THE PROMISE AND PERILS
OF PARTICIPATORY
POLICY MAKING

Lucio Baccaro
Konstantinos Papadakis

117   Research Series

**The promise and perils
of participatory policy making**

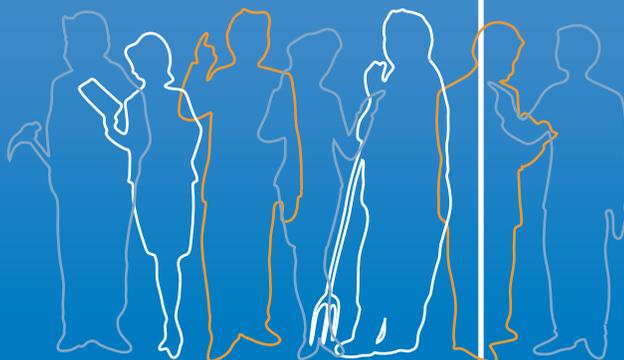**International Institute for Labour Studies**

The promise and perils of participatory policy making

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Research Series

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Preface

There is increasing interest regarding the involvement of non-government organisations in the provision of social services and other areas of public policy. It is sometimes argued that this kind of "participatory governance" would help improve service delivery, because private, not-for-profit actors represent constituencies which are directly affected by the issue for which a policy solution is sought. Moreover, participation of such actors in public policy would strengthen democracy. For example, organisations representing groups like youth, migrants or indigenous people would have a stronger influence when directly involved in policy making, than when they operate indirectly through Parliamentary processes or tripartite social dialogue. Participatory governance is also supposed to be more efficient, in that participants can operate on the basis of arguments, rather than lobbying. And, according to the "deliberation theory", the best arguments will prevail through this process.

The present volume by Lucio Baccaro and Konstantinos Papadakis examines evidence on the advantages and limitations of participatory governance. The study compares theoretical predictions with the experience of South Africa, where policy-making fora open to civil society were set up as part of the transition from apartheid to democracy.

The authors find little evidence in support of the efficiency and democracy gains predicted by deliberation theory. Instead, there would be a risk that the interests of civil society be captured by the State. This happens when the government exerts a strong influence over the demands articulated by civil society organizations, and hence over the outcomes of the participatory process. As a result, the participatory process might not represent the interests of its constituencies. The study highlights one

remedy to this problem, namely a credible *exit option*, and, associated with it, strong mobilization capacities by civil society groups. It shows that, in South Africa, only the labour movement and few other groups possess such an exit option.

These findings point to the continued relevance of traditional civil society action –such as tripartite social dialogue– which is based on a combination of dialogue, bargaining and mobilisation rather than deliberation capacity. Therefore, according to this study and despite the trend decline in union affiliation observed in many countries, social dialogue between government, employers and unions remains relevant for addressing a wide range of key policy issues.

The study has been presented in several academic and research events, and has received critical comments, including from the leading German philosopher Jürgen Habermas, one of the main proponents of deliberation theory.

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1. Introduction

This volume addresses an emerging stream of research on the combined benefits of participatory decision-making and deliberation. We refer to it as "deliberative public administration" (DPA). [1] This literature is both advocatory and empirical. Its main goal is to promote a rejuvenation of democratic institutions and progressive politics by favouring direct civil society involvement in public policy-making. It centres on two claims: first, that a broadly participatory approach to policy-making – involving a wide range of social actors in addition to public actors – generates not just a richer texture of democracy but also more effective policies; second, that the various actors participating in the policy fora coordinate (or end up coordinating) by exchanging arguments based on principles or appeals to generalizable interests. To the extent that all potentially affected groups have equal opportunities to become involved in 0the process and propose topics, formulate solutions, or critically discuss taken-for-granted approaches, these institutional innovations qualify as examples of deliberative democracy in action. DPA attributes both efficiency and equity gains to itself. Involvement of citizens and groups with detailed knowledge of problems and potential solutions generates – so the argument goes – more efficient solutions than more traditionally top-down, bureaucratic approaches. At the same time, participation of all affected groups ensures that no interest or value orientation worthy of protection is unduly disregarded in policy design and implementation.

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[1] The DPA label seeks to capture some of the features shared by a number of intellectual projects going under different names: "associational democracy" (Cohen and Rogers, 1995; Hirst, 1994), "direct deliberative poliarchy (Cohen and Sabel, 1997), "empowered participatory governance" (Fung and Wright, 2003). There are specific differences among them and none of them is exactly identifiable with the ideal type laid out here.

This volume contrasts the empirical generalizations and normative prescriptions of DPA with policy developments in South Africa. Post-apartheid South Africa seems a good case to examine empirically the plausibility of the DPA institutional blueprint. It had once raised (and, *malgré tout*, still continues to raise) many hopes among radical democrats and reformed socialists due to the explicit commitment of government, stated in official documents, not to limit democratization to the institution of periodic elections but to strengthen it with robust doses of participatory and direct democracy, including, *inter alia*, the establishment of policy-making fora open to civil society participation and influence. We examine the functioning of three of these fora, the National Economic Development and Labour Council (NEDLAC), the Child Labour Inter-sectoral Group (CLIG), and the South African National AIDS Council (SANAC). These were selected to cover different types of policies in the labour and social field.

We find little evidence of the equity and efficiency effects claimed by the abstract model. On the contrary, we find rather robust evidence of **capture**, not of the policy process itself by powerful and well-resourced private organizations, as traditionally argued by critics of pluralist policy-making (Schattschneider, 1960; McConnell, 1966; Lowi, 1969), but of civil society organizations by the state – a state whose room for manoeuvre is, in turn, severely constrained by international macroeconomic constraints (which, it can be argued, are reflective of the interests of international financial capital). In particular, we find that the views that participating groups hold about the nature of the public policy problems at hand and the range of feasible solutions are systematically closer to the government's views than those held by groups staying outside. It should be noted that our research priors were different from empirical results. We were not seeking to discredit a progressive normative programme by pointing out its unavoidable empirical shortcomings.[2]

Our findings seem to turn the DPA model on its head. Consensus is not to be regarded as the outcome of a successful deliberative process but as a worrisome sign of group cooption. Participation solely based on the force of one's own better arguments is sure to be sidelined. The most effective civil society organizations are those that do not lock themselves into a strategy of institutional participation but keep a credible exit

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[2] Baccaro (2002) argued that what was referred to therein as "associational democratic" project was, with some caveats and provisos, empirically plausible as well as normatively desirable.

option open and, associated with it, strong mobilization capacities. In general, protest and litigation seem more effective than discourse.

Admittedly, our sample of participatory institutions imperfectly matches the list of normative prescriptions contained in the DPA literature about the way participatory governance institutions should be organized and run. Hence, one could invoke "Type 1" error (that is, rejecting the null hypothesis when this is true) and ignore the empirical findings. This would be a mistake, in our opinion, as the evidence presented here has, we surmise, important implications for the theory in question and may contribute to explain the apparent ease with which crucial elements in it – for example the notion of civil society participation in policy-making, if not that of deliberation itself – have been incorporated into mainstream development and policy-making discourse and, in the process, lost much of their transformative connotation and potential.[3]

The South African case directs our attention to the importance of an adequate conceptualization of the role of the state for understanding how participatory institutions work and the kind of outcomes one might realistically expect from them. DPA theory implicitly conceives of the state as a benevolent and politically-neutral actor, which, aware of its own informational and technical limitations, willing devolves policy-making power to civil society organizations as a way to increase its problem-solving capacities. However, when the state has clear preferences about what policies should be adopted (often as a result of international macroeconomic constraints), participatory processes run a serious risk of being manipulated for the purposes of "manufactur[ing] support" to pre-determined policies (Hirst, 1995: 106), unless organizations can back argument with power.

Also, the analysis of South African policy fora suggests that DPA's particular understanding of deliberation – which insists on the transformative potential of **face-to-face** discourse within institutionalized settings – may not just be an empirically inadequate characterization of what goes on in participatory policy-making fora (where powerful participants fail to be persuaded by even the best arguments) but also generates the wrong kind of advice for progressive civil society organizations. By implicitly encouraging these organizations to move from "social

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[3] See Papadakis (2005: Ch. 2) for an analysis of the crucial role played by the notion of "participation" in the policy documents of all major international organisations and several national policy-making organisations.

movements" into "secondary associations," and engage with the state, this view ignores the risks of colonization inherent in such a move (Habermas, 1987) – risks that do not seem to be counterbalanced (if ever they could) by greater policy effectiveness. Also, it provides an unduly restrictive view of the kind of politics that should be considered deliberative in real world circumstances.

The notion of deliberative politics advanced in this volume is very different from DPA characterizations. Drawing (rather freely) on Habermas (1996: especially Chs. 6 and 7), we interpret the *modus operandi* of South Africa's most successful civil society organizations, such as the Treatment Action Campaign (TAC), or even the Congress of South African Trade Unions (COSATU), as aimed at building *communicative power* (see Flynn, 2004). This form of power is, first, accumulated in the informal public sphere and, then, expended in the institutionalized sphere of policy-making to counter other sources of (non-communicative) power impinging on the extended bureaucratic apparatus. It is "communicative" because it is based on nothing else than the sheer acceptance of particular validity claims by citizens.

The remainder of the volume develops the argument summarized above as follows: section two summarizes the deliberative public administration programme. Section three contrasts it with Habermas' "two-track" theory of deliberative politics (Habermas, 1996: 287ff.). Section four, the empirical core of the volume, reconstructs both the macro context of public policy in post-apartheid South Africa and the functioning of the three participatory fora mentioned above. Section five uses the evidence to advance an alternative to the DPA model of relationship between civil society organizations and the extended policy-making sphere. In this alternative model much of the influence that civil society organizations exert on public policy outcomes is built from outside, in "siege-like" manner, rather than from within, through participation in institutionalized policy-making fora. Section six concludes by reconsidering briefly one of the clearest cases of success in the DPA literature, participatory budgeting in Porto Alegre.

2. An Outline of Deliberative Public Administration Theory

Deliberative public administration shares with current mainstream development and other theories a sceptical attitude to the problem-solving capacities of the central state (for critiques, see Sanyal, 1994; Tendler, 1997). For this reason, the theory begins by advocating the devolution of as many decision-making prerogatives as possible from centralized public bureaucracies to policy-making fora in which citizens participate either directly or (more frequently) through their membership in intermediate social groups or "secondary associations" (Cohen and Rogers, 1995; Hirst, 1994; Fung and Wright, 2003). The rationale for group involvement is in the groups' (assumed) knowledge of the problems they are faced with as well as possible solutions. Groups are also considered to have greater capacities to promote voluntary compliance with the outcomes of public policy than public institutions (see Bobbio, 2002). At a time in which public policy increasingly concerns issues and situations whose heterogeneity, complexity and volatility tends to escape the cognitive and problem-solving capacities of central bureaucracies, these group features become important assets for policy-makers.

The state participates in the participatory policy-making process (including in the fora themselves) with a role that is different from the past, even though by no means less important or demanding. It no longer provides direct solutions to regulatory problems, but

1. Lays out the broad objectives of regulation, often through "soft law" instruments [4];

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[4] On soft law, see Kirston and Trebilcock (2004); Trubek and Trubek (2005). For an articulate critique (applied to international labour standards) see Alston (2004).

2.   Contributes to redress representational asymmetries (by promoting the organization of those interests that do not find adequate expression in the existing associational structure);

3.   Selects in the universe of groups those whose qualitative features (e.g. encompassingness) make them amenable to incorporate some notion of the "common good" in their demands and actions;

4.   Encourages groups to come together and deliberate about their common problems and experiment with different solutions, and then provides incentives for them to confront, and learn from (e.g. through structured processes of measuring and benchmarking), the experiences of other units faced with similar regulatory problems (Dorf and Sabel, 1998; Sabel, 1999).[5]

This new regulatory framework seeks to mimic a series of organizational innovations which have recently emerged in the private sector, where, as a result of the crisis of large, vertically integrated firms, the boundaries between producers and suppliers have become increasingly blurred, and decentralized collaborative ventures collaborate as well as compete with each other to come up with the most effective technical solutions to practical problems (see Helper et al, 2000).

Coordination in these fora is assumed to be by deliberation, that is, "a dialogical process of exchanging reasons for the purposes of resolving problematic situations that cannot be settled without interpersonal coordination and cooperation" (Bohman, 1996: 27). The mechanisms by which deliberation should ultimately carry the day as opposed to alternative modes of coordination and types of action (for example, bargaining) are generally not very clearly spelled out in this literature.[6] One may think that the practice of deliberation creates its own preconditions (see Abers, 2003; 1998; Pateman, 1970), that is, produces an anthropological transformation from self-serving to ethical (i.e., other-regarding vis-à-vis a specific reference community) and, at the limit, even moral actors (i.e., other-regarding vis-à-vis humanity as a whole). In this regard, the fora act

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[5] A similar logic seems to inspire the EU's Open Method of Coordination: see Zeitlin and Pochet (2005).

[6] It is worth noting that both bargaining and deliberation produce consensual outcomes and are empirically difficult to tell apart. The difference between the two is in the reasons that ground the consensus: "Whereas a rationally motivated consensus rests on reasons that convince all parties in the same way, a compromise can be accepted by the different parties each for its own different reasons" (Habermas, 1996: 166).

as Tocquevillian "schools of (deliberative) democracy" (Cohen and Rogers, 1995; Fung and Wright, 2003).

An alternative mechanism may have to do with incomplete information, bounded rationality and radical uncertainty. Faced with unfamiliar problems, whose contours they are unable even to spell out clearly, actors do not know exactly how their values, interests and preferences are going to be affected by future developments. They only know that the solution to these novel problems will depend on collaboration with others, or sometimes just perceive a heightened sense of interdependence. Deliberation is a way of jointly exploring alternative ways to proceed, in trial-and-error fashion. In this view, the impetus for deliberation is, at least at the beginning, strictly self-interested, even though the determination of exactly what it is that actors are interested in, and of the means to achieve it, is cooperative and dialogical (see Sabel, 1994; Dorf and Sabel, 1998). In all likelihood, (strict) deliberative outcomes, intended, *à la* Habermas, as rational agreement motivated by the same reasons (Habermas, 1996: 166), is not as prevalent as claimed by this literature. What really takes place in the fora (when the process is successful) is probably some form of integrative, as opposed to strictly distributive, bargaining (see Walton and McKersie, 1965; Scharpf, 1997: ch. 6; Baccaro, 2002; Mansbridge, 2003).[7]

Many of the building blocks of the DPA model, and especially the idea of deliberation as self-government through unconstrained communication among citizens, owe much to the thinking of Jürgen Habermas. There are, however, significant differences between the two intellectual projects, particularly with regard to the conflict-resolution and consensus-generating potential of face-to-face dialogue and the specific role attributed to civil society organizations in the polity. The next section explores these differences.

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[7] Integrative (or mixed-motive) bargaining differs from distributive bargaining because it contains two different phases. One is a problem-solving phase in which partners push out the Pareto frontier (i.e. seek to come up with creative solutions to increase joint welfare). The other is a distributive phase in which the benefits and costs of cooperation are divided up. The first is, like deliberation, characterized by open and truthful communication; the other requires, like distributive bargaining, secrecy and even deceit. These requirements are potentially contradictory. In particular, the presence of distributive conflict may make the problem-solving phase very difficult if not impossible even when there are joint gains to be reaped. It bears emphasizing that when deliberation is counterposed to bargaining as a coordination mechanism (e.g. in studies of "arguing" vs. "bargaining"), the "bargaining" to which reference is made is distributive bargaining (see, for example, Elster; 1986; 1994; 1995; Risse, 2000; Holziger, 2004).

3. Habermasian Views on Deliberation and Civil Society

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

Social coordination through communicative action is possible in societies characterized by "strong archaic institutions" and "small and relatively undifferentiated groups" (Habermas, 1996: 25). This is because communicative action always takes place against the backdrop of a shared lifeworld, which, in traditional societies, provides "a reservoir of taken for granteds, of unshaken convictions that participants in communication draw upon in cooperative processes of interpretation" and from which "processes of reaching understanding get shaped" (Habermas, 1987: 124 and 125, respectively). Coordination through communicative action only is improbable in post-traditional societies, due to the emergence (strictly related to rationalization and modernity) of self-centred action based on strategic calculations. In these societies, "in which *unfettered* communicative action can neither unload nor seriously bear the burden of social integration falling to it" (Habermas, 1996: 37), law emergences as a functional necessity exactly to "lighten the tasks of social integration for actors whose capacities for reaching understanding are overtaxed" (p. 34). [8]

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[8] Discussing the work of Joshua Cohen (1989), Habermas argues explicitly that deliberation is not a model "for all social institutions." (1996: 305).

Since strategic action is unavoidable, and since Habermas, following a long tradition in social theory, does not believe that a social order can be established through strategic action only,[9] the normative regulation of strategic interactions through law provides a way out of the predicament. Hence, law comes to play a dual role. For strategically-oriented actors, it influences calculations of costs and benefits. From this point of view, the law fulfils the function of social coordination by providing rewards and sanctions that enter into the actors' objective or utility functions and shape the process of strategy selection (a process perfectly captured by game theory). For communicatively-oriented actors, the law is binding because it is inter-subjectively recognized as embodying valid social norms, i.e. maxims that the actors would collectively give themselves as free and equal persons. The willingness to comply with law is therefore based both on the law's *facticity* and its *validity*. These two aspects are strictly related but the validity aspect is pre-eminent because the binding power of law is legitimate only in so far as members of a legal community are able to consider the norm to which they are subject as something they would have authorized in "a free process of political opinion- and will-formation" (p. 38).

This process of (counterfactual) authorization operates through a network of discourses, taking place at different levels. Some of these discourses are located in the sphere of institutional politics and are highly structured and proceduralized. They are specialized in "will-formation," that is, in the production of collective decisions. Others are more informal and dispersed in the public sphere. Their function is that of "opinion-formation." A system of constitutional rights at the same time guarantees and enables both kinds of discourses, structured and unstructured, and makes possible the exercise of popular sovereignty. Habermas' concept of deliberative politics is thus "two-track" and "lives off the interplay between democratically institutionalized will-formation and informal opinion-formation" (p. 308). It should be noted that some of the discourses which are produced in the informal public sphere conform poorly to the "gentlemen's club" model featuring in some theories of deliberation (i.e. rational, poised, and articulate), which according to critics, "involves communication in the terms set by the powerful" (Dryzek, 2000: 70), and resemble much more the "agonistic," partisan discourses

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[9] For recent arguments on the failure of rational choice to establish a social order, see Elster (1989) and Heath (2003).

of a trial setting. Groups do not seek to persuade each other, but seek to influence the court of public opinion by forcefully asserting the issues, values, and interpretations that they believe should be binding for everybody, sometimes even through "sensational actions, mass protests, and incessant campaigning" (Habermas, 1996: 381). The most important normative requirement for this kind of agonistic discourses is that of authenticity. In other words, given their novel character, some discourses may not be immediately recognized as factually true or morally appropriate by the public, but, especially when they walk on the legs of thousands of men and women, they can be easily recognized as expressing authentic commitment to particular values.

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

> "[Civil society's] initiatives are intended to produce a broad shift in public opinion, to alter the parameters of organized political will-formation, and to exert pressure on parliaments, courts, and administrations in favour of specific policies … Within the boundaries of the public sphere, or at least a liberal public sphere, actors can acquire only influence, not political power … Public influence is transformed into communicative power only after it passes through the filters of the institutionalised procedures of democratic opinion- and will-formation and enters through parliamentary debates into legitimate lawmaking … To generate political power, the[] influence [of informal public discourses] must have an effect on the democratically regulated deliberations of democratically elected assemblies and assume an authorized form in formal decisions." (Habermas, 1996: 371-2).

This last point about the appropriate role of social actors in deliberative politics and policy-making is perhaps where the strongest disagreement between Habermasian and DPA views lies (see Cohen, 1999). DPA theorists are puzzled by Habermas' overconfidence in the "systematic inner logic of public bureaucracies" (Habermas, 1992: 452) – a sentiment which appears unjustified to them in light of the growing difficulties these public bureaucracies face in solving a variety of public policy problems (like industrial regeneration, long-term unemployment, skill development, and the revamping of public education, just to mention a few examples). Also, they are dissatisfied with a democratic project that limits itself to stating the possibility for ordinary citizens to exercise indirect influence "from the periphery of the system," rather than from within the system's policy-making core (Cohen, 1999: 410).

In DPA views, civil society has much greater problem-solving capacities than are attributed to it by Habermas, and the opposite is true for public bureaucracies. The functional prerequisites for effective problem resolution – so the DPA argument goes – are changing rapidly and public bureaucracies, just like private organizations, are nowadays all the more effective at doing their job, the less they act as *closed systems* (see Helper et al., 2000; Sabel, 1994; 1996) Specialist knowledge, a clear distinction of tasks, and hierarchical lines of bureaucratic accountability are no longer sufficient (and, perhaps, not even necessary) for problem-solving efficiency.

It may very well be true that nowadays the public administration needs to be able to tap into the resources of the "lifeworld" more often and deeply than in the past. Administrative action may currently have a greater need to incorporate, as a condition for its pragmatic success, the information and expertise, as well as (and perhaps more importantly) the commitment and compliance capacities of civil society actors than is allowed by Habermas' blanket distinction between "system" and "lifeworld" (Habermas, 1987). The popularity of catchwords such as "partnership," "participation," "governance" – all pointing to the need for societal involvement in the policy-making sphere – testifies that this may indeed be the case. Even in these circumstances, however, the second of Habermas' arguments for non-engagement remains relevant. This argument points to the risk that, by responding to the demand for involvement issuing from public authorities at various levels, civil society organizations compromise their capacity for effective problematisation and critique.

Aside from the possibility of sheer cooption, there is a more fundamental reason for non-engagement that has to do with the different logics of action regulating the various spheres. As articulated in the *Theory of Communicative Action* (Vol. 2, 1987: 301ff.), the public administration operates within systemic constraints (both its own and those of the capitalist economy) that exceed the social actors' capacities for conscious collective control. This does not necessarily mean that social actors are unaware of these constraints; rather, that they are willy-nilly pushed to take them into account and internalize them. As soon as a social group starts engaging in the practical resolution of public administration problems, systemic requirements and pragmatic considerations (particularly stringent at a time of economic globalization) forcefully assert themselves, and the horizon of what is possible and feasible dramatically shrinks. The polity may perhaps gain in efficiency, but its deliberative quality, intimately linked with the public sphere's capacity for thematisation of (even impractical) alternatives, dramatically deteriorates.

DPA theory advocates focussing on the pragmatic resolution of well-defined problems (see Fung and Wright, 2003: 189). Yet, for discussion on public policy to be constructive (even in the case of technically defined and localized problems), some basic parameters have to be taken for granted, concerning, for example, the role of public and private in the provision of services; the amount and type of taxation; the extent of cost-recovery; the stance of macroeconomic policy; the role of international financial markets, and other external constraints. This kind of structural distortion, linked with the necessary acceptance of certain pragmatic presuppositions for effective problem-solving, does not derive from the exclusion of particular voices from discourse, or from unequal access to power and resources among participants in discourse, and could not be addressed by institutional design targeted at the latter (short of planetary inclusion and leveling of inequalities). In these circumstances, while deliberation in public policy fora may lead to Pareto-improving outcomes compared with the *status quo*, it often implies accepting a macro framework of policy that is likely to be path dependent – in the sense that some of the constitutive choices will already have been determined in the past, in non-deliberative fashion (Barthe, 2002) – and that is sure to reflect specific interests constellations and power distributions. In this respect, the fact that Habermasian civil society organizations are "under no pressure to decide" (Flynn, 2004: 440), which DPA considers a diminution (see Cohen 1999), could be regarded as a blessing because this condition permits the formulation of more fundamental systemic challenges (see

also Mouffe, 2000), and of moral alternatives to the status quo – alternatives that do not need to worry about their practicality (yet).

By examining the South African experience and, specifically, the functioning of three policy fora, the National Economic Development and Labour Council (NEDLAC), the Child Labour Intersectoral Group (CLIG), and the South African National AIDS Council (SANAC), the next section turns to an empirical investigation of the issues laid out above – whether civil society participation in formal decision-making increases the efficiency of policy-making and the democratic quality of a polity, or whether the cause of deliberative politics is better served by organizations operating agonistically (and antagonistically) from the periphery of the system, and then using the power accumulated through grassroots action to strengthen their bargaining position within institutionalized fora. Our empirical approach shares some features with what Michael Burawoy calls "extended case method" (1998). In line with this approach, our main goal is theory development. Our ambition is to use the in-depth analysis of a particular case as an opportunity to advance a much broader theoretical discussion. Unlike Burawoy, however, we regard social theory not simply as a more or less adequate representation of social reality, but also, and perhaps more importantly, as a theory-practice nexus, a blueprint for social intervention and change, which is bound to correspond to some interests and power constellations better than others, even when theorists are unaware of the linkages. By engaging in empirical research, we do not simply look for empirical anomalies and, by resolving them, seek to enrich the theory's empirical content (along the lines of Lakatos, 1970). Our search for empirical anomalies is also aimed at bringing the connection between theory, interests, and power in the open. From this point of view, the resolution of the anomalies serves less to "reconstruct" the theory, as suggested by Burawoy (1998), than to "deconstruct" it. [10]

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[10] Field research in South Africa was carried out in two waves: in Spring 2002 we conducted 74 interviews with government officials, representatives of employer organisations, trade unionists, and members of NGOs and other civil society organisations. In Spring 2005, we followed up with additional 50 field interviews more narrowly focused on the inner working of the three participatory institutions. A complete list of informants is provided in the Appendix.

4. The Evolution of Participatory Governance in South Africa

About 15 years ago, the South African transition from apartheid to democracy (1990-94) raised many hopes among radical democrats and reformed socialists around the world. It seemed that a new model of associational democracy, and perhaps even a new variant of socialism, participatory and anti-bureaucratic, was on the rise (see, for example, Klug, 1995; Swilling, 1992). The new regime appeared committed to a process of radical democratization. Periodic elections would not be sufficient – argued the new ruling elite – to redress the legacy of discrimination and inequality that the country had inherited from the apartheid period. The institutions of representative democracy needed to be complemented by participatory fora at all levels, in which civil society organizations would play a key role, if not the leading one. These intentions were publicly expressed in the 1994 Reconstruction and Development Programme (RDP) (ANC, 1994), the policy manifesto of the new democracy,[11] negotiated by the African National Congress (ANC) and its civil society allies, including COSATU, the major trade union confederation, the civics movement and other mass organizations, as well as reiterated in the 1995 White Paper on the Transformation of Public Service (RSA, 1995). It is worth quoting from these documents at some length, because it is from passages like these that stemmed our interest in South Africa as a test case for participatory governance institutions.

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[11]   At the ANC electoral victory celebration on 2 May 1994, Nelson Mandela declared: "We have emerged as the majority party on the basis of the programme which is contained in the Reconstruction and Development book. That is going to be the cornerstone, the foundation upon which the Government of National Unity is going to be based" (cited in Bond and Khosa, 1999: 1).

"The RDP vision is one of democratising power. Democracy is intimately linked to reconstruction and development. We will not be able to unleash the resources, neglected skills and stunted potential of our country and its people while minority domination of state and civil institutions persists. Without thoroughgoing democratisation, the whole effort to reconstruct and develop will lose momentum. Reconstruction and development require a population that is empowered through expanded rights, meaningful information and education, and an institutional network fostering representative, participatory and direct democracy." (RDP, 1994, par. 5.2.1.)

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

"Multipartite policy fora (like the present National Economic Forum) representing the major role players in different sectors should be established and existing fora restructured to promote efficient and effective participation of civil society in decision-making. Such fora must exist at the national, provincial and local levels." (RDP, 1994, par. 5.13.7)

"The GNU [Government of National Unity] is firmly committed to transforming the State to an enabling agency which serves and empowers all the people of the country in a fully accountable and transparent way. The GNU is aware that this process can only succeed if it is carried out in partnership with the organisations of civil society. Structured opportunities must therefore be provided to involve civil society in the formulation, implementation and monitoring of government policies and programmes at all levels, national, provincial and local." (White Paper, par. 2.3.)

In this section, we take a close look at the functioning of some of these participatory policy structures.[12] Our main goal is to understand whether the fora have developed as originally envisaged, whether they have lived up to their promise, and whether or not the outcomes attributed to them by DPA theory, more effective public policy and deeper democratic participation, have materialized.

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[12] This section draws on Papadakis (2006 and 2008).

a) *Participatory Economic Policy: The Case of NEDLAC*

NEDLAC is the most important of all participatory policy institutions. It was established in 1995, to replace and consolidate two previously existing tripartite fora, the National Manpower Commission (NMC) and the National Economic Forum (NEF) (interviews: Gostner; Patel; Webster). Its structure and purpose are embedded in law. As stated in the Nedlac Act, No. 35 of 1994, NEDLAC is a consultative forum where the social partners discuss and negotiate specific parts of the national economic policy. It is divided into four different chambers: Labour Market, Trade and Industry, Public Finance and Monetary Policy, and Development. If a consensus emerges among its constituents on any of these issues, it is very difficult for Parliament to alter its terms.

NEDLAC is somewhat different from similar tripartite institutions, because a number of civil society organizations are represented in one of its chambers, the development chamber. Five organizations currently form the so-called "community constituency" in NEDLAC: the South African National Civic Organization (SANCO), the Women's National Coalition (WNC), the National Cooperatives Association of South Africa (NCASA), the South African Federal Council on Disability, and the South African Youth Council (SAYC). [13] A sixth civil society organization, the Financial Sector Campaign Coalition (FSCC), was admitted in 2002 as part of an ad-hoc task team on financial sector reform. This is a platform of associations with an interest in promoting the deracialisation and democratization of the financial sector (interviews: Caine, Mkhize). Besides sitting in the Development Chamber, the community constituency is also represented in the Executive Council and the Management Committee.

There were essentially three reasons for this "tripartite-plus" structure. First, civil society organizations, particularly the civics, had played an important role in the United Democratic Front from 1983 on – a period in which the ANC was banned (Seekings, 2000). It was felt that these long-term allies should be recompensed with an institutional role

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[13] The NEDLAC act (clause 3 (5)) states a series of organisational requirements for associations "of community and development interest" participating in it. These have to: 1) represent a significant community interest on a national basis; 2) have a direct interest in reconstruction and development; and 3) [be] constituted democratically."

(interview: Dexter). The second reason had to do with the remarkable mobilization capacities that especially the civics had shown during the period of transition (1990-94), when they had orchestrated a series of rent- and tariff-boycotts in the townships. It seemed that their inclusion would contribute to restore normalcy (interview: Keys). The third reason was more intellectual and had to do with the need to avoid institution-alization and bureaucratization – two possible side effects of corporatist policy-making (interview: Webster). In other words, by bringing in additional civil society actors, an attempt was made at avoiding that NEDLAC turned itself into a purely corporatist institution – one in which policy would be decided by peak-level leaders only, with little or no grass-root participation (see, for a discussion, Bird and Schreiner, 1992; Webster, 1995).

Overall, NEDLAC has obtained important results. The most impor-tant pieces of legislation in the labour field have been negotiated within NEDLAC, beginning with the 1995 Labour Relations Act and the 1997 Basic Conditions of Employment Act. The various constituencies, includ-ing big business, acknowledge the importance of having an institution that can implant a culture of consensus-building and negotiation in a country that, until few years ago, was used to very deep levels of conflict and violence. The statement of Frieda Dowie of Business South Africa (interview) is representative in this regard: "If NEDLAC stops, we will have to create another one" (see also interviews with Botha; Keys; Van Vuuren).[14] However, what works well in this institution is its corporatist, tripartite core, **not** its post-corporatist appendage. The civil society com-ponent has so far played a purely symbolic role and seems to lack both the independence and capacity needed for real policy influence.

According to several interviewees, the development chamber makes no difference and is described as "toothless and sidelined" (interview: Darroll). Its participation does not create particular problems for the traditional social partners (labour and business) because "it is not a threat" and lacks the capacity to mobilize (interview: Naidoo). Incidentally, this seems to be exactly the reason why the business community did not object to the involvement of a fourth partner. As noted by the representa-

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[14] Not all in the business world and related think-tanks share this view, however. An alternative view is that participatory forms of governance were appropriate for a previous phase of South African history, when there was no legitimate government that could be considered representative of the people. Now that such a government is in place, it should be allowed to rule the country more or less autonomously. For an argument along these lines, see Centre for Development and Enterprise (1999: 51).

tive of a black business organization, "as long as civil society participation stays confined in the development chamber, business would not object to its presence in Nedlac" (interview: Wesingwe).

There seem to be various reasons for this lack of effectiveness. One has to do with deep financial problems affecting all civil society organizations in the development chamber. With no money to pay for telephone bills, it is difficult to organize capillary consultations of members and mandating meetings at various levels – upon which the organizations' problem-solving capacities ultimately depend. More generally, the representativeness of the organizations, that is, their claim to speak on behalf of particular groups, the poor, or even the community at large, is often challenged (see Friedman and Chipkin, 2001; Reitzes and Friedman, 2001). The second reason is that these organizations are confined to the development chamber only (referred to as "a dumping ground for any issue," interview: Dexter) and, in this way, are institutionally prevented from influencing discussions on trade, finance, and labour issues, which are related to and relevant for development. It is, however, doubtful whether access to the other chambers would really change things. The third reason, and perhaps most important reason, is linked with their lack of independence from the ANC, which constrains the organizations' ability to speak with an autonomous voice. None of these organizations has managed to articulate a clear agenda on any issue, distinct from that of government.

There have been several in-depth studies of associations involved in the community chamber at NEDLAC and they all come to similar conclusions concerning the incapacity of these associations, as well as of the chamber as a whole, to exert real influence on policy developments (see Keller and Nkadimeng, 2005). For example, a study of the WNC (the women association) argues (Gershater, 2001) that this organization does not have a clear purpose and should follow the suggestion made by several among its members, i.e. close (p. 27). It also notes that "[the WNC] has largely been silent, and has failed to speak in a critical voice to the current government. This can be attributed to both the coalition's initial close relationship with the ANC and to its inability to establish a clearer focus and political path" (p. 17). "The WNC has been largely inactive in lobbying the government for the 'public goods' that could address the situation of black African women, who, in South Africa, have less income, are more likely to be unemployed, less likely to be educated, and have less access to facilities and services than other groups" (Alberthyn et al.,

1999:2 cited in Gerhater, 2001: 18). In particular, the WNC has had nothing to say about GEAR, the neoclassical macroeconomic policy framework (see infra), which may have had negative repercussions on women's employment by promoting budget restraint (p. 17) (see also interview: Nutt).

The studies of SANCO (Seekings, 1992; 2000; Heller and Ntlokonkulu, 2001, Zuern, 2004) reach similar, and, if anything, stronger, conclusions. Heller and Ntlokonkulu (2001) argue that, as a national organization, SANCO has largely failed, even though its local structures (i.e., the local civics) are still able to channel popular participation and mobilization. "If SANCO is ever to play a role as a national social movement – argue Heller and Nktlokongulu (2001: 50 – it will have to redefine its relationship to the ANC … The terms of engagement must however be selective and conditional, and backed by a credible threat of withdrawal." [15] Zuern goes further and argues that, even at the local level, the fortunes of the civics are parasitic on the mobilization and protest capacities of local social movements.

SANCO has had huge problems defining its role after 1994. During the anti-apartheid struggle, the civics were grassroots organizations specialized in protest, boycotts, and insurrectional tactics. With the transition to political democracy and the emergence of local democratic institutions, it became unclear what the civics' function was, and whether they should continue to exist at all at a time in which the local branches of the ANC could legitimately claim to be the genuine representatives of the poor and marginalized people of the townships (where the civics' traditional constituencies resided). Some, including within their own ranks, advised them to act as apolitical watchdogs to make sure that government's policies served the interests of the poor. [16] However, the SANCO leaders were unwilling to do so, as this strategy entailed the risk of having to challenge the ANC government head-on and, hence, of contributing to strengthen "counter-revolutionary" forces (see Nthambeleni, 2003). SANCO sought to move from "protest" to "development," and, in so

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[15] Reitzes and Friedman (2001: 9) are even more trenchant: "SANCO at a national level speaks largely with its master's voice [the ANC], and is largely paralysed as a result of its subservience to the ANC."

[16] Consider the words of a former SANCO activist: "There is still, at the time of this writing, no guarantee that the future local government will be so thoroughly democratic as to allow and empower people to actively participate in and control local governance and development. The civics will therefore play a watchdog function with respect to political education, and in the process experiment with alternatives in building participatory democracy" (Mayekiso, 1996: 234).

doing, *de facto* chose a role of "transmission belt," contributing (as much as it declining organizational strength allowed it) to mobilize citizens' compliance with government policy. [17] In particular, just like the WNC, and other civil society organizations operating within the NEDLAC framework, SANCO never seriously contested the move from the RDP to GEAR (Ministry of Finance, 1996) – the neo-liberal macroeconomic policy framework adopted in 1996 in the wake of a speculative attack on the Rand – even when the policies of privatization and cost-recovery associated with this move severely limited poor people's access to basic services (Heller and Ntlokonkulu, 2001: 53; Mayekiso, 2003: 64). Moreover, it vocally distanced itself from COSATU when this recurred to confrontational tactics (strikes and mass demonstrations) to fight back the privatization of public services. [18]

In recent years, the government's policies on service delivery have led to the emergence of several oppositional social movements at the grassroots level, such as the Anti-Privatization Forum (APF), or the Soweto Electricity Crisis Committee (SECC), as well as others. These have been

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[17] Consider the following 1996 declaration by Mlungisi Hlongwane, Sanco president (cited in Zuern, 2004: 6): "If you want to be an instant revolutionary these days and be involved in boycotts, Sanco is no longer a home for you … Although Sanco was an organisation that mastered the art of boycotts, it has made a complete break with the past."

[18] Adoption of the Growth and Redistribution (GEAR) strategy marked a transition from a kind of left-Keynesian macroeconomic policy, represented by the RDP, to a fully orthodox (that is, neoliberal) policy stance in South Africa. The key idea in the RDP programme was growth through redistribution. In other words, an active and interventionist state would promote growth by meeting basic needs, e.g. in terms of education, health care, address to services and infrastructure (electricity, housing, telecommunications, etc.). The major driver of growth would be increased demand from the poor through greater spending power. This demand-led strategy would be combined with extensive involvement of civil society in the design and delivery of services. The GEAR strategy reversed the approach: first growth and then redistribution. It emphasized fiscal conservativeness and inflation reduction, together with elimination of capital controls and privatisation. Like the RDP, it assumed that the economy was operating with excess capacity, but, unlike the RDP, sought to impart a fiscal stimulus issuing almost exclusively from an increase in private investments. The boost in private investments would be produced, in the intentions of the modellers, from a "crowding in" mechanism: deficit reduction and disinflation would produce a reduction in real interest rates and would step up investors' confidence (Weeks, 1999). It bears emphasizing that GEAR failed to reach its growth and employment targets: GDP growth was much lower than expected; employment growth was negative. The inflation and public deficit figures were, at the end of the period (2000), lower than anticipated. Part of the reason why GEAR failed to reach its targets had to do with very high real interest rates (much higher than planned), which were linked with the need to protect the currency from speculative capital movements and capital flight. Even those economists that deprecate "macroeconomic populism" and consider that GEAR was, all in all, the right recipe for South Africa (e.g., Nattrass and Seekings, 2001; see also Friedman, 2002) seem to believe that the combination of overly restrictive fiscal and monetary policies may have depressed growth in South Africa, just as it did in other developing countries implementing structural adjustment programmes (see Stiglitz, 2002). For more on the evolution of South Africa's macroeconomic policy from RDP to GEAR, see (within a large literature) de Wet (1994); Nattrass (1994; 1995; 2001); Michie and Padayachee (1998); Weeks (1999); Fine and Padayachee (2001); Nattrass (2001); Magketla (2004) and (2005); Terreblanche (2005).

organizing boycotts and disobedience campaigns in the townships in an effort to fight cost-recovery strategies by utility companies – involving, for example, the use of pre-paid meters (which make usage of services contingent on ability to pay) – and to stop cut-offs and disconnections, especially of water and electricity. The tactics of these social movements are remarkably similar to those used by the civics in the years of apartheid. Similar is also their vehement anti-governmental rhetoric. What is new is that this rhetoric now targets the ANC (interviews: Ngwane; Mnisi; see also Buhlungu, 2004; Ballard et al., forthcoming; Banda, 2003).

For example, the Soweto Electricity Crisis Committee (SECC), which emerged in 2000, has used mass protest and civil disobedience to advance its goals. The SECC conducted the operation "Khanyisa" (in Zulu, "bring the light"), which involved illegal electricity reconnection of houses by trained local members.[19] Eventually, public authorities and ESCOM, the electricity company, were forced to negotiate a peaceful solution to this crisis. In order to do that, they invited SANCO as the official bargaining counterpart (Zuern, 2004: 19-20; interviews: Bond; Ngwane; Mayekiso; Mbele). Hence, SANCO was able to capitalize on grassroots mobilization to carve out a role as community broker for itself. However, everyone in the community knew only too well who was to thank for the local authorities' change of plan (interview: Ngwane).[20]

SANCO's lack of critical voice and independent stance contrasts sharply with the completely different attitudes of other national organizations that do not participate in NEDLAC. For example, at least until 2002, the South African NGO coalition (SANGOCO), an umbrella organization coordinating about 4,000 NGOs, has been arguing for a radical redefinition of South Africa's macroeconomic policy, as well as NEDLAC's role and structure. According to this organization, macro-economic policy needed to be included in the agenda of all chambers, including the development chamber (interview: Dilthake). This organization joined COSATU in mass mobilizations against deregulation and privatization, as well as in

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[19] Within six months, the SECC had illegally reconnected over 3000 households (Egan and Wafer, 2004, cited in Labour Bulletin "The Soweto Electricity Crisis Committee: does size count?" Labour Bulletin, 28(5), 2004: 25).

[20] See Zuern (2004: 20): "Without pressure from the SECC and massive non-payment, Escom would never have offered such a large write-off. In contrast, in Tswane, where SANCO leaders participated in a series of negotiations with the metropolitan government council and where no group such as the SECC had engaged in large mobilizations prior to negotiations, the council refused Sanco's request to write off outstanding arrears, arguing that effective credit control measures were already in place."

People's Budget Campaign, advocating more transparency and participation in budget formulation (interviews: Ditlhake; Scheepers; Steele). Also, it joined COSATU and other NGOs, like the South African Council of Churches (SACC) (which, like SANGOCO, does not participate in NEDLAC), in a campaign aimed at introducing a universal minimum income for all, known as the Basic Income Grant (BIG) campaign) (interviews: Tsele; Sheepers; Steele; Ditlhake). Finally, it actively supported the campaign for cancellation of the Apartheid debt, which it considered one of the reasons why South Africa was unable to increase its financial commitment to fighting unemployment and poverty.[21]

The one civil society actor that is able to utilize the NEDLAC process to articulate and push for its own, independent agenda is the union movement – not surprisingly the one organization with a clear membership base and an independent source of finance. Trade unions were unable, despite all their efforts, to prevent the adoption of the GEAR framework, which was declared "non-negotiable" by government in 1996 and, consequently, never discussed in NEDLAC's Public Finance and Monetary Policy Chamber, where, it could be argued, it should have been discussed according to the brief of the chamber itself.[22] However, they did manage to strike a number of victories, especially in the field of labour market regulation.

The union movement, and particularly COSATU, does not limit itself to institutionalized participation in the NEDLAC process but always uses a multiplicity of tactics. It combines mass mobilizations to build pressure on the bargaining counterpart, "hard" negotiations, and direct lobbying of Parliament, by means of the direct access that COSATU unionists have to Parliamentarians by virtue of the Tripartite Alliance that links the ANC, COSATU, and the South African Communist Party.

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[21] Recently, however, SANGOCO's strategy seems to have changed. The change was linked to a turnover in leadership as well as to a serious financial crisis that threatened the organisations' survival. SANGOCO has now decided to seek direct involvement in NEDLAC as opposed to exercising influence from outside through campaigning (interview: Shabodien).

[22] As reported by Keller and Ngadimeng (2005: 13), this is "to reach consensus and make agreements on all matters pertaining to the framework within which financial, fiscal, monetary and exchange rate policies are formulated; the coordination of fiscal and monetary policy and related elements of a macroeconomic policy as well as associated institutions of delivery." A representative of the National Treasury Bureau of Macro-economic Policy (interview: Masilela) justified adoption of GEAR outside of the NEDLAC process on technical ground: "The process in Nedlac can be classified in two broad categories: First, for information. Second, for negotiation. Macro-economic issues [such as GEAR] are only for information. […] Given the nature of NEDLAC there has been an effort to try to minimise the number of issues that go down to Nedlac negotiation. Since reaching consensus at Nedlac is not easy, at the end of the day the government decides."

In some cases, COSATU engages in direct negotiations with top managers of large, internationalized firms.

Two illustrations of COSATU's strategy are the negotiation of the Labour Relations Act (No. 66 of 1995) (LRA) and the reaction to a set of amendments to labour legislation proposed by the government in 2000. The LRA, a highly progressive labour code, which contains legal provisions for sectoral bargaining, extension clauses, and the establishment of workplace union fora, was one of the first documents negotiated at NEDLAC. Throughout the negotiations, COSATU kept the option of "taking it to the street" open, and, indeed, did so twice (Webster, 1996: 4; Standing et al., 1996: 175). This "inside/outside" strategy was a conscious choice, which strengthened considerably the unions' negotiating position. According to the unions, street action remained essential to counterbalance the (implicit or explicit) influence of big business and the international financial institutions.

Another occasion in which COSATU applied an inside/outside tactic was with the negotiations of the amendments to labour legislation in 2000. Government's main goal was to make industrial relations more flexible, and the country more attractive to mobile international capital, by relaxing several provisions, particularly those related to collective bargaining extension clauses. COSATU responded by embarking on a series of general strikes until the amendments were withdrawn. The final outcome brought no flexibilization and even increased the stringency of labour regulation. For example, labour gained the right to strike over the retrenchment of 50 or more employees. In this occasion, COSATU recurred to bilateral negotiations with big business in what came to be known as the "Millennium Labour Council" (MLC). Large enterprises were much more vulnerable to industrial conflict and therefore much more willing to compromise on labour flexibility than small and medium-sized firms (Handley 2005). Once a deal was struck in the MLC, it became very difficult for business representatives to fight off its ratification in NEDLAC (interview: Dowie).

The experience of the Financial Sector Campaign Coalition (FSCC) also points to the importance of mobilization and outside pressure as preconditions for effective influence in NEDLAC.[23] The FSCC, a coali-

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[23] FSCC is one of the least studied organisations in South Africa. The reconstruction below is based on FSCC documents available on the internet site of the South African Communist Party (SACP) under "press releases", e.g., http://www.sacp.org.za/pr/2004/pr0526.html and http://www.sacp.org.za/pr/2003/pr1017.html, as well as interviews with the coordinator of the FSCC (Caine), the Executive director of NEDLAC (Mkhize), and the convenor of the community Constituency at NEDLAC (Shezi).

tion of 55 organizations, was originally established in 2000 to demand universal access to affordable financial services for every South African citizen. It included various large organizations such as COSATU, SACC, or TAC, but was de facto coordinated by the South African Communist Party (SACP). The slogan of the campaign was "Make the Banks Serve the People." Through street demonstrations, which included a march to the National Parliament, the Coalition managed to push the issue onto NEDLAC's agenda. At that time, poor South Africans had little or no chance to qualify for a bank account, let alone access credit. While insurance companies and banks provided highly sophisticated products and services to a privileged minority, more than 10 million people had no access to financial services at all. This left them at the mercy of money lenders which could charge up to 500 per cent interest rate per year, at a time when the official rate was much lower (roughly 20 per cent).

While the campaign was not an unconditional success – in 2003 the financial industry adopted, outside of NEDLAC, a unilateral Financial Sector Transformation Charter which failed to incorporate all of the commitments that had been made in a financial sector transformation summit in August 2002 – it did manage to introduce at least one important change: the launch, in October 2004, of the *Mzansi* national bank account – which allowed ten million previously "unbanked" people to receive a debit card as well as deposit, withdraw and save money at affordable charges. According to the coordinator, what was crucial to the campaign's success was both the building of grassroots support as well as the fact that the campaign, unlike the Treatment Action Campaign (see *infra*) and others, carefully avoided to target government directly (interview: Caine). The "enemy" was the business sector, not government per se. Also, since both the SACP and COSATU were actively involved, the Coalition could count on two avenues for influence: both the NEDLAC process and the Tripartite Alliance.

b) *Participatory Policy-Making and Child Labour*

Child labour is certainly not as serious a problem in South Africa as in other Asian or African countries. There is little or no child labour in the formal sector of the economy, specifically in manufacturing (interviews: Scheepers, Camay 1 and 2; Solomons, Thoko). Also, South African legislation is among the most advanced and comprehensive in the world on this issue. [24] The South African Constitution is one of the few to make explicit reference to child rights and child labour (e.g., Section 28 (1)(e)). In addition, compulsory education, a major preventative measure against child labour (Weiner, 1990; ILO, 2004: Ch. 4), is assured to all children until the age of 15 or completion of 9th grade, and seems to be well enforced since rates of primary school completion are very high in comparative perspective (around 90 per cent in 2000). [25]

Nonetheless, a number of children do engage in work activities. For a long time, no reliable data existed on the pervasiveness of this phenomenon in South Africa. Recently, however, a "Survey of Activities of Young People" (SAYP) has become available (Statistics South Africa, 2001). This shows that, on a total of 13.4 million children between 5 and 17, 1.7 million (12.5 per cent) were engaged in either 12 hours of economic activity, 12 hours of school maintenance activities, or 14 hours of household chores in 1999. The numbers are considerably higher when lower threshold values are used. These children were typically black and likely to reside in rural areas (especially in the former homelands). Their households generally lacked access to electricity and piped water – which explains why fetching wood and water was the children's most common work activity. Not all of these working activities by children could be immediately classified as child labour, as this requires, in line with the South African Constitution (Section 28) and international standards, that activities be "exploitative, hazardous or otherwise inappropriate for

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[24] South Africa has ratified the United Nations Convention on the Rights of the Child, as well as the ILO's Minimum Age Convention, 1973 (No. 138), and the Worst Forms of Child Labour Convention, 1999 (No. 182). In addition, various pieces of legislation deal, directly or indirectly, with the issue of child labour. The Basic Conditions of Employment Act, 1997, administered by the Department of Labour (DOL), stipulates in Section 43 that it is illegal to employ children under the age of 15 or children who are "under the minimum school-leaving age in terms of any law." No specific legislation exists on issues like child trafficking, child prostitution and child domestic work. However, all of these are outlawed by general legal instruments like the Constitution (1996), the Child Care Act (1983), the Domestic Violence Act (1998), the Basic Conditions of Employment Act (1997), the Sexual Offences Act (1957), and the Prevention of Organised Crime Act (1998).

[25] World Bank, World Development Indicators (on-line database).

th[e children's] age, detrimental to their schooling, social, physical or moral development" (DOL, 2002). However, of all the children engaging in strictly economic activities for at least three hours a week, 2.1 million declared to be exposed to hazardous conditions. [26]

In the first years of the democratic transition, civil society organizations operating in the field of child labour and children's rights actively contributed to shape the post-apartheid agenda on these themes, by participating in international mobilizations and national awareness-raising events, and by contributing their knowledge and expertise to areas that had been entirely neglected by the previous regime. A few years later, some of these organizations became formally involved in policy-making fora, either directly or through umbrella organizations. Far from increasing the civil society's leverage, however, this inclusion seems to have had little or no impact on public policy in this domain.

As in many other policy fields, a consultative policy-making structure, the Child Labour Intersectoral Group (CLIG), was established in 1998, under the auspices of the Department of Labour (DOL), to coordinate the actions of the public administration departments (Labour, Education, Welfare, Justice, Health, Foreign Affairs), the social partners (labour and capital), and NGOs operating in this area. The establishment of the CLIG resonated with the emphasis on participatory democracy in post-apartheid South Africa (interviews: Thoko; Patel, Bosch). At the same time, it also complied with one of the conditions included in a Memorandum of Understanding (MoU) signed by the DOL and the International Labour Office (ILO), which made financial and technical assistance by the ILO's International Programme for the Elimination of Child Labour (IPEC) contingent on the establishment of a participatory

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[26] It needs to be taken into account that, as the survey targeted children within households and excluded those living on the streets, it probably underestimated the relevant population parameters, especially as far as illegal work activities such as prostitution and crime were concerned (interview: Ozel). In addition, the survey, which was conducted in 1999, did not take into consideration the most recent impact of the HIV/AIDS pandemic. By orphaning many children, this may have worsened the problem (interviews: Cassiem; Camay 2; LeRoux). With respect to prostitution, the most authoritative data are to be found in research conducted by some NGOs, e.g., the study of Molo Songololo (see, Koen et al., 2001), a Cape Town-based organisation focusing on child trafficking and prostitution. One interviewee estimated that 28,000 to 38,000 children may work as prostitutes (interview: Solomons). Also, independent researchers have worked on the issues of HIV/AIDS and child labour (Rau, 2002) and on child domestic workers in South Africa (Bundlender and Bosch, 2002) for the ILO/IPEC. Child domestic labour (paid or unpaid) is estimated to affect about 55,000 children between 5 and 17, that is, 5 per cent of all working children. Of these, 10,000 may fall in the category of "worst forms" of child labour (involving, for instance, long hours of work and possibly sexual abuse) (Bundlender and Bosch, 2002: 43).

governance structure involving "representatives of state departments whose work relate to the problem of child labour, representatives of employers' and workers' organizations and representatives of non-governmental organizations active in the field of child labour." [27] A limited number of consultants, specialized in child labour issues and working alternatively for the ILO or the DOL, also played an important role in the process of policy formulation.

The CLIG was assigned the task of coordinating the activities of all public sector departments and civil society organizations active in the fight against child labour as well as contributing to draft a national programme of action. [28] The first few years of its life saw the organization of highly participatory national meetings, involving more than 50 different organizations, supplemented by additional meetings within provincial CLIGs. These events were generally considered beneficial by participating NGOs (interviews: Bosh; Loffell; Mashishi; Pamla; Camay). While they did not lead to policy formulation (also due to the fact that the public officials staffing these structures not only rotated frequently but were also of junior status and, hence, unable to make decisions), they did favour the emergence of networks of like-minded people operating on the field, who could refer to each other when dealing with particular cases of working children (interview: Msezane).

Two civil society actors were most active not just in the CLIG plenary assemblies, but also in the CLIG executive committee: the Network Against Child Labour (NACL) and the National Children's Rights Committee (NCRC). The NACL was the main umbrella organization dealing with child labour. Established in 1990, it consisted of 50 organizations primarily involved in awareness raising and advocacy activities (interviews: Camay 1 and 2; Loffell 1 and 2). This organization had in previous years both been active in collective mobilizations and in the drafting of legislation. For example, during the 1998 Global March Against Child Labour (an international event sponsored by the ILO/IPEC), the NACL coordinated the NGO activities for the South African campaign. It also

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[27] See http://www.ilo.org/ipec for the text of the MoU.

[28] The CLIG was itself part of a broader National Programme of Action (NPA) on the Rights of the Child. The latter was established to follow up on implementation of the 1995 UN Convention on the Rights of the Child (CRC), which South Africa ratified in 1995. This requires from every signatory state the creation of a "Programme of Action" addressing children's rights. In addition, countries commit themselves to designing and supervising the implementation of appropriate policies related to the protection and promotion of children's rights, and to produce a bi-annual report on the state of children's rights (Article 44, CRC).

helped to draft and disseminate portions of the Basic Conditions of Employment Act of 1997 (BCA), specifically those pertaining to child labour. The other umbrella organization was the NCRC. Since 1990, this had been co-coordinating the activities of approximately 200 NGOs. Unlike NACL, which dealt specifically with child labour problems, the NCRC focused more broadly on child rights. The main activity of the organization was advocacy, capacity building, awareness raising and education, as well as lobbying at the national, provincial and community levels (Rantla, 1999).

The activities of the CLIG proceeded rather smoothly until 1999. It was decided that a sensible programme of action needed in-depth knowledge of the phenomenon at hand. Consequently, a household survey, the abovementioned Survey of Activities of Young People (SAYP), was designed and administered with the technical assistance of Statistics South Africa and the ILO. The survey findings ran, however, political problems which almost ground the whole process to a halt (interviews: Camay, Loffell; Pamla). In the words of one of the informants, "the stats were shocking" (interview: LeRoux) and painted a picture of much bigger size than anyone (including the NGOs operating in the field) expected. Were they to be presented as such, they would not only embarrass government, but even risk being used by foreign countries as a pretext for the adoption of punitive measures in bilateral trade relations.[29] Hence, government did not allow the public release of the survey results. The civil society organizations participating in NACL did protest about that (Camay and Loffell, 2001), but, lacking political muscle and being dependent on government support to integrate their meagre budgets, could not afford to rock the boat too much. The activities of the CLIG de facto ceased to exist, not just at the national, but also at the provincial level, with sporadic exceptions being made for Gauteng and the Western Cape.

The policy process started again in the Fall of 2002, when the government decided to authorize publication of the survey after introducing a series of definitional changes, which clarified that the survey data could not be immediately interpreted as evidence of child labour because it was not clear which working activities, and to what extent, could be considered detrimental for the child. Determination of what counted as child labour was to be one the purposes of a new participatory exercise, known

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[29] It bears recalling that in 1998 the US Department of Labor had published a study, By the Sweat and Toil of Children, which included South Africa alongside 15 other countries (USDOL, 1998).

as the Child Labour Action Programme (CLAP). The other major purpose of the CLAP was, as previously with the CLIG, coordination of the activities of various governmental departments as well as civil society organizations. The CLAP process was, however, much more top-driven than the former. A discussion document was produced (by consultants) based on the survey results. This document was then extensively "workshopped" in the first half of 2003 through a series of provincial level meetings open to civil society participation. Then there was extensive consultation within government departments. The results of this process, which also involved listening to the views of the children themselves, were consolidated (by consultants) into a draft National Child Labour Action Programme (DOL, 2003).

At present, this document is waiting assessment of its cost implications by the Department of Labour, which should be supported in this endeavour by the Treasury. There are also some outstanding organizational issues to be resolved involving which, between the Department of Labour and the Office of the Rights of the Child (which reports to the Presidency), should take the lead in coordination activities. Also, there seems to be a trend towards streamlining the participatory nature of the policy process (to say the least). Indeed, unlike previous structures, the Implementation Committee of the CLAP (CLAPIG) is strictly tripartite (interview: Pamla).

It does not seem that the participatory structure of policy-making produced significant results in terms of policy implementation. As far as the quality of policy design is concerned, the Action Programme is certainly a comprehensive and integrated policy paper, which calls upon a series of actors and structures, mostly from the public administration, but also from civil society, to take responsibility for particular actions. However, it is hard to say whether these features of the document reflect civil society participation or simply the skills and ability of the consultants who drafted it (and who, it bears emphasizing, had been involved in the policy-making process from the start). According to one informant, the CLAP process reflects a shared consensus in South African society about the nature of child labour and the ways to address it, but many of the ideas contained in the document had been around for many years (interview: Loffell 2).

The civil society organizations we interviewed were rather cynical about the whole process, including their own role in it (interviews: Camay 1 and 2; Jackson; Msezane). They seemed to believe that partici-

pation had ended up co-opting rather than empowering child-rights NGOs. The strongest statement in this regard was made by a representative of the NACL:

> "We've now been driven into the government's agenda instead of driving our own agenda of what is possible and that creates a problem because in the current South African situation the ANC government is […] not amenable to criticism – which is a problem across government in various departments […] We're acquiescing formally … Secondly, we don't have the power to change things. We don't have the emotional support of the community regarding child labour … It's not seen, so there's less of a social sensitivity around the issue" (interview: Camay 2). [30]

In this context, organizations like Molo Songololo (interview: Solomon), the Nelson Mandela Children's Fund (interview: Biyela) or Sithabile (interview: Msezane) prefer staying outside of participatory processes, and focussing instead on research and lobbying activities. This is not to say that these organizations do not believe in the value of engaging in dialogue with government; far from it: raising the awareness of labour inspectors is crucial for these NGOs. Yet they believe that the risk of being trapped in long, unproductive, and costly discussions ("talk shows"), or being co-opted, is greater than the potential benefits, and does not warrant direct involvement.

There seems to be a diffuse perception among South African elites that child labour is a surrogate problem – one that stems from underdevelopment and can only be addressed through economic growth. This view is generally articulated as follows (interview: Toko): 1) Apartheid left the country with a legacy of poverty, underdevelopment, and unequal educational opportunities, which create and maintain propitious conditions for child labour in South Africa. 2) "Poverty leads to child labour." Consequently, economic development will also address child labour. Given these feelings, it is not surprisingly that the current government efforts in this field are directed not at child labour per se but at the worst forms of child labour. A joint DOL/ILO initiative, known as TECL (*Towards the Elimination of Worst Forms of Child Labour*), has recently been launched to deal with child domestic work, child trafficking and

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[30] Similar considerations were made in relation to NGO participation in other participatory processes, like the drafting of biennial reports on the Rights of the Child for the UN: "Civil society and the NCRC are often used to legitimate the government reports on child issues prepared periodically for instance for the UN. The report states and civil society endorses, however, what the State wants to hear, not what civil society believes" (interview: Jackson).

sexual exploitation, the use of children by adults to commit crimes, and the long-distance fetching of wood and water (interview: Bosch).

In brief, child labour is a policy issue without a societal constituency. The issue is not especially visible to the large public. The policy network operating in this field (including experts, NGOs, and civil servants, both national and international) shares a background consensus on the relevant issues and a commitment to push the policy agenda forward. Yet the process proceeds extremely slowly because no civil society organizations has the mobilization capacities needed to create urgency around the problem and compel government to act on it. The unions could play such a role, as they do in other policy areas, but they do not consider the issue to be relevant enough (interview: Magketla). An actor involved in the process from the start recalls that the only time the unions made a significant contribution was at the time of discussions over the BCEA (1997), when they required a blanket prohibition of child employment. After that, they often did not even bother to participate in meetings or comment on documents (interview: Bosch). In the absence of strong societal pressure, it seems that other, more pressing issues for government take precedence over child labour policies.

In this regard, it is interesting to note that one of the few clear victories struck by civil society in this domain – the extension of the child support grant to all children below the age of 14, rather than 6 years as it was previously the case – was the result of a successful mobilization not by the child labour NGOs, but by the Basic Income Grant (BIG) campaign (see *supra*).[31] Indeed, government decided to extend the child grant as a honourable way of meeting some of the demands advanced by the BIG, which requested a universal grant for all citizens (interviews: Yeni; Leshika; see also Matisonn and Seekings, 2003).

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[31] It should be noted that ACCES, an NGO active in the area of social security for children, played an important role in this campaign.

c)   *SANAC and the Fight Against HIV-AIDS*

HIV/AIDS is, with unemployment, the biggest policy priority for South Africa at the present time (Nattrass, 2003). South Africa has more people living with HIV/AIDS than any other country in the world. According to the 2003 National HIV and Syphilis Antenatal Sero-preva-lence Survey, 5.6 million people were living with HIV at the end of 2002 – a rise of 300,000 compared to the 2002 estimate (Department of Health, 2004: 10). This estimate included 3.1 million women and 2.4 million men, aged between 15 and 49 years. The national prevalence of HIV amongst pregnant women in the country was estimated to be at 26.5% at the end of the same year, as opposed to 7.6% in 1994 and 1.7% in 1991. The rate of mother-to-child (MTC) transmission was about 30 per cent. South Africa is one of the few countries where more women are infected than men. Data presented in the South Africa Health Review (2004: 199) show that HIV prevalence among women is 15.0% compared to 11.5% among men. The same survey shows that, at the end of 2002, almost 100 thousand babies were infected by the virus. Finally, the number of orphans (under 18 years) in 2002 was estimated to be over 885,000, of whom 38% were estimated to have been orphaned by AIDS-related deaths (UNAIDS, cited in SAHR, 2004: 201). The consequences of the AIDS epidemic affect the labour market, the educational system (given the high number of teachers affected), as well as the extent of child labour in the country (given the orphans' need to work in order to sustain their households). It has also been estimated that the epidemic will contribute to greater income inequality (Nattrass, 2002). [32]

Government policy in the field of HIV/AIDS underscores the need for education and prevention, as well as adequate nutritional supple-ments, but, at least until recently, did not include a large-scale "treatment action" plan. By "treatment" we refer to a cocktail of anti-retroviral med-ications (ARVs) that are believed to decelerate the progress of AIDS by improving the immunization system of the HIV-positive. In some cases

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[32] It should be noted that among the five million HIV infected people who risk dying of AIDS by 2005 (unless they receive adequate treatment), many are students today (interview: Creve). While it is hard to know the exact number of HIV/AIDS infection rates in university campuses, one survey of HIV prevalence among university students and teaching personnel at the University of Western Cape estimated the infection rates at approximately 20 per cent (Barnes, 2000: 13). The University of Durban-Westville has reported a 16 per cent infection rate within its ranks. This means that the state is currently spending approximately 50 per cent of its annual budget on the education of people at large proportion of whom might die prema-turely (Skordis and Nattrass, 2002; see also interview: Tsele).

it has been observed that such therapy may even eradicate the HIV virus or at least turn it undetectable in the patients' blood. [33] Research has also shown that a single dose of nevirapine can prevent mother-to-child transmission at birth by almost 50 per cent in a breastfeeding population (Guay et al., 1999). Government generally justifies its position by reference to both medical and practical considerations (see Butler, 2005). It underscores the toxicity of anti-retroviral medications and the need for the drugs to be administered under close medical supervision in order to minimize serious collateral effects (like bone marrow). It also argues that since South Africa lacks the appropriate infrastructure to follow patients in the various phases of prophylaxis, large-scale distribution is not advisable (interview: Mametja). Implicit in government position, at least until recently, is also the problem of the high cost of a treatment campaign [34] – given the high number of patients that would be potentially involved. [35] The alleged "denialist" views of key Cabinet members – concerning the causal link between HIV and AIDS – probably play a role as well (see Mbali, 2002). It is therefore not surprising that the 2000-2005 Strategic Plan for HIV/AIDS/STD devoted some space to treatment of opportunistic infections or "targeted" use of anti-retroviral drugs, but did not provide any specific guidelines to national or provincial Departments of Health regarding the treatment strategy (DoH, 2000).

The official position of the Department of Health (DoH) was summed up at the International AIDS conference held in Durban from the 9th to the 14th July 2000. The official statement of the DoH ended as follows:

> "The battle against HIV and AIDS has to be won, and therefore will be fought tenaciously at all fronts that employ affordable, effective and sustainable strategies. In this regard prevention remains our vanguard, while we continue to work tirelessly to investigate other options and interven-

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[33] The founder of AIDS Law Project, one of the most active NGOs in the HIV/AIDS area, Justice Edwin Cameron, is believed to have profited of such therapy. The HIV virus is no longer detectable in his blood samples.

[34] Butler (2005: 610) observes, however, that cost considerations can no longer be considered the primary determinant of what he refers to as South Africa's "ameliorative/nationalist" approach to HIV/AIDS: "With ARVs now costing little more than US$150 per patient per year, and notwithstanding considerable costs associated with ancillary testing, the 'affordability' debate about comprehensive treatment has abated."

[35] According to the Minister of Health for instance: "In South Africa, we cannot afford these medicines. The budget for medicines is R2 billion. We face a number of diseases in this country, and if we bought anti-retrovirals, we couldn't afford to treat any of the others. At the meeting with the pharmaceutical companies in June, we all agreed that the medications were very expensive. You also need to keep a supply of twelve different cocktails, because resistance builds up so quickly." (Minister's Parliamentary Media Briefing September 13, 2001, see http://www.pmg.org.za/briefings/010913health.htm).

tions. Our health status, socio-economic situation, together with our level of infrastructural development firmly put us in a position where, at this stage, no other weapon against HIV/AIDS will, in the long-term, achieve benefits to the level that prevention will; hence our aggressive information, education and communication campaign against HIV/AIDS, our full involvement in local initiatives in vaccine development, and our interest in mother-to-child transmission. All these preventive measures, which fully recognize and accommodate our circumstances, are guaranteed to put us on top of the scourge, and ensure that we stay there. Remember, prevention is better than cure!!" [36]

It is beyond the scope of this volume (as well as beyond the competence of its authors) to evaluate what is effective policy and what is not in the field of HIV/AIDS. [37] Our purpose here is to analyze the policy process and, especially, examine what kind of impact societal participation had on it, and through what channels. As with the case of child labour, the impetus to set up a participatory structure came both from domestic and international sources. During the transition period, the ANC and the then Department of National Health and Population Development initiated a process aimed at formulating a national strategy for HIV/AIDS (1991). This process culminated in a national conference, the National AIDS Convention of South Africa (NACOSA), which recommended the creation of a participatory structure located in the Presidency, which would be responsible for implementation of the strategy. The underlying assumption was that plan would carry more political weight as well as be more easily implemented if the various actors were parties to it. This formula had previously been successfully used in Uganda (Rwomushana, 2000, in van der Vliet, 2004: 54). The establishment of such a body was also broadly in line with the "governance" approach to HIV/AIDS policy which was being promoted and propagated by international organizations such as the Joint UN Programme on HIV/AIDS (UNAIDS). [38] In addition, it was also a response

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[36] Available at http://www.doh.gov.za/docs/pr/2000/pr0719.html. In the same conference, according to a press report, President Thabo Mbeki "reiterated his controversial view that HIV is not wholly responsible for Aids" (see BBC, 2003).

[37] For an accessible overview of some of the medical and policy issues, see Munjanja (2000). See also Benatar (2004) for a general overview of South Africa's HIV/AIDS policy.

[38] Guideline 1 of the International Guidelines on HIV/AIDS and Human Rights states: "States should establish an effective national framework for their response to HIV/AIDS which ensures a co-ordinated, participatory, transparent and accountable approach, integrating HIV/AIDS policy and programme responsibilities, across all branches of government." (http://www.unaids.org/en/in+focus/hiv_aids_human_rights/international_guidelines.asp.)

to the requirements of the Global Fund for HIV/AIDS, TB and Malaria, which made the disbursement of money conditional on the establishment of a Country-Coordinating Mechanism (CCM) with the participation of a wide range of civil society sectors. [39] In South Africa, this participatory body came to be known as the South African National Aids Council (SANAC). [40]

SANAC was established in January 2000 and included 15 government representatives and 16 civil society representatives. It had one representative each from business; people living with HIV/AIDS; NGOs; faith-based organizations; trade unions; women; youth; traditional healers; legal and human rights; disabled people; celebrities; sport; media; hospitality industry; and local government. The members of the body participated in their individual capacity and were selected by government according to their reputation and achievements in the areas of HIV/AIDS. Various members were prominent leaders of civil society groups. Among them, the most important umbrella organization represented in the civil society constituency was the National Association of People Living with AIDS (NAPWA).

Chaired by the Deputy President, SANAC's mission consisted of bringing together "all the stakeholders and role-players" in order to discuss issues related to HIV/AIDS, facilitate collaboration between the state and other sectors, advise the government on all matters relating to HIV/AIDS, monitor the implementation of the Strategic Plan and mobilize resources. It is worth noting that (until adoption of the Operational Plan, see *infra*), the issue of treatment was absent from SANAC's agenda, reflecting the official position, shared by both government and participating civil society, that HIV and AIDS could be combated more effectively through prevention.

Many interviewees (some of whom wanted to remain anonymous) stated in unambiguous terms that South Africa's AIDS figures could have

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[39] The function of the CCMs is to select, review, monitor and evaluate project proposals at the national level and forward them to the Secretariat of the Global Fund. The Secretariat transmits the proposals to an independent Technical Review Panel which makes recommendations to the Board. The latter makes the final decision as to the appropriateness of the proposals for funding (Global Fund, s.d.: Section VI.B-F and Section VIII) See, http://www.theglobalfund.org/en/files/publicdoc/Framework_uk.pdf.

[40] For more on the roots of SANAC, e.g., Chirambo, 2004.

been much lower if the state had embraced a treatment policy early on. [41] They also criticized SANAC for its silence on key aspects of government policy concerning in particular the issue of mother-to-child transmission, the link between the HIV virus and the disease, and, in general, treatment and drug distribution. According to several informants, SANAC has dealt with none of the big issues of controversy in the HIV/AIDS field (interviews: Heywood; Munro, Mazibuko, Clark; LeRoux). For example, it never discussed MTCT or the provision of antiretrovirals for women victim of rape, let alone large scale treatment, but it did debate the issue of virginity testing and the health hazards associated with it.

One of the staunchest critics of SANAC is the Treatment Action Campaign (TAC), largely the most influential and effective NGO in the HIV/AIDS field. TAC is highly critical of this structure as well as civil society organizations participating in it, because these "have not been able to actively influence the agenda of this body and have remained prisoners to the agenda of the government" (Geffen, 2002b). TAC was formed in 1998 to lobby for cheaper and more easily available anti-retroviral medications. [42] The impetus for its establishment was provided, *inter alia*, by a 1997 legal case, with which a Brussels-based organization representing pharmaceutical manufacturers (PMA) sued the South African government in court for passing an amendment allowing the purchase of antiretroviral medications (ARVs) from foreign suppliers at cheaper prices than from local subsidiaries. The amendment was viewed as a violation of existing WTO rules on intellectual property. TAC sat with the government in court. It also engaged in a series of demonstrations outside the pharmaceutical companies' buildings. Some of its tac-

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[41] The fight against HIV-AIDS in South Africa is complicated by incorrect beliefs regarding the origin of the virus ("the disease was created in a laboratory and was spread by the Apartheid state to eliminate the black indigenous population; the use of condoms would also aim at diminishing the proportion of black population."), and the treatment of the disease ("sexual intercourse with a virgin person may cure AIDS"). Also, government's official statements question the medical link between HIV and AIDS (arguing instead that poverty is the cause of AIDS) and the medical effectiveness of drugs (like Neverapine). These statements run against the decision by some local health authorities to provide low cost treatment therapies, based precisely on the assumption that HIV causes AIDS and that ART (anti-retroviral therapy) improves its symptoms (interviews: Van Zyl; Geffen; Timpson). The particular position of women and children in South African society also contributes to the problem: "Women and children are considered by a part of the population as inferior and therefore are likely to be treated as such" (interview: Bower). Mistreatment includes rape of women and young children, including rape of students at school by other students or even by teachers (interviews: Mathijs; Keys; Bower).

[42] The reconstruction of TAC's development is based on field interviews (Steele; Geffen; Mameja; Heywood; Ekambaran) and information available at the UN Office for Co-ordination of Humanitarian Affairs, "Chronology of HIV/AIDS treatment access debate" (http://www.irinnews.org).

tics were highly spectacular. For example, it brought patients dying of AIDS to witness in court. The pharmaceutical association eventually dropped its charges.

Relationships with government quickly deteriorated, however, due to government's policy on treatment and AIDS. In August 2001, TAC, whose campaign had received the official support of COSATU as well as other organizations, launched a court case demanding government provision of neverapine to pregnant women to limit mother-to-child transmission (Heywood, 2003). A few months later, the Pretoria High Court upheld TAC's case arguing that the provision of ARVs was part of government obligation under the constitutional right to health care. The government appealed the decision to the Constitutional Court. In conformity with the first ruling, the provincial government of KwuaZulu Natal initiated a plan for the distribution of neverapine to pregnant women. However, the Department of Health blocked a US$72 million grant destined to the province on the basis of the argument that KwuaZulu Natal should not have approached the donor directly. In collaboration with Médecins sans Frontières (an international medical NGO), TAC started its own private treatment plan by importing ARVs illegally from low cost producers abroad. The chairperson of the organization, Zackie Achmat, himself HIV-positive, refused to take ARVs until they became generally available to all South Africans that needed them.

In April 2002, the Constitutional Court upheld the decision of the High Court and confirmed that failure to provide treatment violated the constitutional rights of women and babies. However, the Department of Health delayed the rolling out of the distribution plan due to insufficient infrastructural capacities. TAC responded by launching a civil disobedience campaign, "Dying for AIDS," and pressing manslaughter charges against government in connection with AIDS deaths. In November 2003, after an attempt at comprehensive negotiations within NEDLAC (which failed because the Cabinet disowned the tentative agreement at the last moment), the government gave in to pressure and issued an "Operational Plan for Comprehensive HIV and AIDS Care, Management and Treatment for South Africa" (DoH, 2003). This dealt with treatment generally, not just with MTCT. Indeed, it would introduce one service point in every district. It aimed to reach 1.4 million people in five years.

TAC's mobilization was also largely responsible for the introduction of changes in SANAC's institutional structure in 2003. According to the

new design, participants in the new SANAC were to be "chosen by the sectors themselves" rather than being handpicked by the government. As a result of the restructuring, some of SANAC sector representatives, for example those of the People Living with HIV/AIDS, were elected by their respective constituencies (interviews: Mabele; Jacobs). Also, the composition of the various sectors was slightly modified to include important societal actors, including a national representative of TAC.

Since the release of the Operational Plan, whose implementation is supposed to be supervised by SANAC, thousands of people (mainly in the Gauteng and Western Cape Provinces) have benefited from access to treatment. Yet, against a target of 50,000 people by March 2004, by October 2004 less than 15,000 people were being treated in public hospitals and clinics (TAC newsletter 3/11-2004).[43] TAC still accuses SANAC of immobility and the government of unduly controlling the participatory process (interview: Heywood; see also Munro, Mazibuko; Mabele; Mpolokeng). Indeed, it appears that the position of the government did not change much even after the adoption of the Operational Plan. Thus, non-treatment responses, such as prevention or good nutrition, have remained at the core of government's strategy to combat the pandemic. At times, even the prevalence of the disease has been officially underestimated despite ample scientific evidence to the contrary. As the South African Health Minister stated during the national conference on HIV/AIDS (June 2005), the public should "focus on diseases other than HIV/AIDS." In this context, TAC has resumed its mobilization and litigation activities aimed at the effective implementation of the Operational Plan. On November 4, 2004, it launched a new court case in the Pretoria High Court demanding the government to make the implementation timetable publicly available.[44] Alternatively, TAC asked the court to compel the Minister of Health to develop one (TAC, 2004b). Parallel

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[43] According to the Department of Health, by the end of September 2004, only 11,253 patients were put on treatment (see "Progress Report on the Implementation of Comprehensive HIV and AIDS Care, and Management and Treatment Programme," at http://www.doh.gov.za/docs/reports/2004/hivaids-care/monitorreview.pdf).

[44] This demand concerns an Annexure to which the Operational Plan document made reference but that the government failed to release. More specifically, because the Operational Plan referred to the implementation plan timetable as Annexure A, TAC asked the Minister on 20 February 2004 to release said Annexure A. After that TAC made several formal and informal requests for the Minister to make the implementation plan timetable publicly available. However, in September 2004 the DoH informed TAC that the so-called Annexure A was a draft that had never been adopted by the Cabinet, the MinMEC, or the task team that drew up the Operational Plan and that references to Annexure A in the Operational Plan had consequently been made in error (TAC, 2004).

to this, TAC launched a nationwide demonstration campaign to gather public support for this new legal action. [45]

TAC's strategy and tactics contrast sharply with those of the most important NGO participating in SANAC until 2003, the National Association of People Leaving with Aids (NAPWA). [46] This claims to represent between 200,000 and 300,000 members. While not rejecting the need for distribution of ARVs, NAPWA has embraced the government's hesitant approach to treatment. [47] It argues that South Africa "still lack(s) basic infrastructure which is conducive to effective administration of antiretrovirals" (NAPWA, 2001). It focuses "on the provision of care and support for people living with AIDS," on the "facilitation of co-ordination" and the establishment of "support groups for counselling," and finally on the "enhancement of HIV/AIDS awareness through seminars and workshops throughout South Africa," but not on treatment. [48] NAPWA has accused TAC of promoting a hidden "anti-governmental" (anti-ANC) and "racist" (anti-black people) agenda (TAC newsletter) and has officially distanced itself from TAC. [49]

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[45] According to Mbali (2005), TAC's human-rights based activism drew from the repertoire of gay activism in the US, especially from organisations like ACT UP.

[46] TAC's tactics combine constitutional litigation with mass mobilization. The activists are persuaded that without the latter, the former would be insufficient (see Achmat, 2004: 18: "The MTCT case demonstrates that court action alone is insufficient. Public mobilisation on a large scale accompanying litigation led to whatever success there has been in the rollout of th[e MTCT] programme. Undoubtedly the court was swayed by the strength of legal argument … But other important socio-economic judgements have also been made by the Constitutional Court with limited effect on implementation of government policy because the associated civil society mobilisation was missing or muted.") Geoffrey Budlender, the lawyer that argued the MTCT case, confirms this view by contrasting the MTCT case with the so-called "Grootboom" case (which involved the right to housing). Here, too, the case was won in court, but, then, in the absence of sustained societal mobilization, policy change was minor. Consider the following statement (Budlender, 2002): "There is a sharp and illuminating contrast between the consequences of the TAC case, and the earlier Grootboom case. In Grootboom, the Constitutional Court dealt with the right to housing. It explained the obligation of the government to people who are in a desperate situation, have no place where they can live securely, and are truly homeless. National government's compliance with the judgment only started a year later, after the high profile Bredell land invasion. And there are still major cities which continue to act in breach of the Constitution. The major reason for this is that civil society organisations have failed to take up the opportunity created by Grootboom, to compel government to deal with the needs of the truly homeless."

[47] "NAPWA is supposed to be representative of all people living with HIV … but it is very sad that they are not doing that. Instead it has degenerated into a cabale where only a few people benefit and those people would be those that tow the line … Because NAPWA is largely funded by government it has almost become a propaganda organ for government" (interview: Mazibuko; see also Chirambo; Mazibuko, Heywood; Ranthako;) See also Mazibuko (2004): "NAPWA became a perfect and convenient restorer of credibility in the government's continued legitimisation and justification of the Department of Health's outright refusal to provide anti retroviral treatment to millions of people living with HIV and Aids"

[48] See, www.napwa.org.za.

[49] "NAPWA hereby takes a position to distance itself from the Treatment Action Campaign and all its activities" (NAPWA 2001).

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

5. Building Communicative Power: A Discussion of Empirical Findings

The South African case study was preceded by a theoretical contrast between two alternative conceptualizations of deliberative politics and of the role of civil society organizations within it: on the one hand, DPA theory, which recommends that civil society groups engage with the state for the joint resolution of public policy problems, assuming that the exercise of reason would lead to more equitable and efficient policy outcomes than alternative mechanisms of policy formulation; one the other hand, Habermasian theory (see also Offe, 1985; Cohen and Arato, 1992), which emphasizes the role of moral discourse in the informal public sphere and which is rather sceptical about civil society's ability to influence the official circles of power by participating directly in them. The first view conceives of social groups as "secondary associations," the second as social and human rights movements.

None of the institutions examined above functioned according to the idealized model of DPA theory. Participatory fora are dominated by government and generally underwrite government approaches to the resolution of public problems. Within NEDLAC, civil society organizations like SANCO or the WNC have failed to articulate original positions about almost anything. In particular, they take failed to take a critical stance against GEAR, the highly controversial neo-liberal macroeconomic framework, which, by promoting fiscal restraint and commercialization of public utilities, has had a negative impact on poor people's access to basic services. In CLIG, the NGOs participating in the forum seem to have bought into the dominant approach that child labour is a surrogate problem – one that derives from poverty and needs to be addressed through pro-growth policies. Child labour is a policy issue without a social constituency, which, through mobilization, could create

a sense of urgency around the problem. Consequently, policy development proceeds extremely slowly. In SANAC, the state and at least some civil society organizations, including the national association of HIV/AIDS-infected people, share the same view that the causal links between HIV and AIDS are unclear, that the country is, from the point of view of infrastructures, unprepared for a treatment action campaign, and that the distribution of antiretrovirals, beside being economically unaffordable in many respects, would also have seriously undesirable side effects for poor people's health.

In all of these fora, the quiescence and acquiescence of participating organizations contrasts sharply with the activism and effectiveness of organizations that refuse to lock themselves in a strategy of institutionalized engagement. The case of TAC is perhaps the clearest. TAC managed eventually to alter the government policy stance on HIV/AIDS, in the sense that it was largely responsible for the issuing of an Operational Plan on treatment. It did not do so through dialogue, but through protest and litigation. All the most effective organizations, not just TAC but also COSATU and the Financial Sector Campaign Coalition, behave like social movements. They pressure official power from outside in a siege-like manner and then seek to reap the benefits of such mobilizations at the bargaining table. Their tactics include mass demonstrations, boycotts, and, in the case of TAC, "shame campaigns" (involving domestic as well as international allies) and legal litigation.

As to why the institutions examined above fail to live up to the standards of empowered participatory governance (Fung and Wright, 2003) – indeed, at least two of them, CLIG and SANAC, are anything but empowered – one could draw at least two lessons about the applicability of the DPA normative model. These have to do with: 1) the role of the state, and 2) the conceptualization of deliberative politics.

DPA theory assumes that social groups have informational and problem-solving advantages over public bureaucracy, and conceives of the state as a benevolent and politically-neutral actor, which is aware of its technical limitations, are is therefore willing to share its policy-making prerogatives with civil society organizations as a way of filling its information-gathering and processing gap. However, the state generally has very clear preferences about the kind of policies that should be adopted, often as a result of international macroeconomic constraints. In the case of South Africa, these constraints lead to a constant preoccupation not to upset international financial markets and force government

to maintain a tight control both on fiscal policy and, more generally, on the scope and depth of public intervention in the economy. DPA theory seems to assume that, at a time of declining systemic and ideological differences, it is possible to carve out areas of local consensus, and transform political issues into technical problems awaiting efficient solutions. It is like saying that, because ideological differences are dead, we can now all focus on how to fix the local school. Yet this carving-out strategy does not go too far. The South African case shows that even the apparently most technical issues, having to do with effective HIV/AIDS or child labour policies, are deeply intertwined with South Africa's position in the international economy One of the primary reasons why government may want societal involvement in policy-making is the need to increase "buy-in," namely facilitate compliance with potentially controversial or unpopular policies. In these circumstances participatory processes run a serious risk of manipulation and cooption. In the South African case, this risk is heightened by the domestic strength of the ruling ANC party and the insufficient separation between civil and political society (on the latter, see Friedman, 1992; Reitzes and Friedman, 2001: 9; Shubane, 1992: 37).[50]

Also, DPA's particular understanding of deliberation, centred on the transformative potential of **face-to-face** discourse within institutionalized settings, is empirically inadequate as a characterization of the mode of coordination within the three participatory fora we examined. These are (at best) bargaining fora, in which arguments are taken into consideration only to the extent that there is power to back them, otherwise they are ignored.[51] Indeed, powerful actors are unlikely to be persuaded by even the best rational arguments. The evidence from deliberative polls

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[50] It also bears saying that, in contrast with DPA assumptions, we found no evidence that social groups had informational and problem-solving advantages over public bureaucracies, and, a fortiori, no evidence that societal involvement in policy-making permitted to mobilize these additional skills. A student of the various participatory structures, both in the period of transition and after, related to us his view that the fora had been unable to produce a single concrete policy outcome (interview: Friedman). Only one of them had produced a policy, the housing policy, and it had been a disaster. The civics had participated in the forum to represent the consumers of housing, i.e., the homeless. However, the whole consultative process had entirely misread the problem: It had spent five years trying to work out how to get mortgage finance to the poorest among the poor. But research had later shown (Tomlinson, 1997) that the poorest of the poor did not want mortgage finance. They preferred small loans to buy materials and improve their dwellings themselves. They said: "These guys lock us into things we can't pay for or that only last until you have a job. Then you lose your job and they come and take your house away."

[51] According to one of our informants, "societal participation allows policy-makers to come across unexpected information, information they did not anticipate, but if you have power you can discard that information" (interview: Magketla).

supports this point by showing that preferences are less likely to change when the issue is particularly salient and when participants enter the debate with highly structured preferences (see Farrar et al., 2003: 17). Principal-agent considerations reinforce this conclusion: the actors participating in policy fora are representatives of particular group views. Even admitting a transformative effect on the preferences of agents, it is not clear what the impact on the principals, i.e. the constituencies at large, would be.

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

The strategy of the civil society organizations that have the greatest impact on policy, like the Treatment Action Campaign (TAC), or even the Congress of South African Trade Unions (COSATU), is, in many respects, a communicative strategy (see Friedman and Mottiar, 2004), as it centres on persuading as many citizens as possible of the moral appropriateness and binding character of the particular policy options advocated by these organizations. Like all communication, this, too, involves performative

contradictions and consistency constraints. For example, the rationale of TAC's court case against government is that its HIV/AIDS policy has violated the commitments solemnly taken by adopting the South African Constitution, which states that "everyone has the right to have access to health care services" and that "the state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realization" of this right (Art. 27). An example of consistency constraint is the refusal of TAC's Zachie Achmat to assume antiretroviral medications until they are made available to all. Unlike standard DPA views of deliberation, communication is not limited to verbal utterances but involves more dramatic forms of action, too, from marching to engaging in hunger strikes and civil disobedience. Perhaps more importantly, this type of communication does not seek to change the views of other actors in policy-making directly (a change which seems unlikely to take place), but seeks to build pressure on them indirectly by mobilizing the public, at both the national and international level. [52] The mechanisms through which such pressure is exercised may be multiple but rely primarily on the impact that electoral competition has on policy-makers, making it highly unlikely that they will endure large scale manifestations of dissent from their constituencies without responding. This logic is articulated in the following excerpt from a COSATU strategy paper:

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

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[52] Note the similarity with the "boomerang effect" analysed in Keck and Sikkink (1998).

6. Concluding Remarks

Based on an analysis of three South African participatory policymaking fora, the National Economic Development and Labour Council (NEDLAC), the Child Labour Intersectoral Group (CLIG), and the South African National AIDS Council (SANAC), this volume has both critically examined some of the assumptions underlying what we refer to as "Deliberative Public Administration Theory," and advanced an alternative characterization of deliberative politics in real world circumstances and of the role of civil society within it – one which shares with critics of deliberation, in primis with Carl Schmitt's **Crisis of Parliamentary Democracy** (1985), as well as previous work by Habermas himself (e.g. 1989), a sort of scepticism concerning the possibility of deliberation in formal settings, and places action aimed at reaching understanding (Habermas, 1984) in the informal public sphere, where the preferences of citizens are still malleable, pragmatic constraints as to what is possible and feasible given circumstances less pressing, and it is possible for civil society groups to build communicative power by articulating moral alternatives to the status quo that motivate and mobilize the public (Habermas, 1996). This communicative power can then be used in the formal sphere to counterbalance other forms of power.

In conclusion, we need to address the question of why DPA theory seems dramatically inadequate when faced with an account of South African developments, while it seems to fit remarkably well other experiments in participatory governance taking place in other parts of the world (or so it is claimed). What is different between the South African multistakeholder fora and, say, participatory budgeting (PB) in Porto Alegre, the most celebrated case of success? While a full comparison is

beyond the scope of this volume (and perhaps not even entirely appropriate, since the South Africa multistakeholder fora are national institutions, while the PB is a local phenomenon), the preceding discussion suggests that we look at the attitude of the public actor as key.[53]

Porto Alegre's PB experiment combines grassroots meetings at the neighbourhood and regional level, in which citizens are called upon to discuss, propose, and prioritize particular actions, with a complex bureaucratic process, involving public servants and technocrats, as well as citizen representatives from different regions and thematic areas. One of the most important outcomes of the PB is that it seems to have solved the problem of imperfect representation of the citizenship by elected politicians. Especially where there are pervasive clientelistic networks, electoral incentives often do not suffice to ensure correspondence between the preferences of voters and the policy choices of elected representatives. Even though the median voter is poor, public policies are generally not pro-poor (see Keefer and Khemani, 2003, for a discussion). In Porto Alegre, the introduction of participatory budgeting has led to a much greater allocation of public funds to poor people than it was the case in the past. Consequently, all indicators of poor people's access to basic services have improved: home access to clean water increased from 80 to 98 per cent between 1989 and 1996 and the number of people with access to the sewage system increased from 46 to 85 per cent in the same period (Vaillancourt-Laflamme, 2005: 40).

While participation remains confined to a minority of the population (less than 8 per cent) and there are concerns about a possible bureaucratic involution and co-optation of participating organizations (Gret and Sintomer, 2002: 109), PB has been successfully involved the least well-off: most participants in the process are from poor neighbourhoods. Coordination, scholars seem to agree, is not by deliberation properly speaking. Indeed, in the words of Rebecca Abers (2003: 205-6):

> "In Porto Alegre … people are not drawn into the process because they wish to deliberate, but because they wish to get infrastructures for their own neighbourhoods, to improve their lives. Typically, new participants have almost no perception and little concern for other neighbourhoods' needs … The participatory process has an extremely competitive component which is precisely what gives it its vitality: if it did not provide the

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[53] What follows draws from the literature review on Porto Alegre prepared for the IILS by Catherine Vaillancourt-Laflamme (2005).

prospective of providing returns to their specific needs or concerns, most people would not go to the meetings … I doubt very much that purely deliberative processes ever occur in participatory fora, except where issues are not particularly contentious." (Abers, 2003: 205-6). [54]

The ruling party, the *Partido dos Trabalhadores* (PT), is firmly committed to the process, which is, for all purposes, its own creation. This commitment does not proceed solely from the party's historical and ideological emphasis on autonomy, devolution, self-organization, and from its opposition to clientelism – but also from organizational self-interest (Abers, 2000: 101). From 1989 on, the PT has never been able to count on an electoral majority in the legislative assembly, which has the task of approving the budget. The PB process has helped it activate an alternative mechanism of consensus mobilization and reduce the likelihood of political backlashes. The contrast with South Africa could not be starker in this respect. With no credible electoral competition and a solid grasp on the vote of the poor, the ANC does not need societal participation to the same extent as the PT. This might explain why over time it has distanced itself from social movements, trying to co-opt them or turn them into agents of service delivery for the state (Heller, 2001; see also Habib, 2005; Lyons et al., 2001).

DPA theory advocates civil society inclusion in policy-making, arguing that such inclusion leads both to more equitable and efficient policies. The discussion conducted so far suggests that this advocacy should be qualified by consideration of what kind of incentives the state might have to engage in, and remain committed to, genuine societal participation. By insisting on the transformational potential of **face-to-face** discourse within institutionalized settings, DPA gives progressive civil society organizations possibly the wrong kind of advice. If the evidence provided in this volume is to be trusted, participation solely based on the hope that the force of the better argument will eventually prevail may rest on weak (and naïve) foundations. At the same time, splendid isolation is not a viable strategy either: every social movement has at some point to engage with the state to push its agenda for policy transformation. Such engagement seems most productive when social movements maintain strong mobilization capacities and when they keep an exit option open for themselves.

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[54] However, again according to Abers (1998: 527), the practice of participatory democracy creates its own anthropological preconditions and people start enlarging their mental horizons and incorporating other people's concerns over time.

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