
“Post-Democracy” and the Public Sphere: Informality and Transparency in Negotiated Decision-Making

Roland Czada

Abstract

Growing numbers of informal consultation bodies, dialog forums and national summit meetings set up by governments indicate a double departure from neo-corporatist interest-intermediation: first from pragmatic, exchange-oriented bargaining towards value-based forums of discourse; second from bargaining processes largely conducted *in camera* to media events accompanied by public scrutiny. Although extra-parliamentary consultation and consensus formation has been interpreted as a ‘post-democratic’ symptom of decline, developments in Germany reveal a tendency towards broader participation and greater transparency as well a shift from distributive issues towards post-materialist reform agendas. Furthermore, political consultations initiated by governments should not be equated with lobbying against governments. They rather attempt to curb one-sided influence and pressure politics. It is therefore proposed to revise the concept of post-democracy in its focus on lobbying and pressure politics in favour of an extended theory of “negotiation democracy”.

Lack of transparency is a frequently-raised criticism of informal interest politics said to “take place behind closed doors, and neither political parties nor backbenchers have much of a role in them. Rather, cabinet members and high-level civil servants serve as brokers to help interest groups reach agreements, which are then accepted as binding by everyone involved” (Haus and Hausmann 2012: 165). In the following chapter, I will point to recent developments in Germany to open up extra-parliamentary consultation for public scrutiny and discussion. In addition, it is shown that ethics-based arguments have come to the forefront, attenuating materialistic demands in consultations and national summits held between politicians,

R. Czada (✉)

University of Osnabrueck, Seminarstrasse 22, 49079 Osnabrück, Germany

e-mail: roland.czada@uni-osnabrueck.de

senior officeholders, experts and civil society representatives on, for example, energy policy, welfare state reforms or immigrant integration policies.

Unlike elections, parliamentary polls, debates or deliberations in official committees and cabinet meetings, political bargaining and group politics rarely follow mandatory rules of procedure usually required in political decision-making. Rather, they emerge from efforts to substitute formal structures that are not (yet) available or—where such structures exist—to overcome their limitations. This applies, for instance, to agreements reached in the run up to formal governmental proceedings and includes informal decisions made between party leaders in pre- and extra-parliamentary forums, or in exchanges between governments and interest groups. Their significance varies over time, across policy fields and levels of government just as from country to country.

The shift of decision-making from the constitutional sphere of politics to informal consultations and preliminary negotiation is by no means a new phenomenon. Its essential causes and the conditions on which it functions were described in detail, as early as the nineteenth century, by Joshua Toulmin Smith (1849). Yet, the contemporary academic literature on the subject suggests that policy-making has recently been undergoing an increase in informality as a result of an increase in the complexity of policy problems and of a rise in the number of players involved. Moreover, it is assumed that where informality is on the rise, there is, simultaneously, a decline in the transparency and public accessibility of political decision-making.

Indeed, the growth of informal networks and negotiations in which multiple levels and forums, and a diversity of actors have been part of policy formulation and implementation cannot go unnoticed. This applies to global, supranational, national, regional and local network political structures. It is reflected in the notion of “governance” replacing that of government once a multitude of non-state actors and stakeholders become involved in policy-making and implementation. Automatically linking a decline in openness and public involvement thereto does appear, however, rather questionable. On the contrary, it can be shown that informal bargaining systems are revealing a tendency towards an increase in public involvement and transparency for quite some time now. Moreover, at least in Germany, we observe a transition from compromise solutions based on bargaining to a greater consideration of public values and ethically-based orientations towards the common good.

1 Critique of Post-Democracy

The shifting of political decision-making from formally responsible governmental institutions to arenas such as neo-corporatist bargaining systems, expert committees, consultation bodies and government committees, consensus bodies, round tables, QUAGOs and QUANGOs,¹ fire-side chats and similar platforms of

¹QUAGO: Quasi Governmental Organisation; QUANGO: Quasi Non-Governmental Organisation (cf. Kosar 2008).

informal deliberation and interest mediation has long been regarded as an essential deficit of democracy. Academic critique was previously concerned with problems of legitimacy due to an unequal consideration of interests, a lack of public involvement and transparency, the absence of accountability, deparliamentarisation, elitism, and an overly strong emphasis given to the executive branch of government. The links between democracy, group politics, formal political conduct and the public sphere were discussed with different main focuses inter alia in Habermas (1973), Panitch (1977), Offe (1984), Streeck and Schmitter (1985), Czada (1997), Benz (1998), Schneider (1999), Grande (2000) and Heinze (2002). The debate reached a new high point when Jacques Rancière and Colin Crouch introduced their equally critical and acclaimed concepts of "Consensual Postdemocracy" (Rancière 1999: 100–123) or "Post-Democracy" (Crouch 2004).²

What is being described here as a general trend reveals considerable differentiation upon closer examination. Preliminary political decision-making bodies like those dealt with in the context of research on corporatism and in contributions on negotiation democracy (cf. Lehbruch 1977, 1984, 1987, 1991, 2000, 2003) are indeed characterized by elitism and various degrees of informality. These extend from occasional meetings and ad hoc commissions to law-based involvement of organized groups in public policy-making and implementation that we can find in social partnerships in Austria, in Dutch consultation structures, and in remiss procedures of Swiss or Swedish origin. Additionally, research on corporatist networks showed that extra-parliamentary consultation and interest intermediation does not necessarily weaken parliamentary legislation and government (Lehbruch 1977). On the contrary, neo-corporatism and established structures of negotiation democracy have often been seen as having a relieving function not only from the viewpoint of the effectiveness of problem solving, but from that of political legitimation as well.

From the theories of corporatism and consociational democracy, we have learned that insulated negotiation between elite representatives may be an effective means of securing legitimacy in the face of tensions between different groups in society (Streeck and Schmitter 1985; Williamson 1989; Lijphart 1977). Confidentiality in negotiation produces compromise which afterwards can be defended and legitimised to the grassroots via the internal channels of the organisations and parties involved (Naurin 2002: 4).

Interestingly, the legitimation, mentioned here, of compromises between elites of social organisations only succeeds in countries in which neo-corporatist consultations are sustainably established and achieve high rates of acceptance in public opinion polls. This can be seen in the trust enjoyed by national trade unions, which assume an essential role as social partners and in general politics of countries that are known as consensus democracies (Lijphart 2012). A majority of the

² A most notable difference between Rancière's "Consensual Postdemocracy" and Crouch's "Post-Democracy" concerns the role of government vis-à-vis private interests and the general public which will be discussed below.

population trust trade unions in these countries: Finland (67 %), Denmark (66 %), the Netherlands (59 %), Sweden (55 %), Austria (52 %), and Luxemburg (51 %). In contrast, countries with majoritarian political structures, mostly together with more polarised societies, exhibit low levels of trust in unions: UK (35 %), Italy (32 %), Spain (30 %) and Greece (29 %). Germany (45 %) and France (41 %) rank in between the two (Eurobarometer 2010: 48).

In liberal democracies, opponents to and dissidents against corporatist negotiation systems have numerous options of voice and exit, be it in their capacity as members of associations or voters, or as activists or supporters of social movements and NGOs or in any unconventional form of protest. Jörke (2011) points out that the activation of broader segments of civil society and the testing of new forms of protest and participation were promoted by critical debates on expertocracy and elitism long before the academic debate on “Post-Democracy” entered the scene. Rolf Heinze (1982), much earlier, argued in similar terms. He attributed the growth of grassroots protests and alternative movements back in the early 1980s to the predominance of neo-corporatist elite cartels and to the exclusion of new social needs and problems from public discourse. The consideration of interests and needs not represented in elite networks can in fact be fought for or enforced under democratic conditions comprising freedom of association, freedom of expression and free political elections. In Germany, this happened through the incorporation of previously-excluded interests into existing or newly created informal structures of consultation, negotiation and consensus building. The intrusion of the goal of abandoning nuclear power into German energy policy—first featuring a mass protest movement, then on the scene of party competition, then in the expert bodies of the nuclear energy sector and finally in an “Ethics Committee on Safe Energy Supply”, which ultimately adopted the abandonment resolution—can be seen as a perfect example of such a process.

It is evident that the Achilles’ heel of corporatism, expertocracy, policy networks, and bargaining democracy in regards to legitimacy does not lie so much in an allegedly uncontrolled exercise of political power, but rather in their opacity. Features of adhococracy, complexity and lack of transparency, and of the informal procedures and decisions linked therewith have become the object of widespread and occasionally escalating criticism. This is not completely new. After all, the shifting of political decision-making to informal elite networks and ad hoc committees has always been a preferred means of excluding the public. Toulmin Smith (1849) already saw the British Royal Commissions operating in the nineteenth century as representing an attempt to one-sidedly favour certain interests and to disguise the practice of taking undue political advantage. Though there is also a functional aspect to mention here: non-public negotiations and confidentiality obligations appear to be necessary preconditions for successful negotiations between organisational elites, since public observation—as the common argument goes—would negatively affect and weaken the negotiation strategies of those involved and, in the final analysis, render negotiated solutions less effective (Czada 1997; Grande 2000).

I present three interrelated current trends which extend or partly contradict the prevailing understanding of the structures, functional modes and subject matter of extra-parliamentary consultation and interest group involvement in policy-making. The observations refer primarily to the case of Germany and to a number of more relevant ad hoc commissions that operated in place of informal political decision making: the Hartz Commission (established 2002, reform of the labour market policy); the Rürup Commission (2002, pension reform); the Süßmuth Commission (2001, immigration policy), the integration summit (since 2006, immigrant integration policy), the German Islam Conference (since 2006, Muslim Dialog and integration issues), and the "Ethics Commission on a Safe Energy Supply" (2011, abandoning nuclear energy).³

Among the 15 members of the commission "Modern Labor Market Services", known as the "Hartz-Commission" after its Chairman Peter Hartz, human resources executive and board member of Volkswagen, were 5 business executives, 2 prominent business consultants, 2 trade union representatives, 2 social scientists (no economists from academia!), the secretary general of the German Confederation of Skilled Crafts, a city mayor and the North Rhine-Westphalian minister for social and economic affairs. Other commissions comprised of delegates from churches and religious groups, environmental organizations, immigrant associations, or opposition parties. Germany's exit from nuclear energy, for instance, was determined by a commission of 17 technical non-experts from the realms of academia, politics, civil society, religion, and business. Among them was the sociologist Ulrich Beck, author of "Risk Society. Towards a New Modernity" (Beck 1986), philosopher Weyma Lübke, a protestant bishop, the president of the central committee of German Catholics, and Cardinal Marx, Archbishop of Munich.

Without going into detail, the following general observations on policy commissions seem worthwhile to be mentioned at this point:

1. Greater scope of tasks and stakes. While neo-corporatist forms of participation remained focused on macro-economic concertation and sector-wise consultation in the early postwar decades, in unified Germany, extra-parliamentary commissions of many different sizes and compositions have been increasingly set up by the national government to deal with a wide variety of current conflicts and policy problems.
2. Greater openness and publicity. The new bodies of societal consensus formation have been under intensive public observation. For the most part, they were

³ One can find more bodies set up in Germany during the previous decades, such as: the Herzog Commission (established 2003, social security issues), the National IT Summit (2006), the National Ethics Council (since 2007), the Council for Sustainable Development (since 2001), the German Innovation Council (since 2011) or the Commission for the Location of a Final Nuclear Disposal Site (since 2014). Germany has been called a new "Berliner Räterepublik" (Heinze 2002), literally the new Berlin Republic governed by councils or, using the Russian term, by "sowjets".

themselves actively engaged in public relations work. Whether they were doing so merely in pursuance of an information purpose or in response to a now widespread and vehemently voiced call for transparency, the fact remains that the shifting away of political decision-making from constitutional formal institutions was now combined with noticeably greater public involvement than had been the case in traditional neo-corporatist arrangements.

3. Greater attention to ideas and values. From a thematic point of view, a shift can be observed in the course of this development in the immediate subject-matters of distributive policy towards the management of value conflicts. This implies a change in the decision-making procedure, too. Instead of the accommodation of interests through bargaining, we have an exchange of arguments in which information, general norms, and public values are assessed and explained among the participants themselves and in their relationship to the public.⁴

The following remarks are concerned with new forms and procedures of pre-parliamentary and administrative interest intermediation and consensus formation in specially-created bodies and negotiation rounds, whose existence is generally known, but whose procedures and contents are accessible to the public only to varying degrees.

2 Negotiation, Deliberation, Balloting

Bargaining on conflicting political interests is about achieving compromise as their result. Such negotiation (or bargaining) processes typically differ from deliberative talks in that they are focused on the exchange of interests among the parties involved instead on an exchange of arguments in order to persuade and arrive at a shared insight. Political negotiations, like deliberative procedures, can be held within small circles of participants or before larger public settings, or they can even remain totally concealed to the public. But as soon as there is the need for their results to be justified in public or confirmed in elections and balloting, they come out of the shadow of informality. It is then that they become a subject-matter of debates, assuming a formal appearance in the form of majoritarian elections and decision-making. Elections and balloting always require formal procedures which regulate matters regarding time and place, voter eligibility, control and vote counting, and the announcement of results. It follows that the link between informality and public involvement, at a theoretical level alone, appears more complex than what the simple equation, 'the more negotiated decision-making, the more the informality and the less the public involvement', says. This notion, in empirical terms, too, is hardly tenable.

⁴This may reflect a transition, at the national level, from political muscle-flexing to deliberation on ideas and arguments, such as that which has long been undergoing intensive discussion in the area of international relations (cf. Risse 2000).

Table 1 Informality and public involvement in political negotiations and decision-making

Informality	Public access	
	Strong	Weak
High	Public summit meetings, consensus talks, etc.	Corporatist interest intermediation, political fire-side talks
Low	Elections, parliamentary debates and ballots	Cabinet meetings, parliamentary committees

Negotiation democracy in Germany alone (Lehmbruch 2003; Grimm 2003; Czada 2000) reveals a diversity of levels of and interrelations between informality and public involvement in political bargaining processes.⁵ Negotiations in the multi-level federal system are more formally conceived than policy formulation in coalition committees, these, in turn, being more formal than negotiations in the subsystems of corporatist interest intermediation, and so on and so forth; the list continues until we arrive at the level of the most informal consultations between the government and societal associations' representatives. Negotiations between government and the opposition, in which preliminary legislative decisions with far-reaching consequences are sometimes made, represent a special case.

Contrary to the assumption that bargaining processes are accompanied *grosso modo* by an increase in informality and, at the same time, by a greater degree of confidentiality or of non-public treatment, we see a diversity of interrelations which can roughly and simply be represented in the form of a two by two table (Table 1).

Agreements involving public participation are usually not only regarded as commanding greater legitimacy, but also as having superior problem-solving capabilities. In contrast, however, there is also the view that where the public is excluded, the objective aspects of a matter to be decided upon can come to the forefront and its subjective aspects will receive less attention (Elster 1995: 251). Here, the justification for excluding the public draws upon the argument that deliberations held *in camera* deal with real matters free of any influence and can arrive at common conclusions, whereas in deliberations held in public, irrelevant, public-oriented, face-saving or party-political conflicts would easily gain the upper hand (Czada 1997). Hence, the explanation given, for example, for confidentiality of the Reactor Safety Commission in Germany called attention to the publicly-pursued "unity and closeness of the Commission and the necessary openness of the discussions" (Müller 1990: 175), while similar nuclear energy bodies in the USA basically deliberate in public. In Germany, the public affairs of advisory bodies concerning policy and administrative matters are treated more cautiously than in the USA (Brohm 1987).

⁵ A rough distinction can be made between negotiations in subsystems of corporatist interest intermediation, in the multi-level federal system and between parties, particularly in coalition governments, each of which reveals its own inter-connections between informality and confidentiality (Czada 2000, cf. also Lehmbruch 2003; Grimm 2003).

Jon Elster (1995: 251) sees a basic contradiction between the openness of deliberative procedures to the democratic public on the one hand, and their problem-solving capacity as well as substantive quality on the other hand. In his view, excluding the public facilitates adequately objective efforts towards finding appropriate solutions to problems, while the publicity of democratic decision-making processes compels those involved to engage in an exchange of extraneous arguments and can negatively affect discussions. This viewpoint contrasts starkly both with optimistic notions of what practical discourse ethics is expected to deliver and with a widespread distrust of procedures of interest intermediation between elite representatives as practised in neo-corporatism and negotiation democracy. Such procedures are considered indecent when they ‘short-circuit’ the established democratic forums, when they push parliament into taking action, or when they bypass parliament. This explains why they are often under suspicion of unconstitutional collusive action, cartelling or even of corruption, as well as often dismissively categorised as “shadow politics” (Alemann 1994: 141).

3 New Issues and the Conflict Lines of Negotiation Democracy

Besides the various forms of consociational power-sharing found in party politics, corporatist interest intermediation between high-ranking government offices and interest groups has become exemplary for the concept of negotiation democracy (Lehmbruch 2003; Czada and Schmidt 1993). Negotiation democracy represents a mode of political integration and participation in which the principle of majority voting makes way for conflict resolution through extra-parliamentary consultation and negotiation. While research contributions on neo-corporatism are predominantly focused on the fields of industrial relations and social policy, the spectrum of topics dealt with in structures of consociational democracy comprises almost all relevant policy fields.

The observation that certain group identities and conflict lines, such as the antagonism between capital and labour, have lost political significance cannot be easily refuted. Whether or not this results in “individuation” (Schmitter and Trechsel 2004) and therefore, in an insidious atomisation of society, in a “disorganised capitalism” (Offe 1985) or in both (cf. Streeck 2008) appears rather open. The scenarios of decline usually connected with such assessments overlook the emergence of new topics and conflicts, which should be viewed as starting points for new group formations and strategies of interest intermediation. Social developments from the past few decades suggest that the new dominant conflict situations no longer present themselves as comparatively clearly identifiable distributive conflicts primarily between capital and labour, but as conflicts over culture and modes of living. This shifting of matters of conflict is connected with new forms of conflict resolution, which, together with new instruments of the articulation, organisation and intermediation of interests, give rise to new social facts and processes. We may be reminded of changes brought about by the internet, digital

campaigns or forms of e-government. Striking transformations in the area of political communication and the call for transparency, such as can be seen in public discourse and in the open-government concept, play a crucial role in this development. It would be premature, however, to derive, on this basis, a trend towards the disorganisation, pluralisation and informalisation of political interest intermediation. Rather, it can be shown that the mediation of societal group conflict still represents a largely structured field of action which will not simply implode against the background of changing issues of conflict, but is subject to transformation in terms of form and topic that need to be observed and analysed.

In addition to the influence of new forms of communication (internet, e-mail, twitter, facebook, etc.), social diversity and—in a complex correlation therewith—questions of transparency, equality and equal treatment mark a new cleavage and pose new questions of distributive justice. They are oriented towards ethnic and religious group identities, and towards other spheres and cultural groups in their respective lifeworld condition. The value context and orientation in which distributive conflicts are fought out now was already visible in the "Agenda 2010" of the German Red-Green Coalition Government (1998–2005). Whereas the "Alliance for Work", which preceded the Agenda programme and failed in the end, was still meant to function as a negotiated reform of the welfare state framed by the logic of neo-corporatist exchange (Lehmbruch 2000), the commissions set up subsequently—the Hartz Commission and the Rürup Commission, named after their chairpersons—proved different in design, conversation, and argument. The questions raised there suggesting a search for sustainable problem solving based on fundamental concepts and considerations were of rather little relevance in proceeding neo-corporatist negotiations.

The moral claim of a new social policy found its first expression in the so-called "Schröder-Blair paper" titled "The Third Way in Europe". Drawn up in 1999, its neo-liberal undercurrents also characterised the Hartz report. In presenting it, Hartz himself claimed to have written a "bible of the labour market". Here, the new moral tone was first expressed by the slogan "support and demand" as a mixture of a universalist claim-making ethics promising social security for all, and an individualistic work and performance ethic directed against any paternalistic models of the welfare state. A further example of the ethical turn in political consultations is the "Independent Commission on Immigration" (Süssmuth Commission) set up in 2000. Among its 21 members, there were by far more bishops and representatives from religious communities, for example the President of the Synod of the Protestant Church in Germany and the President of the Central Council of Jews in Germany, than representatives of business or trade unions. The reason for this might have originated from the unions' fear of coming into contact with the topic. The commission report, which was presented in May 2001, initially assumed that the results of the deliberations would be incomprehensible to many citizens. Many citizens and residents did not understand how there could be a shortage of highly qualified labour and skilled workers in Germany when there was an annual average of 3.9 million unemployed (BMI 2001: 11). The report very commendably dealt with the question of immigrant integration and offered numerous proposals,

but hardly revealed any attempts at clarifying the comprehensibility problem. Instead, it suggests, in its introduction, that Germany's then-weak economic growth was due to the low rate of immigration of qualified workers (*ibid.*)—a statement which the two union representatives in the commission would not have been able to convey to their organisations without any ifs and buts. On the other hand, the German employers' associations presumably did not have any problems conveying the report to their clientele. Accordingly, the managing director of the Federation of German Employers' Associations enjoyed a high ranking position in that body. The commission's explicit aim was to achieve "change in consciousness" (*ibid.*: 12); it thus distinguishes itself basically from the traditional neo-corporatist *quid pro quo* logic.

The argumentative turn in proceedings of consultation bodies came to full bloom within the context of a turnaround in energy policy in 2011. The abandonment of nuclear power and an ambitious plan for the development of renewable sources of energy were at stake. The decisive contribution to this fundamental change of policy with far-reaching social and economic consequences was made by an "Ethics Commission on a Safe Energy Supply". It not only met under the watchful eye of the public, but also placed the protagonists of the earlier corporatist arrangements in a situation of powerlessness. Besides newspaper reporting and broadcasts on radio and television, the debates could have been partly followed live on the internet. To put it briefly: in energy policy, the traditional corporatist structure of interest intermediation shielded from the public was replaced by a forum with a strong public presence that featured a bishop and a cardinal in addition to philosophers and other public figures, most of them alien to the technical and economic subject matter. Once-dominant business leaders and interest associations of the energy sector as well as nuclear safety experts suddenly became passive members of the audience (cf. Czada 2014). This example alone fuels doubts whether western democracies turned into mere political facades of economic power as suggested in writings on post-democracy.

What the example of the Federal Republic of Germany illustrates here should not be generalised in every aspect for other countries. In comparing consultation bodies (immigrant and religious minority integration) that have been set up recently in many European countries, one can detect quite different organising principles behind them (Musch 2011, 2012; Czada 2011). Instead of functional interest groups predominant in the classical conception of corporatism and the pluralist group school, new alignments and cleavages come up, in the wake of migration, by virtue of cultural, religious, ethno-national or linguistic identities. Fora like the German Integration Summit and Islam Conference, both established in 2006, are rooted in the national traditions of consociationalism or religious governance more than in the neo-corporatist exchange logic (*ibid.*).

4 Administrative Interest Intermediation

The cases discussed point to significant changes in the mediation of political conflicts and political decision-making. However, they do not indicate a shift from the corporatist back to the parliamentary arena. There is still the informal mediation of interests, even in an increasing measure, in subsystems of extra-parliamentary conflict management and policy-making. The new aspect is that they no longer generally follow the pragmatic exchange logic of negotiations for compromise, but increasingly take value orientations into account. Therefore, we find less disagreement and a kind of consensus based on values and principles that is more clearly positioned than the one known from previous neo-corporatist agreements. At the same time, there is an observable tendency towards transparency and more public involvement, without this being connected to formal institutionalisation.

The result thereof is a double departure from the "old" concept of neo-corporatism: first from pragmatic, exchange-oriented interest compromise towards value-based forums of discourse; second from bargaining processes largely conducted in camera to media events accompanied by public scrutiny. On the other hand, very little has changed in the degree of informality or formality of the decision-making arenas. Informal, pre-parliamentary consultation, deliberation and decision-making bodies still exist and are even on the rise. Ever since the turn of the century, they have increasingly been convened to deal with urgent matters calling for decisions and, not least, to help prevent ungovernability and legitimization problems. They thus represent the theorem of a government-initiated "administrative interest intermediation", as proposed by Gerhard Lehbruch (1987), rather than an approach to the activation and participation of civil society as a whole.

The commissions mentioned were initiated and convened by the German federal government mostly on an ad-hoc basis. The recruitment of their members, the frequency and mode of their meetings, their agendas and decision-making procedures remained completely in the hands of the government, and yet they did not follow strictly formal rules of procedure. This reveals a pattern of state-led interest intermediation penetrating informal political pre-decisions among government agents and party leaders or societal group representatives. Due to the status and authority of the participants involved, those pre-decisions are usually accepted among their constituencies and followers, and therefore bind the constitutional proceedings that follow. This is exactly what Gerhard Lehbruch (1987) called "administrative interest intermediation". It is based on strategies of administrations to enhance the associational capacities of societal groups and give them a share in public governance in order to render policy-making more effective and simultaneously raise support for it. Administrative interest intermediation is, thus, explained by mutual resource dependencies of public and private actors. Whether and how this works, however, depends on historical contingencies. Regulating societal conflicts and solving collective problems through top-level exchange relationships requires effectively organized corporate actors as well as an exchange

orientation entrenched in well-established state-society networks (Lehmbruch 1991).

Lehmbruch's concept of Administrative Interest-Intermediation reveals a link to the debate on post democracy in so far as it points out the fact that governments co-opt elites from certain sectors of society towards a predefined goal. Thus, they deliberately convert conflict into a form of negotiation with non-state actors in order to achieve a reduction of disagreement. This reminds us of Rancière's (1999: 121) notion of "Consensual Postdemocracy" which, in his words, is not the insidious work of neo-liberal capitalists but rather a "government practice and conceptual legitimization of democracy after the demos, a democracy that has eliminated the appearance, miscount, and dispute of the people and is thereby reducible to the sole interplay of state mechanisms and combinations of social energies and interests" (ibid: 102). Here we see a difference to Colin Crouch's concept of a somewhat pluralist "Post-Democracy" referring to the older (pressure) group school and its emphasis on the influence of interest groups on governments that are being victimized or even captured by business interests. His claim that "the economic actions of government become distorted by lobbies with privileged political access" (Crouch 2004: xi) falls short of the reality, at least with German politics. Here, the government deliberately attributes status, co-organizes and incorporates groups into policy-making which might prove useful in the pursuit of a common goal.

In contrast to past experiences, extra-parliamentary commissions set up by governments for purposes of negotiation, for the preparation of official proceedings and also, for actual final decision-making, are no longer largely withdrawn from the public eye in the terms described by J. Toulmin Smith in his monograph, 'Government by commissions illegal and pernicious', published as far back as 1849. He refers to the principle of "openness and publicity (. . .) a principle which, like every other protection provided by our fundamental laws and institutions, is directly violated by all crown-appointed Commissions" (Toulmin Smith 1849: 138). Placing public decisions out of parliament or local self-government, in his eyes, fosters a "Procrustean system of centralization of which commissions are but the machinery" that he condemns to be an "irregular, illegal and pernicious method now in use, by which falsehood is made to usurp the place of truth and the latter only to sink the deeper in that well where it lies hidden (Toulmin Smith 1849: 31). One cannot avoid thinking of today's critique of post-democracy when reading these passages from a book published in 1849.

Just as in Anglo-Saxon Common Law, which Toulmin Smith had in mind when drawing upon his examples from England, Ireland and Australia, formality and publicity are central elements of Roman Law, elements which often appear together in civil and constitutional law. This perhaps partly explains the fact that informality is commonly associated with the absence of publicity. In addition, historical experience supports the validity of this correlation. Nevertheless, a new trend towards radical openness and more publicity has been noticeable in recent times. This seems to have a number of vital causes and consequences:

1. There is an identifiable overarching trend in politics and society towards an increase in transparency and the public treatment of issues. It would, however, be inaccurate—if what is at stake is actually ‘governance by commissions’—to interpret this as an increase in deliberative democracy. Rather, commissions and consultative bodies set up on an ad-hoc basis and operating with a low degree of institutionalisation present themselves, fairly often, as part of modern political marketing. Their purpose and function is to shift political decisions into a sphere of public propaganda, which, above all, is meant to serve the government and its re-election interests. To that extent, greater visibility and publicity is quite in accordance with concepts of Post Democracy (Crouch 2004) or “Consensual Postdemocracy” (Rancière 1999) in particular.
2. A reason for involvement by governments of non-state actors in largely informal commissions could be sought in the generally increased complexity of political problems and decision-making. Difficult decisions on substantive matters associated with deep-rooted conflicts are transferred to pre-decision-making systems and thus removed from the immediacy of party competition. In this way, complicated matters and conflict situations are processed into manageable topics and concepts, “pre-digested” as it were, for party competition based on the simplification of problems.
3. A lack of information and expertise on the part of parliaments and administrations can further speed up the creation of extra-parliamentary, non-governmental consultation bodies. Where the in-house expertise of the civil service does not have sufficient capacities, these bodies function as expert quasi-governments for certain policy fields. Besides, formal advisory councils located purely at the administrative level on a permanent basis still operate *in camera*. An example in Germany would be the ‘Reactor Safety Commission’ or regulatory agencies (cf. Döhler 2002). In regard to the Netherlands, the institutions of ‘Techno-Corporatism’⁶ may be mentioned here.

The developments described for Germany could culminate in arrangements in which corporatist package deals are being replaced by governmental initiatives to reach overarching ethically-based agreements among societal elites on how pressing collective problems should be solved across legislatures in a sustainable manner. Additionally, the change in form and function of extra-parliamentary consultations and government commissions is no longer a matter of shifting decisions to the non-public backstage of politics. This classical explanation of extra-parliamentary policy-making has almost turned into its opposite. Institutions such as the Süßmuth Commission, the Integration Summit, the German Islam

⁶This includes the *Sociaal-Economische Raad*, the *Central Panbureau* and the *Stichting van de Arbeid*. Like these bodies, which have existed throughout the post-war decades and, depending on the circumstances, exerted different degrees of influence, the consultation structures of Dutch immigrant and Islamic integration are legally protected as well. In contrast, the ups and downs of corporatist interest intermediation in Germany together with frequent changes of fora and participants reflect a low degree of formal institutional provisions.

Conference, the Rürup Commission, the Hartz Commission, the Herzog Commission, the National IT Summit, the National Ethics Council, the Council for Sustainable Development, the German Innovation Council or the “Ethics Commission on a Safe Energy Supply” served as instruments of political marketing and governance with a strong public relations impact. This is where they differ from neo-corporatist consensus bodies, which they have somehow replaced, and also from advisory councils and expert commissions, which are located at the administrative level and continue to exist thanks to, not least, their higher degree of institutionalisation. Since the ephemeral corporatism of the Federal Republic of Germany has never been as strongly institutionalised as similar participatory institutions in the Netherlands, Norway or Austria, the change in form and function of extra-parliamentary interest mediation in society could make particularly rapid progress.

References

- Beck, U. (1986). *Risikogesellschaft. Auf dem Weg in eine andere Moderne*. Frankfurt: Suhrkamp. [English edition: Beck, U. (1992). *Risk society: Towards a new modernity*. London: Sage].
- Benz, A. (1998). Postparlamentarische Demokratie? Demokratische Legitimation im kooperativen Staat. In M. Greven (Ed.), *Demokratie – Eine Kultur des Westens?* (pp. 201–222). Opladen: Leske+Budrich.
- BMI. (2001). *Structuring migration – Fostering integration: Report by the independent commission on migration to Germany*. Berlin: BMI (Federal Ministry of the Interior). Accessed March 10, 2014, from http://www.bmi.bund.de/SharedDocs/Downloads/EN/Broschueren/Structuring_Immigration_-_Fostering_Id_14625_en.pdf?__blob=publicationFile
- Brohm, W. (1987). Sachverständige Beratung des Staates. In J. Isensee & P. Kirchhof (Eds.), *Handbuch des Staatsrechts Bd. II* (pp. 207–248). Heidelberg: C.F. Müller.
- Crouch, C. (2004). *Post-democracy*. Oxford: Wiley.
- Czada, R. (1997). Vertretung und Verhandlung. Aspekte politischer Konfliktregelung in Mehrebenensystemen. In A. Benz & W. Seibel (Eds.), *Theorieentwicklung in der Politikwissenschaft – eine Zwischenbilanz* (pp. 237–260). Baden-Baden: Nomos.
- Czada, R. (2000). Konkordanz, Korporatismus, Politikverflechtung. Dimensionen der Verhandlungsdemokratie. In E. Holtmann & H. Voelzkow (Eds.), *Zwischen Wettbewerbs- und Verhandlungsdemokratie* (pp. 23–49). Wiesbaden: Westdeutscher Verlag.
- Czada, R. (2011). *The governance of immigrant integration in Europe*. ISS Research Series 47, University of Tokyo. Accessed March 5, 2014, from http://jwww.iss.u-tokyo.ac.jp/publications/issrs/issrs/pdf/issrs_47.pdf
- Czada, R. (2014). Informalität und Öffentlichkeit in politischen Aushandlungsprozessen. *Zeitschrift für Vergleichende Politikwissenschaft*, 8(S1), 115–139.
- Czada, R., & Schmidt, M. (Eds.). (1993). *Verhandlungsdemokratie, Interessenvermittlung, Regierbarkeit: Festschrift für Gerhard Lehmbuch*. Wiesbaden: Westdeutscher Verlag.
- Döhler, M. (2002). Institutional choice and bureaucratic autonomy in Germany. *West European Politics*, 25, 101–124.
- Elster, J. (1995). Strategic uses of argument. In K. J. Arrow et al. (Eds.), *Barriers to conflict resolution* (pp. 237–257). New York: Norton.
- Eurobarometer. (2010). *Public opinion in the European Union. Annex: Table of results*. Brussels: European Commission. http://ec.europa.eu/public_opinion/archives/eb/eb74/eb74_anx_full_fr.pdf/ Accessed January 15, 2014.

- Grande, E. (2000). Charisma und Komplexität. Verhandlungsdemokratie. Mediendemokratie und der Funktionswandel politischer Eliten. *Leviathan: Zeitschrift für Sozialwissenschaft*, 28 (1/2000), 122–142.
- Grimm, D. (2003). Lässt sich die Verhandlungsdemokratie konstitutionalisieren? In C. Offe (Ed.), *Demokratisierung der Demokratie: Diagnosen und Reformvorschläge* (pp. 193–210). Frankfurt: Campus.
- Habermas, J. (1973). *Legitimationsprobleme im Spätkapitalismus*. Frankfurt: Suhrkamp. [English edition: Habermas, J. (1975). *Legitimation crisis*. Boston: Beacon Press].
- Hauss, C., & Haussmann, M. (2012). *Comparative politics: Domestic responses to global challenges*. Stamford: Cengage Learning.
- Heinze, R. (1982). Elitenkooperation und Basisproteste: Grenzen neokorporatistischer Steuerung. *Journal für Sozialforschung*, 22, 429–446.
- Heinze, R. (2002). *Die Berliner Räterepublik. Viel Rat – Wenig Tat?* Wiesbaden: VS-Verlag.
- Jörke, D. (2011). Bürgerbeteiligung in der Postdemokratie. *Aus Politik und Zeitgeschichte (APuZ)*, 1(2/2011), 13–18.
- Kosar, K. R. (2008). *The quasi-government: Hybrid organizations with both government and private sector legal characteristics (RL30533)*. Washington, DC: Congressional Research Service. Accessed April 10, 2013, from <http://digitalcommons.ilr.cornell.edu/keyworkplace/539/>
- Lehmbruch, G. (1977). Liberal corporatism and party government. *Comparative Political Studies*, 10, 91–126.
- Lehmbruch, G. (1984). Concertation and the structure of corporatist networks. In J. Goldthorpe (Ed.), *Order and conflict in contemporary capitalism* (pp. 60–80). Oxford: Oxford University Press.
- Lehmbruch, G. (1987). Administrative Interessenvermittlung. In A. Windhoff-Héritier (Ed.), *Verwaltung und ihre Umwelt* (pp. 11–43). Opladen: Leske+Budrich.
- Lehmbruch, G. (1991). The organization of society, administrative strategies and policy networks. Elements of a development theory of interest systems. In R. Czada & A. Windhoff-Heritier (Eds.), *Political choice. Institutions, rules and the limits of rationality* (pp. 121–158). Frankfurt: Campus Verlag.
- Lehmbruch, G. (2000). Institutionelle Schranken einer ausgehandelten Reform des Wohlfahrtsstaates. Das Bündnis für Arbeit und seine Erfolgsbedingungen. In R. Czada & H. Wollmann (Eds.), *Von der Bonner zur Berliner Republik* (pp. 89–112). Wiesbaden: VS-Verlag.
- Lehmbruch, G. (2003). *Verhandlungsdemokratie. Beiträge zur vergleichenden Regierungslehre*. Wiesbaden: Westdeutscher Verlag.
- Lijphart, A. (1977). *Democracy in plural societies: A comparative exploration*. New Haven, CT: Yale University Press.
- Lijphart, A. (2012). *Patterns of democracy*. New Haven, CT: Yale University Press.
- Müller, W. D. (1990). *Geschichte der Kernenergie in der Bundesrepublik Deutschland. Anfänge und Weichenstellungen*. Stuttgart: Schäffer Verlag.
- Musch, E. (2011). *Integration durch Konsultation? Konsensbildung in der Migrations- und Integrationspolitik in Deutschland und den Niederlanden*. Münster: Waxmann.
- Musch, E. (2012). Consultation structures in German immigrant integration politics: The national integration summit and the German Islam conference. *German Politics*, 21(1), 73–90.
- Naurin, D. (2002). *Taking transparency seriously* (SEI Working Paper No. 59). Sussex European Institute (SEI).
- Offe, C. (1984). *Contradictions of the welfare state*. London: Hutchinson.
- Offe, C. (1985). *Disorganized capitalism: Contemporary transformations of work and politics*. Cambridge, MA: MIT Press.
- Panitch, L. (1977). The development of corporatism in liberal democracies. *Comparative Political Studies*, 10, 61–90.

- Rancière, J. (1999). *Disagreement: Politics and philosophy*. Minneapolis, MN: University of Minnesota Press.
- Risse, T. (2000). "Let's Argue!": Communicative action in world politics. *International Organization*, 54, 1–39.
- Schmitter, P. C., & Trechsel, A. H. (2004). *The future of democracy in Europe: Trends, analysis and reforms*. A Green Paper for the Council of Europe, Secretary General of the Council of Europe. Strasbourg: Council of Europe.
- Schneider, V. (1999). Möglichkeiten und Grenzen der Demokratisierung von Netzwerken in der Politik. In J. Sydow & A. Windeler (Eds.), *Steuerung von Netzwerken: Konzepte und Praktiken* (pp. 327–346). Wiesbaden: Westdeutscher Verlag.
- Streeck, W. (2008). *Re-forming capitalism: Institutional change in the German political economy*. Oxford: Oxford University Press.
- Streeck, W., & Schmitter, P. C. (1985). *Private interest government: Beyond market and state*. London: Sage.
- Toulmin Smith, J. (1849). *Government by commissions illegal and pernicious: The nature and effects of all commissions of inquiry and other crown-appointed commissions*. London: S. Sweet.
- von Alemann, U. (1994). Schattenpolitik. Streifzüge in die Grauzonen der Politik. In C. Leggewie (Ed.), *Wozu Politikwissenschaft? Über das Neue in der Politik* (pp. 135–144). Darmstadt: Wissenschaftliche Buchgesellschaft.
- Williamson, P. J. (1989). *Corporatism in perspective: An introductory guide to corporatist theory*. London: Sage.