

## **Public deliberation – a contradiction in terms? Transparency, deliberation and political decision-making.**

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### **The research problem**

What is the effect of opening up previously closed processes of political decision-making to a public audience, by means of transparency reforms? A common view in the scholarly debate on the democratic status of the European Union is that increased transparency may promote “output-oriented legitimacy” (Scharpf 1999:6), which means that political decision-makers who are forced to act in public will have to ‘shape up their acts’. Transparency has the power to prevent “wrong-doing” (Scharpf 2003:4), make elite decision-makers more “responsive” (Héretier 1999:272) to the public and “secure the adoption of more impartial decisions” (Gargarella 2000:202), it is argued. It is assumed to increase the quality both of the decision-making processes and of the decisions taken.

This positive view of transparency finds strong support in deliberative democratic theory, where transparency is seen as “one of the purifying elements of politics” (Gutmann & Thompson 1996:95). In particular, transparency is assumed to affect the mode of decision-making away from bargaining (defined in the deliberative democratic literature as aggregation of preferences via the exchange of threats and promises) towards arguing (transfor-

mation of preferences via the exchange of rational arguments) and the types of justifications used by actors from self-regarding to other- and ideal-regarding (Elster 1998:109). In public, it is assumed, the ‘force of the better argument’ norm rules, and actors will be sanctioned if they refuse to abide to it. “Public debate induces actors to replace the language of power by the language of reason, i.e. they have to appeal to common norms and values” (Eriksen & Fossum 2000:27). From a normative point of view this is a shift in behaviour which is welcomed by deliberative theorists. The heart of democracy, in their view, is the exchange of rational arguments concerning the common good, rather than bargaining or voting. Transparency, thus, is an important component of deliberative theorists’ institutional program of designing “deliberative processes that favour broader over narrower interests [and] puts a premium on moral deliberation rather than power politics and bargaining” (Macedo 1999:10. See also, for instance, Chambers 2004, Dryzek 2000, Bohman & Rehg 1997, Habermas 1996.)

The current drive towards increasing transparency in political institutions is not applauded everywhere, however. Some argue that transparency puts the effectiveness of negotiations at risk. A certain degree of secrecy is necessary in order to produce agreements, according to this view. For instance, the famous culture of compromise in the EU Council of Ministers may be damaged by radical transparency reforms (Hayes-Renshaw & Wallace 1997:7).

The sceptics may lean towards negotiation theory for support. In order for negotiating parties to reach a “wise outcome”, it is claimed within this literature, “it is useful to establish private and confidential means of communicating with the

other side" (Fisher, Ury & Patton 1999:36. See also Walton & McKersie 1965, Lax & Sebenius 1986, Putnam 1988). Secrecy is a necessary condition for positive-sum "integrative bargaining" (Walton & McKersie 1965: chap 4), which is characterised by a cooperative attitude, rich information-sharing and participants candidly speaking their minds. Transparency, on the other hand, leads to posturing and more rigid positions, negotiation theorists argue. Recent game theoretical works have reached similar conclusions. Transparency may inhibit Pareto-efficient outcomes: "Although there may be benefits to 'sunshine laws' and other measures to make negotiations open, our results show that they may actually harm efficiency" (Groseclose & McCarty 2001:114). David Stasavage argues that "in any empirical investigation we should expect to see more uncompromising positions taken during open-door bargaining, greater polarization of debate, and more frequent breakdowns in bargaining than would otherwise be the case" (Stasavage 2004: 679).

The ground for this controversy between the deliberative theory and the negotiation theory perspectives lies in their different assumptions of the basic characteristics of the public sphere. Deliberative theorists assume that the public audience, which decision-makers who are exposed to transparency will have to face, is an audience of *citizens*. Citizens are public-regarding, in the sense that they expect and demand public-regarding justifications of policy, and willing to deliberate, i.e. to give and take arguments about what is the best public policy. In the negotiation theory and game theory models, on the other hand, the public audience is an audience of *constituents*. Constituents have already made up their minds about what they

want; maximizing their own interests. The decision-makers and negotiators represent these different constituents, which makes them vulnerable to group pressure in public settings. The constituents want to know that their representative is on their side, fighting for their interests, and at the end of the day it is the constituents who decide whether their representative will be re-elected or not.

Two hypotheses on the effect of transparency reforms, which will be tested empirically in the project, may thus be formulated:

1. (Deliberative theory) Transparency promotes a shift in the mode of decision-making away from self-interested bargaining towards public-spirited arguing.
2. (Negotiation theory) Transparency will push actors towards "distributive" rather than "integrative" bargaining. That means that positions will become less flexible, arguments more selfish, discussions less open and frank, information more manipulated and the degree of trust will fall.

In addition to studying the effect of transparency on the arguing-bargaining continuum, probing the different assumptions of deliberative democratic theory and negotiation theory, the project will test a third hypothesis which is often referred to in political and scholarly debates on the value of transparency reforms, in particular with respect to the European Union (Curtin 1996:104, Lord 1998:88). The vice-president of the European Commission, Margot Wallström, has formulated this proposition in the following way, referring to recent transparency reforms in the EU Council of Ministers: "The most important compromises and discussions are now taken at different dinners and lunches. We are gaining weight!" (Dagens Nyheter 050118)

If transparency has the effect of making decision-makers less willing to reveal private information and be flexible on their positions, in line with the second hypothesis above, and/or if the force of the better argument norm forces actors to refrain from bargaining all together, as the first hypothesis states, then the actors involved may find that they have incentives to create new shielded arenas for decision-making. This will be the case if the actors judge arguing as an ineffective way of reaching agreement, while they want to avoid, or cannot use, voting as a decision-making mode. The main effect of transparency, in such cases, may be that the real decision-making process 'leaks' out the backdoor. The actors will seek new informal arenas where log-rolling and horse-trading may safely take place. The paradoxical consequence may be that a misguided transparency reform leads to less *actual* transparency, if the real decision-making takes place over lunch or in the sauna. Informal arenas are not only non-public, their very existence may be unknown to outsiders. An additional effect, therefore, may be that the number of actors having access to the core decision-making may be reduced. Less powerful actors may 'get lost' between the formal and the informal non-public, but real, decision-making arenas. This phenomena of 'decision-making leakage', thus, potentially affects also the powers of relevant actors.

The problem of decision-making leakage in fact questions whether it is at all possible to substantially decrease the level of secrecy in a given democratic decision-making process. Max Weber's proposition that there is an inherent tendency of bureaucracies to insulate themselves from public insight comes to mind (Weber 1987:86). Critics of the Swedish centuries-

old publicity principle have argued that the fact that almost everything that is put on paper within Swedish governmental agencies becomes publicly available has implied that civil servants are using much more verbal communication than they would have done otherwise. One consequence of that is that the archives are less useful for reconstructing afterwards, for example by historians, what was actually going on (Ahlenius 2004). According to Helen Wallace and Fiona Hayes-Renshaw the recent transparency reforms in the EU Council of Ministers have had no effect at all on the content of the negotiations for this reason: "The introduction of cameras into Council meeting rooms has merely had the effect of altering the timing and location of the real negotiations on the basis of which actual decisions are taken" (Wallace & Hayes-Renshaw 2003:14). They present no data to support this claim, however.

The third hypothesis thus reads:

3. Transparency reforms will lead to decision-making leakage from formal to informal (intransparent) arenas. This may affect the actor-constellations involved in decision-making.

The project will make a distinction between transparency and publicity. The connection between transparency and publicity may be described as transparency promoting publicity. Publicity can be defined as having one's actions exposed to a broad audience. While publicity is a phenomena that political *actors and actions* are exposed to, transparency is a characteristic of the political *process*, and on an aggregate level of political *systems*. A transparent political process is one which is easy to follow for anyone who is interested, there is freedom of information and easy access to decision-makers for the media. But the correlation between trans-

parency and publicity is not perfect. There will be no publicity, i.e. no actual exposure of political actors and actions to a broad audience, no matter how transparent the policy-making process if the available information about political actions is left unattended. The mass media is therefore a crucial link between transparency and publicity and to the potential effects on political behaviour. To what extent transparency without media attention will produce the hypothesised effects above will be a question which will be studied in the project.

### **Aim of the project**

Daniel Naurin acquired his Ph.D. at Göteborg university in 2004, on a study of lobbyists' use of arguing and bargaining techniques in Sweden and in the EU (Naurin 2004). His postdoc-project concerns coalition-building in negotiations between member states in the EU Council of Ministers and is mainly based on statistical analyses of survey data. The project which the present application proposes implies a return, on Naurin's behalf, to some of the research questions which were raised by the findings of the dissertation. One of the most striking results in that study was the fact that industry lobbyists tended to emphasise selfish group interests harder in public than in private, which corresponds to the negotiation theory hypothesis above. With respect to the mode of communication, on the other hand, it was found that successful lobbying involves arguing rather than bargaining even in the most secretive closed-door sessions. Thus, the subtitle of the dissertation read: "Why increasing transparency in the European Union will not make lobbyists behave any better than they already do." Naurin's dissertation was a pioneer work

on the problem of effects of transparency and publicity on political behaviour, but several questions were left unsolved.

For example, the generalisability of the behaviour of lobbyists to other political actors and contexts is unclear. In particular Naurin's dissertation shares a problem with other recent attempts at studying the empirical relevance of the theory of deliberative democracy (Jacobsson & Vifell forthcoming, Steiner et. al. 2005, Magnette & Nicolaidis 2004, who all study deliberation, although not transparency and publicity effects), namely that the deliberations studied (encounters between lobbyists and officials, parliamentary floor debates, advisory institutions) are not real decision-making situations. Studies of deliberation in real decision-making, rather than pre- or post-decision-making deliberations, are few (one exception is Öberg 2002). Especially the hypothesised effect of transparency on efficiency can only be credibly tested in a real decision-making situation.

Another outstanding issue is the question of decision-making leakage as an effect of transparency, which seems to be a fundamental problem for transparency reforms. This phenomenon has not been studied empirically at all so far.

In addition to pushing forward the research on transparency effects the present project will address an important methodological issue for the literature on deliberative democratic theory.

There is general agreement among theorists that deliberative democratic theory has "come of age" as a normative theory (Delli Carpini, Cook & Jacobs 2004, Chambers 2003, Bohman 1998). While there are still normative issues to be solved with respect to deliberative democracy, more and more focus has been directed towards empirical studies of de-

liberation. Empirical research cannot be used to 'test' the validity of normative propositions, but it can, and should, test the *relevance* of normative theories to the real world of politics. This project will make an important contribution to that research task, not only by testing the proposed effects of transparency, but also by developing more valid operationalisations of deliberation for empirical research.

A difficult problem facing researchers who wish to contribute to this field of democratic theory is the question of how to operationalise and measure deliberation empirically, without making assumptions that are simplified to the extent that normative theorists no longer recognize the concept. One part of the project will involve reviewing the recent stream of empirical studies aiming at identifying the level of deliberation and arguing in different real world political processes. An assessment will be made to what extent the operationalisations being used are in fact true to the normative theory to which they refer and to what extent they are useful as tools for empirical research. For example, the most ambitious attempt so far - the Deliberative Quality Index of Steiner et al. - suffers from overloading the concept and not making a clear distinction between arguing ('X is the best policy option because of public-interest reason Z') and integrative problem-solving forms of bargaining ('if you give us X, we'll give you Y'). Also fruitless efforts at getting inside the minds of actors must be avoided. The aim of this part of the project will be to develop a series of propositions on how deliberation should, and should not, be operationalised for empirical research, which can be used in the empirical study of transparency's effect on the arguing-bargaining continuum, but which also has

general relevance for the research on deliberative democracy.

### **Research design and method**

The three hypotheses are general in their claims. They will be tested with different methodologies in two different contexts - which will maximize the generalisability of the results - where unique opportunities now exist to compare non-public with public behaviour.

First, as a result of the increasing pressure in favour of transparency in the EU the Council of Ministers has in the last couple of years held an increasing number of their meetings in public. These sessions are televised and recordings can be acquired. The public meetings will be compared in the project to the closed sessions which are also held on the same issues. Both direct observations and interviews will be used. Naurin will benefit from his experience of previous fieldwork in Brussels as well as an extensive network. In particular professor Helen Wallace at the EUI, whom Naurin cooperates with on his postdoc-project, has a unique network in and around the Council. Access to the non-public sessions will be sought via the Swedish and the British Permanent Representations.

Second, since 1994 Swedish municipalities are allowed to hold committee meetings in public. In 2001 open committee meetings were standard in 49 municipalities, occasional in 54, while the remaining 186 had decided to keep their meetings closed. Over time more and more municipalities have chosen to open their doors to the public (Gilljam, Jodal & Cliffordson 2003). There are also reports, however, that some have decided to go back to closed door sessions, after finding that the

discussions in public “became too stiff” (Kommunaktuellt No. 26, 2003). The variation in the degree of transparency in the Swedish municipalities provides an exceptional chance for testing hypotheses on transparency effects which should not be missed. Contacts have already been taken with some municipalities in order to analyse their willingness to let a researcher in on the closed meetings and the responses have been mainly positive.

All three hypotheses may be tested by comparing the contents of the deliberations/negotiations in public and non-public meetings both in the Council of Ministers and in the Swedish municipalities. This includes the extent to which the actors are arguing or bargaining, emphasise group interests or common interests, speak freely and are willing to change their positions. Decision-making leakage may be detected by analysing whether some issues tend to be solved before the meeting to a greater extent in public sessions compared to non-public sessions, or if some issues are handled only in non-public sessions. The data will be collected via direct observations and, to the extent possible, taped recordings of the sessions. The researcher (or research assistant) who is sitting in on the meetings, or is analysing recordings, will have a standardized coding scheme which documents the issues being discussed, the character of the deliberations, types of argumentation, etc. The judgement now, given the proposed budget, is that data can be collected from 10-15 closed Council meetings (the tapes from the open meetings can be requested from the General Secretariat of the Council), while at least the double should be possible for the Swedish municipalities. Naurin will do the fieldwork in Brussels while funding for a research assistant to

do at least a part of the job in the Swedish municipalities is applied for.

Two types of issues will be distinguished in the content analyses: Issues which raise media attention, or at least potentially are salient to a broader public, and issues which are not salient and not reported to any larger degree in the media. The later cases are subject to transparency, but not to publicity. The point of this distinction is to be able to draw conclusions on to what extent transparency must be accompanied by the media and an active public sphere in order to produce any effects on elite behaviour. Both Council of Minister meetings and municipality committee meetings usually involve a range of issues, both salient and non salient. The degree of salience/media attention will therefore be coded after the data on the proceedings has been collected.

Although the content analyses will go quite a long way in testing the proposed hypotheses this data will be complemented by interviews. In particular issues concerning decision-making leakage, the degree of trust between the actors and the ‘frankness’ of the discussions will require interview data to be satisfactorily tested. In the study of the Council of Ministers interviews will be face-to-face with participating negotiators. These interviews will focus on specific issues on which the respondent has been active in both public and non-public sessions. The respondent will be asked to describe how he/she experienced the decision-making process, the communications between the participants, the importance of public and non-public arenas for shaping the outcome, etc. Naurin conducted ca 30 semi-structured face-to-face interviews during his dissertation fieldwork and so is familiar with this type of data collection.

With respect to the municipalities a survey will be used. Closed and open committee meetings will be compared by means of a survey to the chairs and vice-chairs of 180 committees in 60 municipalities (i.e. 360 respondents). Comparisons will be made both between the same type of committees (public and non-public) in different municipalities and between public and non-public committees in the same municipalities, in order to control as well as possible for omitted variables. The respondents to the survey will be asked to recall *the three most recent* committee meetings and base their responses on their experiences of those meetings. This will provide more accurate data than personal reflections on the committee work in general. The questions will concern the characteristics of the deliberations/negotiations in the meetings, the extent to which issues are pre-negotiated in informal forums, the degree of public salience and media attention, etc. Naurin has extensive experience of collecting and analysing survey data from his present postdoc project.

### Relevance and publications

For several years increasing transparency has been on the top of the agenda in the debate on how to strengthen democratic legitimacy in international organisations in general and in the European Union in particular. In Sweden the famous publicity principle has been an institutionalised and much saluted part of Swedish politics for 250 years. The political and democratic relevance of the research problem must therefore be considered to be very high. While some recent works within deliberative democratic theory and game theory have started to theorize and formally model more systematically the effects of

transparency on elite political behaviour (see especially Chambers 2004 and Stasavage 2004) Naurin's earlier work on the subject and the proposed project are internationally leading in the field with respect to empirical research. The present project will also address a key issue for democratic theory, namely how to operationalise deliberation for empirical research without losing its normative core.

The results will be published primarily in the form of articles in leading international journals. Naurin has previously been very active in domestic and European public debates on democracy, transparency and lobbying. The findings will almost certainly be of great public interest and will be communicated to the public via newspaper articles, public lectures and debates.

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