the principal features being a structured context favoring dialogue and deliberation, balanced information, inclusion, and influence.

Dialogue and deliberation

Deliberation is based on exploratory dialogue that implies active listening and empathetic interpersonal communication (Holman 2006). By fostering appreciation and understanding of differences, deliberation can induce individual preference transformation as well as joint construction of social meanings and relationships (Pearce 2002, 8), in search of shared choices and consensus. *Ad hoc* methods or techniques,²⁵ basic rules, and neutral facilitators are commonly used to steer interactions in the direction of deliberation.

Law no. 69/07 contains explicit reference to such aspects by stating that the ‘management of the process should be entrusted to a neutral and impartial actor’ (i.e. a facilitator) (article 15.1 e). Also, the Authority has introduced further devices such as the establishment of *ad hoc* committees to supervise processes. Such extra layers of balanced monitoring are aimed at creating confidence in the process in the eyes of often skeptical officials and mistrustful citizens.

Also, a wide a variety of methods (such as Town Meetings, World Cafés, Citizen Juries and many more) to structure conversations have been used by the processes funded by the Law, that explicitly encourages innovation in process design. The Authority has used his ‘bargaining leverage’ in deciding which projects are funded to favor an adaptive approach (Carson and Hartz-Karp 2005; Holman 2007) tailoring the methods used according to the specific aims of each process and to the context in which it takes place (article 15.1 d).

Information

²⁵ Literally hundreds of such methods have been developed over recent years; see www.iaf-methods.org.

In stark contrast with the ‘raw’ opinions collected in traditional surveys, deliberative participation aims at fostering opinions that, in a balanced way, incorporate available relevant information and knowledge.

Tapping into the knowledge and skills present and active in Tuscan society represents one of the explicit goals of Law no. 69/07. The Law repeatedly emphasizes this point. Specific action should be undertaken to ensure maximum dissemination among all citizens of information, even technical, before, during and after the process (article 15.1 h) and local authorities must ensure access (also using information technologies) to all relevant information (also in non-technical language) on the topic as well as on the process itself (articles 15.4 c, 16.2 f and d). Projects initiated under the Law have used both traditional communications channels as well as websites, allowing citizens to access documents concerning on-going processes, and in some cases to provide feedback comments.

Inclusion

‘Inclusion’ refers to a crucial aspect of deliberative theory, i.e. that all relevant ‘voices’, especially those often ignored, can genuinely be heard. The Law states that ‘special attention should be given to those conditions capable of ensuring equal possibilities of expressing all points of view’ and requesting the involvement of the ‘weak and disadvantaged’ (including physically disabled) individuals (article 16.1 a) as well as persons from ‘diverse social and cultural groups’ (article 15.1 g); furthermore, special attention should be given to practical conditions (choice of timing and location) entailing a balanced gender presence (article 15.1 f).

The criteria used in each process for participant selection constitute a crucial ‘meta-decision’ with relevant implications for the inclusion principle. Assuming that the actual (dialogic) participation of all citizens in contemporary societies is in practice unattainable, even in small communities in essence there are three ways to go about participant recruitment in deliberative practice. Either participants are partisan stakeholders attached to pressure groups, organizations and specific interests, or they are individual citizens and can be recruited basically in two ways: by self-selection according to the ‘open door’ principle, or by random selection of stratified samples of inhabitants (Sintomer 2009) with the aim of constituting a microcosm (Fishkin 1997) of the entire community.

The choice of the participant recruitment approach obviously has relevant implications for the credibility and legitimacy of the process and its outcome. Law no. 69/07 does not prescribe how participants are to be recruited. The Regional Authority has chosen to ‘broker’ the procedure of stratified random sampling of the affected population. This approach met initial resistance as it counters both the partisan stakeholder and ‘open doors’ approaches. But increasingly random sampling has been applied and most processes now use it. Both participants and proponents (usually local administrations) have come to appreciate its merits, though it has not always

been easy to recruit participants at the outset.

However, in applying this innovative approach, the Authority has recommended not to exclude organized stakeholders entirely since their involvement is important for the success of the processes and subsequent implementation. Additionally, they constitute a form of relevant social capital that should be preserved. The general approach is to give them specific process roles, such as informing participants of particular policy standpoints or being included in the above mentioned supervisory committee of a project so as to verify the process quality, and hopefully develop a sense of ‘ownership’ of it.

Influence

The ‘Public Participation Spectrum’ adopted by the International Association of Public Participation (IAP2),²⁶ a simplified adaptation from the well-known ‘ladder of participation’ proposed 40 years ago by Sherry Arnstein (1969), distinguishes among various forms of participation according to the degree of influence exerted. ‘Participation’ in Tuscany is traditionally often meant as the top-down provision of information on decisions already taken, or at the best as ‘consultation’, keeping the convener squarely in control of the scope of the outcome. As one moves up the ladder, the degree of empowerment of participants increases.²⁷

Law no. 69 aims at promoting citizen participation in the ‘formulation of local and regional policies’ (article 1.1) Thus, it is not merely a symbolic exercise, but presents participation as a stage of the overall decision-making processes defining policies and collective choices (Florida 2008, 106).

The Law aims at participant empowerment: ‘In these cases, institutions give up, albeit in part and temporarily’ and on a specific topic, ‘their power to decide according to the standard procedures of representative democracy, and choose to play a different role, that of promoters of a discussion and guarantors of its fairness’ (Bobbio 2005, 69). In other words, deliberative democracy aims at reinforcing the voice of the citizens, but also at promoting the willingness of institutions to listen to that ‘voice’ (Carson 1999). Deliberation, if it is to deliver its promises, can be effective only if the outcomes are taken into serious consideration by policy makers.²⁸

Law no. 69 does not impose necessarily the adoption of participatory

²⁶ www.iap2.org/associations/4748/files/IAP2%20Spectrum_vertical.pdf

²⁷ As stated, for example, by the Brisbane Declaration; www.getinvolved.qld.gov.au/share_your_knowledge/un_conference/documents/pdf/brisbane_declaration.pdf.

²⁸ Many Tuscans seem to doubt that participation has any political effectiveness. In the previously mentioned survey (EMG 2011), 22% of Tuscans are skeptical about the participatory processes that many local administrations are undertaking because they believe governments do what they want anyway. 35% think these processes are useful provided the administrations take the outcome in account, and 16% support the processes provided decisions have not already been made.

processes in local policy decision-making. Instead, for political and Constitutional reasons, the Region must tread lightly on mandates devolved to local administrations. The Law's strategy is to seek the voluntary cooperation of administrations that are keen to activate citizen engagement offering them financial incentives and methodological support. Regional support is subordinated to an exchange, by which the Region requests local authorities to sign an inter-institutional *entente* agreement (artt. 15.4 a & 18) in which the authorities voluntarily accept the principles of the Law and its procedures not just in the specific funded process, but also to use public participation regularly in their decision-making processes. Thus, to gain access to funding local authorities are required to declare officially that they will take into serious consideration the results of the participation process. Should they deem the outcomes less than acceptable (for example, opposing community interests or their electoral mandate), they can override the outcomes only on the condition that they publicly provide the reasons for their deferral. In this way, the autonomy of local administrations is fully respected. They are free to decide whether or not to sign the agreement with the Region, and the responsibility of the final decision remains in the hands of the competent administration.

On the other hand, a substantive participatory process to some extent politically 'compresses' the discretionary power of the administration (Ciancaglini 2008: 6), that *at the very least* is obliged to account for its decisions to its citizens. All in all, this 'device' appears to be an original, balanced and workable solution to the relationship between deliberative and representative democracy.

Beyond what is requested by Law no. 69/07 and the *entente* agreement, to guarantee actual participant empowerment, the Authority requests local administrations to commit all processes to include ongoing feedback of the outcomes of meetings to participants, as well as to the community at large and to nominate ad hoc committees (usually formed by representatives of the participants themselves) to monitor the subsequent developments during the implementation phase.

Implementation

Though Law no. 69/07 appears to have considerable potential to achieve its goals, its implementation has encountered a number of difficulties. A first order of problems arises from ambiguity in the legislation that leaves a great deal of discretion in the hands of the Authority. Also, from a juridical perspective there are numerous overlaps with legal regulations (EU, national and regional) which already require the promotion of information, consultation and participation in a number of specific policy sectors; the procedures introduced by Law no. 69 have not been well coordinated with pre-existing regulations. Furthermore the Law has divided the activities it foresees among two different bodies, the Authority (responsible for local processes and public debate) and the Regional Government, namely the Participation Office of the

Assessorato (Ministry responsible for regional participatory process and training according to the Law). There are obvious links between these activities and their fragmentation misses the opportunity, in a situation in which available resources are scarce, to create synergies among the activities carried out, for example, in the training of personnel in local and regional governments. Finally, and perhaps more importantly, the Authority has not been given sufficient resources to carry out the tasks entrusted to it (such as monitoring and evaluating funded processes); the fact that the 'independent' Authority depends on other institutions for its resources considerably weakens its actual independence.

Notwithstanding such difficulties, the implementation of the Law has attained considerable results. In the period 2007-2012 the Authority received and evaluated 220 requests; 116 were funded,²⁹ for a total cost of approximately 3.6 million euro. The average financial contribution by the Region to each project thus amounted to approximately 31,500 euro.³⁰

It emerges quite clearly that local administrations (and especially municipalities) were the main beneficiaries of the Law (approximately 78.4% of the total). However the Law has enabled also other actors, such as schools (14 processes funded) and ordinary citizens (11 processes funded), to promote and carry out participatory processes.

There is a broad spread of topics; though a large number of processes have focused on urban renewal projects, land planning, participatory budgeting (plus education, concerning processes presented by schools), other topics such as social, economic and environmental policies were also tackled. Processes concerning infrastructure siting decisions were not numerous (ten requests, five funded). It is not clear whether this was due to a lack of such projects, or to the choice to not tackle them by means of citizen involvement. In any case, it is interesting that they were proposed by both administrations and citizens.

Though the impression is that in many cases the processes have in fact exerted influence on decisions and contributed to the overall goals of the Law, hard empirical evidence of the actual impacts of the individual processes and of the overall policy is still lacking (both because sufficient time in most cases has not yet elapsed since the conclusion of the processes, and because of a lack of resources to systematically monitor and analyze the efficacy and outcomes of the processes). Yet the sheer number of processes ignited thanks to the Law and the variety of topics addressed by them *per se* appears to be significant.

Conclusions

Tuscany has gone further than other regional and local governments active in

²⁹ In three cases funds were repealed because the processes had not started within the time indicated by the Law; in two cases the processes aborted before being completed.

³⁰ If the proponent is a local administration, it must also contribute economic resources, whereas schools, citizens and firms are requested only to contribute organizational resources.

this field by means of an ambitious and innovative public policy pro-actively promoting citizen engagement in decision-making processes, focused both on production of social capital and civic-mindedness, as well as managing conflicts. Law no.69/07 creates a new structure of opportunities, and calls institutional and social actors to commit to the quest for new participative practices.

In doing so, Law no. 69/07 clearly moves beyond superficial consultation and pursues quality standards inspired by deliberative democracy theory. In this respect Tuscany can be seen as a ‘laboratory’ where deliberative approaches are being tested in a variety of contexts and issues.

Citizen empowerment strains the relationship between deliberative procedures and representative institutions.³¹ The challenge today is to integrate deliberative democracy with the processes and institutions of representative democracy, or, following Barber (1984), to ‘strengthen democracy’ (as explicitly stated in article 1.3 a); the Tuscan Law addresses the challenges of linking participative with representative democracy offering an innovative and balanced approach to this problematic relationship.

The Law is innovative also in its ‘experimental’ character aimed at verifying its added value, as demonstrated by its ‘sunset’ provision, (the Law was originally intended to automatically expire at the end of 2012, unless the Regional Assembly decided to renew it - as is or modified - in light of an assessment of its results),³² thus introducing criteria based on empirical rather than political rationality.

The approach the Law adopts is pragmatically flexible and open to experimenting with innovative approaches and practices. For this purpose, it has also set up an *ad hoc* Regional Authority whose neutrality is aimed at enhancing public confidence in the processes. Furthermore, the Law is not a merely symbolic provision; although insufficient in answering all requests, substantial financial have been allocated.

On the other hand, as with many innovations, the Law has encountered a number of difficulties in its implementation, the main being the lack of sufficient political backing, which in turn has negatively influenced the operating capacity (funding, staff, etc.) of the new Authority. As mentioned, the Law passed thanks to a unique window of opportunity, that subsequently did not translate into substantive and long lasting support from the Region. After the exit from the regional political scene of the two key policy

³¹ In the debate on deliberative democracy, the subject of the translatability of its legal paradigms within institutional procedures is taking on central importance: ‘how can the scale of deliberation be increased, and how can it be institutionalized?’ (Fung, Gastil and Levine 2005, 281).

³² In fact the Region was unable to pass new legislation within the original deadline and decided to extend the Law and the mandate of the independent Authority for three more months; however new legislation was not passed even within the new deadline of March 31; thus the Law expired and it is not known at this stage if and when a new Law will be passed and what its contents might actually be.

entrepreneurs who had fought for it, what was missing was a political player acting as ‘fixer’ of the implementation game (Bardach 1977) and strong enough to maintain the momentum. Perhaps, the fact that the Law was passed through an atypical meta-participatory process itself, failed to create a sense of ‘ownership’ of the policy on behalf of the legislative Assembly.

All in all the Law has been successful: according to a rough estimate, approximately half of all the participatory processes taking place in Italy in the last several years have occurred in Tuscany thanks to the Law³³. The ‘bet’ is that processes funded by the Law will contribute to advancing the culture of participation and gradually igniting the interest of other administrative and societal actors.

If the Law is maintained by the Region beyond 2012, the ‘Tuscan laboratory’ will offer some useful insights in assessing the extent to which the normative provisions of deliberative democracy, transposed into the language and practice of the Law, can actually enhance the quality of participatory processes, and, more broadly, the overall quality of democracy.

³³ Private conversation with Luigi Bobbio.

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