

Democratic innovations and participatory democracy: a comparative perspective

Martina Trettel

1. Introduction: definitions and aim of the paper

When it comes to participatory democracy, deliberative democracy and to democratic innovations, the different disciplines have dissimilar views and give, consequently, diverse definitions of these concepts. This is the main reason why it is difficult for a public/ constitutional lawyer to deal with these topics from a strict constitutional – legal perspective.

It is a very challenging task to deliver a clear definition of what **deliberative democracy** is, since a lot of attempts has been made in the last two decades¹ and the topic related thereto has become one of the dominant issues researches are dealing with in democracy studies². To sum up, deliberative theories on democracy rely on a critique of the aggregative/majoritarian view of democracy and propose tools, which tend to enhance public reasoning and argumentation with the purpose of improving the quality of democracy itself³. Among the others, James Bohman defines deliberative democracy as “any one of a family of views according to which the public deliberation of free and equal citizens is the core of legitimate political decision making and self-government” that “consists of procedures by which rules and practices are subject to the deliberation of citizens themselves”⁴.

On the other side, **the concept of participatory democracy** is defined differently, depending on the part of the world the definition is coming from. In the English-speaking area this concept refers at emphasizing the broad participation of constituents in the direction and operation of political systems, mostly through bottom-up initiatives such as demonstrations and popular movements⁵. On the contrary in the European context (mostly South-European⁶) the concept of participatory democracy is related to forms of participation, that directly include ordinary citizens into institutionalized representative procedures, in which decisions are the outcome of a consensual deliberative process⁷. It could be argued, that when south-European academics refer to participatory democracy they translate - in concrete terms - the theories on deliberative democracy, elaborated mostly by Anglo-Saxon political scientists⁸.

Lastly, the **concept of “democratic innovations”** is used in the English- speaking world to define all those tools that enter the institutional structures in order to renew the classic representative

¹ Elstub Stephen, The Third Generation of Deliberative Democracy, in *Political Studies Review*, vol. 8, 2010, 291–307; Gutmann Amy, Thompson Dennis, *Why deliberative democracy*, Princeton University Press, Princeton, 2004; Steiner Juerg, *The Foundations of Deliberative Democracy: Empirical Research and Normative Implications*, Cambridge University Press, Cambridge, 2012.

² Weinstock Daniel, Kahane David, Introduction, in Kahane David, Weinstock Daniel Leydet Dominique, Williams Melissa (eds.), *Deliberative democracy in practice*, UBC Press Vancouver-Toronto, 1.

³ Avritzer Leonardo, Democracy beyond aggregation: the participatory dimension of public deliberation, in *Journal of Public Deliberation*, Vol. 8, Iss. 2, Article 10, 2012; Smith Graham, Wales Corinne, Citizens' Juries and Deliberative Democracy, in *Political Studies*, vol. 48, 2000, 51-65.

⁴ Bohman James, The coming age of deliberative democracy, *Journal of Political Philosophy*, vol. 6, 1998, 401. See also Bifulco Raffaele, Democrazia deliberativa, in *Enciclopedia del diritto*, Annali IV, 2011, 271-294.

⁵ Pateman Carole, *Participation and democratic theory*, Cambridge University Press, Cambridge, 1970.

⁶ France, Spain, Italy and Portugal, see: Alarcón Pau, Font Joan, Where Are the Boundaries of Deliberation and Participation? A Transatlantic Debate, in *Journal of Public Deliberation*, Vol. 10, Iss. 2, Article 11, 2014.

⁷ Smith Graham, *Democratic Innovations. Designing Institutions for Citizen Participation*, Cambridge University Press, Cambridge, 2009.

⁸ Bifulco Raffaele, Democrazia deliberativa e democrazia partecipativa, *Astrid on-line*, 2009.

democratic systems⁹. In this scheme, democratic innovations have to be considered as a possible complementation of representative institutions, which aim at including different perspectives in public decision-making processes¹⁰. In other words, democratic innovations are deliberative procedures through which citizens are involved in public decisional mechanisms¹¹. In some way the concept of participatory democracy, developed in the south-European context, coincide with the idea of democratic innovations of the Anglo-Saxon sphere.

Hence, in the paper I will interchangeably use the terms deliberative democracy, participatory democracy and democratic innovations referring always to those tools that introduce ordinary citizens into representative decision-making procedures.

Despite the conceptual and theoretical differences, all the disciplines that deal with deliberative and participatory democracy (such as political science, sociology, philosophy, anthropology and - of course - law), agree on the fact that, in our days, mature democracies are suffering a deep legitimacy crisis and urgently need a revision of the way they work¹². It is difficult to imagine an effective approach through which contemporary democracy illnesses could be cured. All the disciplines state with clarity that participatory democracy cannot be conceived as a panacea for this crisis. Said that, it is important to underline that most academics see in democratic innovations a starting point for a renewal of the way and pattern in which public institutions work. However, they agree on the fact that this renewal should not overturn classical representative decisional mechanisms. In fact it only would implement (and complement) these procedures by means of a direct involvement of citizens in specific decisional processes¹³.

Said that, what I will like to do in this paper is to highlight how and where deliberative democratic theories have been implemented through the use of democratic innovations. The main aim of this work is to give a (worldwide) comparative overview of the *status quo* of participatory democracy, in order to ascertain which kind of institutional design better fits public decision-making processes. How can deliberative democratic theories and principles be effectively translated into practice? Which instruments are able to cohabit with representative democracy structures?

In order to do that, it is necessary to compare and analyze participatory democracy experiences by dividing them into two categories. The first one (**par. 2**) includes all deliberative/participatory procedures which intervened without any specific legal framework regulating them. If we look, from a comparative perspective, at the participatory procedures undertaken in different contexts we can see that very few of the them have been institutionalized. Why is it so? On the one side, we find opponents to the idea of institutionalizing deliberative democracy, that fear the effective co-opting of participatory initiatives will suffocate societal spontaneity, silence dissent and perhaps offer opportunities to cynically manipulate participants, processes and outcomes. On the contrary, who is in favor of regulating deliberative democracy, affirm that one-time/ *ad hoc* participatory

⁹ Smith Graham, *Democratic Innovations. Designing Institutions for Citizen Participation*, Cambridge University Press, Cambridge, 2009.

¹⁰ Smith Graham, Wales Corinne, Citizens' Juries and Deliberative Democracy, in *Political Studies*, vol.48, 2000, 51-65.

¹¹ Smith Graham, *Democratic Innovations. Designing Institutions for Citizen Participation*, Cambridge University Press, Cambridge, 2009, 2.

¹² Avritzer Leonardo, Democracy beyond aggregation: the participatory dimension of public deliberation, in *Journal of Public Deliberation*, Vol. 8, Iss. 2, Article 10, 2012, 1.

¹³ Allegretti Umberto, Democrazia partecipativa e processi di democratizzazione, in *Democrazia e diritto*, vol. 2, 2008, 175-217.

experiments are faster to develop and to implement, but can be easily manipulated by politicians¹⁴. Hence, the second category of participatory experiences I will analyze in the paper (**par. 3**) is the one of democratic innovations that have been legally institutionalized.

In the end, I will draw some preliminary conclusion on the effectiveness of these participatory experiments, trying to answer the question regarding which of these two categories works more effectively and better serve the purpose of positively complementing representative democracy structures.

2. *Ad hoc* experiences/ procedures of participatory democracy

Participatory experiences have been carried out on very different scale. In this paragraph we will analyze three *ad hoc* participatory/deliberative experiences which took place on three different levels of government: the Citizens parliament in Australia (national level), the British Columbia Citizens Assembly (Canada, subnational level) and Participatory Budgeting in Porto Alegre (Brazil, local level). The analysis of each case will try to sketch out why, when, how long and with which institutional design these processes took place. After that, we will try to evaluate the effectiveness of these procedures if related to concrete results in policy making.

2.1 Australia's Citizens' Parliament

Australia's Citizens' Parliament (also referred to as CP) was a nation-scale three-day deliberation process that took place in Canberra between Australian randomly-selected citizens in February 2009. The process was organized by the new Democracy Foundation¹⁵ and the citizens were asked to address the question of “how the Australian government could be strengthened to better serve the people”. Its results, 13 proposals, were presented to the Australian Parliament¹⁶.

The Citizens' Parliament was thought as an assembly of 150 citizens, one from each federal electorate, selected from the electoral roll, chosen using random stratified sampling methodology. The selected citizens were invited to a series of one-day meetings (mostly in capital cities) that explained the process, and got them to start thinking about the basic charge of the CP: How can Australia's political system be strengthened to serve us better? The main meeting of the CP was over four days in February 2009 at Old Parliament House in Canberra¹⁷.

There were different phases of deliberations for the Australian Citizens' Parliament. These included one day of regional meetings and online discussions. To allow the citizens time to get comfortable with one another and the process of deliberating, CP organizers established regional meetings, where, through the sharing of experiences, knowledge, ideas, and the answering of open-ended questions, the initial deliberations gave way to the development of proposals.

Face-to-face deliberations lasted for 4 days. Each day was dedicated to a specific function of deliberation. Networked computers were used throughout the days to project the ideas from the

¹⁴ Lewanski Rodolfo, Institutionalizing Deliberative Democracy: the ‘Tuscany laboratory’, in *Journal of Public Deliberation*, Vol. 9, Iss. 1, Article 10, 2013, 2.

¹⁵ See: <http://www.newdemocracy.com.au/>

¹⁶ See: <http://participedia.net/en/cases/australias-first-citizens-parliament-canberra-australia>

¹⁷ Dryzek John, The Australian citizens' parliament: a world first, in *Journal for Public Deliberation*, vol. 5, Iss. 1, 2009, Article 9.

groups. After the 4 days having deliberated, the first Australian Citizens' Parliament developed the 13 proposals to strengthen their government to better serve the nation¹⁸.

The whole process had almost no influence on the activity of the government. On the first day meeting of the Citizens Parliament, Senator John Faulkner spoke and indicated that the government would examine the proposals the citizens would have elaborated. Beyond this statement, it is impossible to recognize any other kind/sort of concrete influence on federal policy making¹⁹.

2.2 British Columbia Citizens' Assembly

The 2004 British Columbia Citizens' Assembly has been put in place by the provincial government in order to amend and reform the provincial electoral system through the direct involvement of citizens in the same process. The assembly comprised 160 citizens²⁰, half men and half women²¹.

The assembly had both to deliberate on the electoral reform and therefore to bring its recommendations to the electorate in a subsequent referendum. In particular, the assembly had to analyse the provincial electoral system and to propose a new one, if needed. A deliberative process has thus been undertaken, based on information, consultation and discussion. The methodology used in the citizens' assembly rested on deliberation and consensus in order to sidestep the majority principle. After one year, the conclusions of the assembly had to pass through a referendum with a quorum set by the government on the limit of 60%. This experiment was lauded as innovative and alternative to the conventional legislative decision-making process²².

The main outcome of the British Columbia Citizens' Assembly has been the electoral reform proposal and the referendum question. On May 17 of 2005, British Columbians were asked to answer "yes" or "no" to the following question: "Should British Columbia change to the BC-STV electoral system as recommended by the Citizens' Assembly on Electoral Reform?". The referendum got the majority of the votes, but it only won 57.4 percent of the total votes cast, falling a few points under the required 60 percent²³.

¹⁸ Cfr. <http://participedia.net/en/cases/australias-first-citizens-parliament-canberra-australia>; The 13 adopted Recommendations were: Reduce duplication between levels of government by harmonizing laws across state boundaries, Empower citizens to participate in politics through education, Accountability regarding political promises and a procedure for redress, Empowering citizens to participate in politics through community engagement, Change the electoral system to optional preferential voting, Youth engagement in politics, Recognize Aboriginal and Torres Strait Island peoples in the constitution, Bill of rights and responsibilities, Extend and fix the term of government, Open and accessible government, Remove or reduce state level of government, Resurrect the republic debate and/or a referendum, Citizen-initiated referendum.

¹⁹ Carson Lyn, Gastil John, Hartz-Karp, Lubensky Ron, *The Australian Citizens' Parliament and the future of deliberative democracy*, The Pennsylvania State University Press, Pennsylvania, 2013, 289-300.

²⁰ The 160 citizens have been randomly selected from the provincial voters' list. The Chief Electoral Officer of British Columbia selected randomly 15,800 names from the voters' list. Out of this sample, 200 people from each of the electoral districts received a letter asking if they would consider serving the province as a member of the Citizens' Assembly. The numbers in each district were then evenly divided by gender and stratified within five age groups; see Ratner Steven, British Columbia's Citizens' Assembly: The Learning Phase, in *Canadian Parliamentary Review*, 2004, available at: http://www.revparl.ca/27/2/27n2_04e_ratner.pdf.

²¹ Warren Mark, Pearse Hilary, *Designing Deliberative Democracy. The British Columbia Citizens' Assembly*, Cambridge University Press, Cambridge, 2008, 1-19.

²² Warren Mark, Pearse Hilary, *Designing Deliberative Democracy. The British Columbia Citizens' Assembly*, Cambridge University Press, Cambridge, 2008, 1-19.

²³ Pal Micheal, The Promise and Limits of Citizens' Assemblies: Deliberation, Institutions and the Law of Democracy, in *Queen's Law Journal*, vol. 38, 2012, 259-294; Ratner Steven, British Columbia's Citizens' Assembly: The Learning Phase, in *Canadian Parliamentary Review*, 2004, available at: http://www.revparl.ca/27/2/27n2_04e_ratner.pdf.

The case of British Columbia is interesting as it shows how deliberative decision-making and institutional design can complement one with the other. Indeed, the assembly model could be the starting point for a broader reflection on how to include such arenas in legislative processes in order to supplement and implement representative democracy with *ad hoc* deliberative bodies²⁴.

2.3 Porto Alegre's Participatory Budgeting

Participatory budgeting was invented in the Brazilian municipality of Porto Alegre in 1989 and is considered to be one of the most successful worldwide participatory experiences²⁵. Due to the democratic transition, Brazilian civil society organizations elaborated, in the last twenty to thirty years, specific political strategies in order to foster the creation, especially at local level, of deliberative policy making institutions²⁶.

The deliberative procedure of participatory budgeting allows the participation of non-elected citizens in the conception and/or allocation of a specific portion of the local budget in the context of deliberative assemblies in which the local authorities have a direct and active role²⁷. This process establishes a mechanism of joint management of public resources through shared decisions on the allocation of budgetary funds²⁸.

Participatory budgeting is a structure and a process of community participation based on leading principles and on a set of institutions²⁹. The leading principles are: all citizens are entitled to participate; participation is governed by a combination of direct and representative democracy rules and takes place through regularly functioning institutions whose internal rules are decided by the participants; investment resources are allocated according to an objective method based on a combination of general criteria and technical criteria that are up to the executive to implement. The institutional setup of the participatory budgeting is based on: institutions that consists of the administrative units of municipal executive charged with managing the budgetary debate with citizens; community organizations, constituted mainly by regionally based organizations, that mediate between citizens and priorities for city regions; regularly functioning institutions of community participation which allows a permanent mediation between the other two groups of institutions³⁰.

The experience of participatory budgeting in Porto Alegre (and more generally in Brazilian cities) is particularly interesting because of the effects on policy making: in fact in most of the cases the decisions that have been taken through this process, have been then put into practice. In Porto

²⁴ Smith Graham, *Democratic Innovations. Designing Institutions for Citizen Participation*, Cambridge University Press, Cambridge, 2009; Pal Micheal, The Promise and Limits of Citizens' Assemblies: Deliberation, Institutions and the Law of Democracy, in *Queen's Law Journal*, vol. 38, 2012, 259-294.

²⁵ Fedozzi Luciano Joel, Pereira Lima Katia Cacilda, Participatory Budgets in Brazil, in Dias Nelson (eds.), *Hope for democracy. 25 years of participatory budgeting worldwide*, In loco association, Sao Bras de Alportel, 2014, 153-163, 154.

²⁶ Wampler Brian, Avritzer Leonardo, Participatory Publics: Civil society and new institutions in democratic Brazil, in *Comparative Politics*, vol. 36, n. 3, 2004, 291-312, 291.

²⁷ Sintomer Yves, Herzberg Carsten, Roecke Anja, *From Porto Alegre to Europe: Potentials and Limitations of Participatory Budgeting*, Paper online, available at: <http://www.eukn.eu/fileadmin/Lib/files/EUKN/2013/From-Porto-Alegre%20to%20Europe.pdf>

²⁸ Boaventura de Sousa Santos, Participatory budgeting in Porto Alegre: toward a redistributive democracy, in *Politics society*, vol. 26, 1998, 461-510, 469.

²⁹ In order to know more about the way in which the process of participatory budgeting works: Boaventura de Sousa Santos, Participatory budgeting in Porto Alegre: toward a redistributive democracy, in *Politics society*, vol. 26, 1998, 461-510, 470-474.

³⁰ Boaventura de Sousa Santos, Participatory budgeting in Porto Alegre: toward a redistributive democracy, in *Politics society*, vol. 26, 1998, 461-510, 468.

Alegre the local authorities are very much committed to the whole participatory budgeting process and the related municipal departments work closely with the participants in order to define their policy agendas according to the results of the participatory process. As Wampler pointed out: “within the government there must be a concerted effort by politicians and bureaucrats to implement the selected projects. Government officials must gain control of the bureaucracy to ensure, for example, that technical plans are drafted, that contracts are prepared, and that implementation occurs according to established schedules. This intensive, hands-on process was not anticipated by participatory budgeting’s founders, but has helped to revitalize and reform existing bureaucratic structures”³¹. All this happened on the basis of a political commitment, in absence of a specific law regulating and forcing the application of the participatory budgeting process.

This experience led to a very broad dissemination of participatory budgeting throughout the world, especially in Europe. There’s insofar almost no European state in which at least one municipality didn’t experiment the process of participatory budgeting³².

3. Institutionalized experiences of participatory democracy

The three participatory experiences analyzed in the previous paragraph regarded three different levels of government, had different institutional designs/settings and most of all, had very different effects/impacts on policy making. Despite that, all these experiences had one feature in common: the lack of sources of law, institutionalizing and regulating them.

In fact, what is truly missing nowadays in the field of participatory procedures, are stable legal frameworks for participatory instruments. This is demonstrated by the fact that is really easy to find examples of participatory *ad hoc* procedures and is very complicated to discover – on a comparative basis – legal sources which regulates deliberative processes. In this paragraph I will analyze the regional law n. 46/2013 of Tuscany (“*Dibattito pubblico regionale e promozione della partecipazione alla elaborazione delle politiche regionali e locali*”) and the law n. 8/2015 of the Spanish Autonomous Community of Aragon (“*Ley de Transparencia de la Actividad Pública y Participación Ciudadana de Aragón*”). Finally I will go through the French law regulating the *Debat Public*. I will try to highlight if, and how, these regulations guarantee more effectiveness to participatory procedures³³.

3.1 Tuscan Law on Participatory Democracy

The first example is the one of an Italian region, Tuscany, which adopted in 2007 the regional law no. 69, on public participation in regional and local policies. The law provided a sunset clause, foreseeing its automatic repeal after an experimentation period of five years. The positive experience of deliberative processes at local and regional level made it possible to renew the law in 2013 (law no. 46/2013), year in which it became permanent³⁴.

³¹ Wampler Brian, *A Guide to Participatory Budgeting*, Paper online, 2010, Available at: http://www.partizipation.at/fileadmin/media_data/Downloads/themen/A_guide_to_PB.pdf, 22.

³² See, Sintomer Yves, Herzberg Carsten, Roecke Anja, *From Porto Alegre to Europe: Potentials and Limitations of Participatory Budgeting*, Paper online, available at: <http://www.eukn.eu/fileadmin/Lib/files/EUKN/2013/From-Porto-Alegre%20to%20Europe.pdf>

³³ Lewanski Rodolfo, Institutionalizing Deliberative Democracy: the ‘Tuscany laboratory’, in *Journal of Public Deliberation*, Vol. 9, Iss. 1, Article 10, 2013, 1.

³⁴ Nicolini Matteo, La nueva ley de la Región de Toscana sobre participación ciudadana en el ámbito regional y local, in *Revista Catalana de dret public*, available at: <http://blocs.gencat.cat/blocs/AppPHP/eapc-rcdp/2013/10/21/la-nueva-ley-de-la-region-de-toscana-sobre-participacion-ciudadana-en-el-ambito-regional-y-local-matteo-nicolini/>

Which was the process of adoption of the law? And what does it foresee? First of all the law was elaborated with the direct involvement of citizens through a deliberative process, concretely implemented with an Electronic Town Meeting (E-TM). In this sense, the law on deliberative democracy is born thanks to deliberative democracy itself. The process lasted two years and involved – in different citizens assemblies - nearly 1000 persons³⁵.

Two instruments of citizens participation are foreseen and admitted by the law: the public debate, modeled on the French experience of the “*debat public*”³⁶, and the “open deliberative processes” which can be specifically proposed, designed and developed by groups of citizens or local entities.

The deliberative processes are organized, monitored and evaluated by a regional independent authority, regulated in the law. The authority is composed by three members, appointed from the regional legislature for a period of five years. The selection is based on professional merits. As said above, the main task of the authority is to organize and manage the deliberative processes. It is responsible for the financing of them (the regional law allocates a certain amount of money per year to support the deliberative initiatives) and it has to guarantee the inclusive character of the mini-publics³⁷. That is why the independent authority, in charge of monitoring the participatory processes, normally opts for the “stratified random sampling” method for the selection of the participants. Finally, it has to check on the impartiality and transparency of the information that are needed for the correct development of the deliberative process.

The public debate and the “open deliberative processes” are regulated in two different parts of the law and differ profoundly in some features. The regional public debate is mandatory for public and private infrastructural projects, *ex art. 8*, which intervene in areas of regional competence and cost more than 50 million Euros. In this case, the regional independent authority has to set up the whole process and carry it over. The law only foresees a consultative effect of the output of the process for the regional and local legislatures with regard to the results of the deliberative process.

The so-called “open deliberative processes” may be proposed on a facultative basis from local entities and citizens’ groups. All proposals of deliberative processes are evaluated by the regional independent authority, which in case of positive assessment provides for logistic and financial help in carrying out the deliberative process. The law specifies some rules for these processes (on the duration, on the inclusiveness and on the information that has to be provided to the participants), but it leaves room for the creativity of the interested subject when it comes to the design of the deliberative instrument. The outcomes of the processes have to be handed out to the local authorities in form of a protocol (memorandum of understanding), which does not have binding effects³⁸.

³⁵ Alber Elisabeth Valdesalici Alice, Framing subnational “institutional innovation” and “participatory democracy” in Italy: some findings on current structures, procedures, and dynamics, in Palermo Francesco, Alber Elisabeth (eds.), *Federalism as Decision Making: Changes in Structures, Procedures and Policies*, Brill Publishing House, Leiden/Boston, 2015.

³⁶ See, Fromont Michel, *Fondements de la démocratie participative en droit français*, in Allegretti Umberto (ed.), *Democrazia partecipativa. Esperienze e prospettive in Italia e in Europa*, Firenze University Press, Firenze, 2010, 53.

³⁷ The most common practical manifestation of deliberative experiments are the so-called mini-publics, such as citizens juries, planning cells, consensus conferences, deliberative polls. All these models share some design features: participants are selected using random sampling techniques, they are brought together for a period of time, facilitators are provided in order to ensure the fairness of proceedings; evidence is provided by expert witnesses and citizens are given the chance to deliberate in plenary or smaller group sessions; see Smith Graham, *Deliberative Democracy and mini-publics*, in Geissel Brigitte, Newton Kenneth (a cura di), *Evaluating Democratic Innovations. Curing the democratic malaise*, Routledge, London and New York, 2012, 90.

³⁸ Floridia Antonio, *La democrazia deliberativa, dalla teoria alle procedure. Il caso della legge regionale toscana sulla partecipazione*, in *Le Istituzioni del Federalismo*, vol. 5, 2007, 603-681.

The process of evaluation of the 2007 regional law demonstrated the relevance of an organic regional deliberative law and of its main principles: the promotion of instruments meant to effectively implement the citizens' right to participate in the elaboration of local and regional policy making, and the enforcement of regional and local 'quality-democracy' by means of innovative practices, even if, in most cases the participatory procedures don't have a relevant impact on policy-making.

3.2 Spain and participatory democracy in the *Comunidades Autonomas*: the case of Aragon

As Italian regions, even Spanish autonomous communities promoted, over the last few years, the introduction of instruments of civil participation into public decision making procedures.

The Community of Aragon³⁹ is a very interesting example to this regard, as it has developed a specific strategy in order to extend the spaces of active participation and to stimulate the elaboration of an own regional participatory democracy policy, with the ultimate goal to ensure to the citizens the power to influence public decisions.

Civil participation is a widespread concept throughout the whole Statute of Autonomy of Aragon. However, the Statute does not offer a complete and unitary treatment of this matter, but regulates it in different parts⁴⁰. To this regard, the most significant provisions the mandate included in Article 15.3 ("right to participation"): "the public authorities of Aragon will promote social participation in the design, execution and evaluation of public policies, as well as individual and collective participation in the civic, political, cultural and economic fields". Here, two essential points must be highlighted. First, the imperative nature of this declaration must be noted, i.e., the authorities of Aragon will promote participation; and second, the definition of its recipients is broad -all the public authorities of Aragon-, not only the autonomous institutions, but also the local authorities⁴¹.

On this statutory basis, the Government of Aragon encouraged – in the last two legislatures - a policy that could be described as: "a set of processes, institutions and strategic actions created [...] to pave the way for the promotion of active citizen participation in the decision-making processes that affect them. Therefore, its goal is to improve democratic quality by creating a new way of governing and managing public matters, listening to the citizens' voice and opinion"⁴².

Under these premises, Aragon has experimented, in the last years, participatory procedures regarding many different sectorial policies and involving citizens, on the one side, at the local level, on the other side, at the regional level. After a long phase of experimentation of deliberative policy making⁴³, the Autonomous Community of Aragon adopted, in 2015, a law (n. 8/2015) regarding transparency in the Public Administration, Open government and participatory democracy.

For what concerns participatory democracy, the law lists the objectives that the government of Aragon wants to achieve through the implementation of deliberative and participatory procedures, such as stimulating new forms of collaboration between the government of Aragon and citizens, and

³⁹ In the activity of the Spanish Autonomous Communities we can recognize two paths of development of participatory democracy: one of juridification (e.g. Valencia and Canaria) and one of experimentation, as the one of Aragon. See Castel Gayan Sergio, *Descentralizacion politica, participacion ciudadana y renovacion juridica: hacia una democracia participativa?*, in *Revista catalana de dret public*, vol. 43, 2011, 279-316, 284.

⁴⁰ Castel Gayan Sergio, *Civil participation policy and democratic innovation in the autonomous community of Aragon*, in *Perspectives on Federalism*, vol. 4, 2012, 231-251, 235.

⁴¹ *Ibidem*.

⁴² *Ibidem*.

⁴³ On the aspect of experimentation of deliberative policy see even: Castel Gayan Sergio, *Descentralizacion politica, participacion ciudadana y renovacion juridica: hacia una democracia participativa?*, in *Revista catalana de dret public*, vol. 43, 2011, 279-316, 289.

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

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

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

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

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

3.3. The *Debat Public* in France

In the first years of the ‘90s, vibrant protests of the citizens arose in France against the construction of the high-speed train *TGV Méditerranée*, a linkage between two large French cities, Lyon and Marseille. Because of the strong protests, the French government decided that a public debate between all the interested parties would have been needed in the planning of big and costly infrastructural projects in order to avoid conflictual issues. So, in 1995 the “*Loi Barnier*” - a sectorial law on environmental protection – established the “*Commission Nationale du Débat Public*”(CNDP). The CNDP is (since a modification of the law in 2002) an independent administrative authority, responsible to ensure that the planning of national interest’ infrastructural projects, will include public debate between all the interested parties, whenever major social and economic consequences are at stake or whenever there is a significant impact on the environment⁴⁴.

⁴⁴ Mansillon Yves, L’ esperienza del débat public in Francia, in *Democrazia e diritto*, vol. 3, 2006, 101-114.

In this regard, the main aim of the public debate is to inform the public and to collect as many reactions by it as possible⁴⁵.

The CNDP has to start the public debate on all the infrastructural projects that involve more than a certain amount of money⁴⁶ and has to manage the whole process. The debate lasts four months and concerns not only the concrete aspects, but even the same realization of the project. All the citizens are invited to take part to the public debate, when it takes place in the area in which the infrastructure should be built. The CNDP is obliged to invite all the stakeholders that have a concrete interest in the project. At the end of the debate, the president of the CNDP put down in a report all the positions emerged during the participatory process. After three months from the publications of the report, the infrastructure proponent need to inform the CNDP if the infrastructure will still be constructed, and if yes how.

With regard to the effects of the public debate, between 2002 and 2010, 31 public debates have been conducted by the CNDP. According to the results of these debates, in 5 cases the projects were recalled by the proponent of the project. In the other 26 cases, the infrastructures have been built, but (in most of the cases) with major modification to the initial planning of the project⁴⁷.

4. Comparative evaluations and conclusions

The paper aimed at comparing (worldwide) democratic innovations, in order to understand how effectively deliberative processes work in different political structures, with different institutional designs, in different time frames and on different levels of government.

The attention has been drawn, mainly from an institutional/legal perspective, at two key questions: how “one-time” deliberative elements have been developed in the public decision-making process and how and where it has been given a general and stable regulation to democratic innovations.

In order to do that, six cases have been analyzed, three one-time participatory experiments and three legally regulated procedures on deliberative democracy.

Between the three analyzed *ad hoc* experiences, the one with the stronger influence on public policy making has been the experience of participatory budgeting in Brazil. Why that? This is probably due to the fact that this participatory procedure takes place at local level. In fact, normally, participatory procedures work much better on the government levels that are closer to the citizens and in which the decisions directly affects people lives⁴⁸. In this sense, participatory budgeting not only relates to local topics but even involves issues regarding how and for what the money is spent by the local representatives, which is a very debated and attractive matter to the citizens.

The less effective analyzed deliberative experience is the one of the Australian Citizens Parliament. That serve here as a demonstration of the statement regarding deliberative democracy working better on a local or subnational basis, where citizens are closer to the decision-makers and the law making processes normally refer to more concrete and tangible policies⁴⁹. In the Australian case the question on “how the government should be strengthened to better serve the people” was very

⁴⁵ Lewanski Rodolfo, Institutionalizing Deliberative Democracy: the ‘Tuscany laboratory’, in *Journal of Public Deliberation*, Vol. 9, Iss. 1, Article 10, 2013, 7.

⁴⁶ Which is annually fixed by the *Conseil d’Etat* in an executive regulation.

⁴⁷ Bobbio Luigi, Democrazia e nuove forme di partecipazione, in Bovero Michelangelo, Pazè Valentina (a cura di), *Come sta la democrazia?*, Laterza, Roma, 2010, 46-62.

⁴⁸ Colino Cesar, del Pino Eloisa, Democracia participativa en el nivel local: debates y experiencias en europa, in *Revista catalana de dret public*, vol. 37, 2008, 247-283.

⁴⁹ Valastro Alessandra (ed.), *Le regole della democrazia partecipativa. Itinerari per la costruzione di un metodo di governo*, Napoli, Jovene, 2010.

vague and too abstract in order to produce a concrete impact on policy making, even if the whole experience showed a great acceptance, at least by the citizens who took part in it⁵⁰.

The BC citizens assembly could have had an important impact on policy making, but the 60% quorum stopped the procedure. Indeed, such a limit could have been a political intent to control the outcomes of the experiment, even for the case the population had clearly demonstrated the will to adopt the electoral model of the citizen assembly (57,4% yes votes in the referendum). It could be argued that sometimes such deliberative experiments are seen, from governing bodies, as positive tools for fostering their political credibility but, at the same time, as dangerous instruments, when their decisional power on specific issues is partly or completely transferred to deliberative assemblies and to the citizens. In order to avoid the control of the political will on such experiments innovative forms of law-making need an additional step for their well-functioning. The crystallization of such deliberative procedures in the ordinary decision-making process, as it happened in Tuscany, in Aragon and in France could be one step in the right direction. To this regard, some authors point out, that a well-designed flexible and open regulation of deliberative procedures can be capable of facing the problematic issues related to public policy making⁵¹. In fact, in these three experiences - independently from the level of government – the regulation of deliberative procedures created the conditions to apply such procedures to policy making on a regular basis, giving - at the same time - effectiveness to the constitutional principles of participation and popular sovereignty. To this regard, the experiences of Tuscany, Aragon and France showed that is possible to elaborate regulations that can accommodate deliberative procedures and are, at the same time, tailored on a case by case basis in order to correspond the concrete needs of each single territorial entity or specific policy field⁵².

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

From the analysis is possible to identify a global *fil rouge* regarding deliberative and participatory democracy. Even if in some cases the deliberative experiences seem sporadic or episodic, it could be argued that there is a worldwide systematic regarding democratic innovations that situates our democratic system in a transitional phase, moving from a classic representative democracy towards a more integrated democratic structure in which (on all levels of government) people (ordinary citizens) will increasingly play a direct role in public decision making. In fact, if representative democracy was the paradigm of nation-states, in an era in which the boundaries of traditional nation-states are “exploding” in all countries and at all levels of government (upwards and

⁵⁰ On this see, Carson Lyn, Gastil John, Hartz-Karp, Lubensky Ron, *The Australian Citizens' Parliament and the future of deliberative democracy*, The Pennsylvania State University Press, Pennsylvania, 2013.

⁵¹ Alber Elisabeth Valdesalici Alice, Framing subnational “institutional innovation” and “participatory democracy” in Italy: some findings on current structures, procedures, and dynamics, in Palermo Francesco, Alber Elisabeth (eds.), *Federalism as Decision Making: Changes in Structures, Procedures and Policies*, Brill Publishing House, Leiden/Boston, 2015.

⁵² Lewanski Rodolfo, Institutionalizing Deliberative Democracy: the ‘Tuscany laboratory’, in *Journal of Public Deliberation*, Vol. 9, Iss. 1, Article 10, 2013.

downwards), the classic representative mechanisms do not suit anymore contemporary societies' issues.

In this pattern, representative procedures need to be revised and rethought. Democratic innovations could be one efficient way not only to achieve better decision making and more effective decisions, but even to reengage citizens into the political arena. Representative democracy is not at an end point, but urgently needs to be innovated in order to improve the government and the governance of societies. Participation and deliberation of citizens will become more and more key-elements of the traditional decision-making procedures by means of an increment of pluralism and legitimacy in the contemporary constitutions. This is why a lot of comparative research is needed, in particular in legal and constitutional studies, in order to try to understand how to efficiently fit deliberative studies and theories to the contemporary constitutional structures⁵³. To this regard, comparative public law could help to build learning paths on participatory and deliberative democracy. In fact, in most of this cases, lessons drew from other experiences could have been useful in order to develop more effective institutional designs and regulations. Creating a stable dialogue between different experiences could build a “deliberative democratic expertise”, which might improve the concrete impact of democratic innovations on policy making.

⁵³ Palermo Francesco, Participation, federalism and pluralism: challenges to decision-making and responses by constitutionalism”, in Fraenkl-Haeberle Cristina (ed.), *Citizen participation in multilevel democracies*, Brill Publishing House, Leiden/Boston, 2015.