

Elstub S, Kiernan A.

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Chapter 5

**DEMOCRATIC FAILINGS, SUCCESSES AND
PROSPECTS IN THE EUROPEAN UNION:
TRANSNATIONAL DELIBERATIVE
DEMOCRACY AND THE SOCIAL
OPEN METHOD OF COORDINATION**

Stephen Elstub¹ and Annabel Kiernan²

¹University of the West of Scotland

²Manchester Metropolitan University

ABSTRACT

This paper considers the extent to which the social open method of coordination within the EU can be interpreted as an institutionalisation of the features of deliberative democracy at a transnational level. It argues that the experience of the social policy NGO sector in policy deliberation inside the EU provides useful illustrations of the difficulties of institutionalising such ideals, at transnational level. In spite of the limitations experienced thus far, the case offers up a tantalising example of the possible prospects for the future by furthering understanding on the barriers to institutionalisation that need to be overcome, and on where the trade-offs between theory and practice need to be made at a transnational level. More specifically the paper argues that it is the creation of open and transparent, weak and strong public spheres that must be achieved, if deliberative democracy is to be approximated at any level of governance. The OMC, which is a promising element of the 'Lisbon' strategy that aims to increase stakeholder participation in EU social policy formation, goes some way to achieving this, as it generates dispersed and distributed 'hybrid' public spheres that are formed through deliberation between the NGO sector, national governments, and EU institutional actors. The process is far from perfect and particularly needs to be more inclusive (especially in terms of marginal groups with challenging views), has been less responsive to the input of stakeholders than was hoped and, overall, still remains excessively elite dominated. However the commitment to improving on the dynamic between EU institutions and key stakeholders in social dialogue remains and the OMC offers a formal gauge of whether such

commitments are being met. Ultimately the current OMC fails to approximate deliberative democracy sufficiently closely yet, but has had a certain degree of success, and therefore promises encouraging prospects for how this could be achieved at transnational level in the future.

INTRODUCTION

One of the greatest failings of the EU is its democratic deficit. However, for Bohman this is better characterised as a ‘deliberation deficit’ (Bohman, 2007, p. 145). The normative promise of deliberative democracy is increasingly making it the standard on which to judge ‘good’ and ‘legitimate’ governance, at every level of governance, including transnational governance (Bader and Bartlett, 2005; Dryzek, 2006; Bohman, 2007). However, institutionalising deliberative democracy at any level is extremely difficult due to the complex nature of modern societies (Femia, 1996; Elstub, 2007). These features of complexity are at their most acute at the transnational level. Providing more power to the European Parliament is welcome, but not sufficient, ‘rather, more direct forms public deliberation must emerge within the polyarchy’ (Bohman, 2007, p. 147). However, through the Lisbon treaty, the EU is aiming to address this deficit. For example the European Union’s (EU) social policy trajectory represents an attempt to give firm foundation to its claims to being a citizen focused, representative, inclusive model of democratic governance. Recent commitments to meet the ‘good governance’ agenda, through the development of mechanisms such as the Open Method of Coordination (OMC), potentially provide a framework within which some of the ideals of deliberative democracy can be approximated (Bohman, 2007). The argument forwarded here is that the experience of the social policy Non Governmental Organisation (NGO) sector in policy deliberation, inside the EU, provides useful illustrations of the potential benefits of creating formal mechanisms which enable stakeholder participation which can provide the foundations and the tools for building truly participatory policy forums for modern, complex, and transnational societies. Ultimately we argue that the OMC has achieved only limited success in approximating the norms of deliberative democracy at transnational level. However, despite its limitations the social OMC has enabled innovation in consultative processes and, significantly, the engagement by the NGO sector, and other stakeholders, in the formal processes has better equipped those actors for utilising the OMC structures in the future. Therefore, the operation of the first round of consultations in the social OMC may provide an important template on which to build in order to take some further, concrete, steps towards embracing the deliberative model of democracy in a transnational context. In this sense, rather than providing a firm model for the approximation of deliberative democracy at transnational level, the OMC indicates that the EU does have prospects for democratisation and the approximation of deliberative democracy.

Specifically it is argued that the creation of open and transparent, weak and strong public spheres, that incorporates degrees of micro and macro deliberation is essential, if deliberative democracy is to be approximated at any level of governance. The OMC goes some way to achieving this, as it generates dispersed and distributed ‘hybrid’ public spheres that are formed through relatively inclusive deliberation between the NGO sector, national governments, and EU institutional actors fostering public reason, which is connected to decision-making arenas. The process is far from perfect and particularly needs to be more

inclusive (especially in terms of marginal groups with challenging views), more transparent, has been less responsive to the input of stakeholders than was hoped and, overall, still remains excessively elite dominated. However the commitment to improving on the dynamic between EU institutions and key stakeholders in social dialogue remains and the OMC offers a formal gauge of whether such commitments are being met. Therefore, the current OMC does not approximate deliberative democracy sufficiently closely yet, but points the way of how this could be achieved at transnational level.

The chapter is organised into five sections. The first defines deliberative democracy and discusses the need for weak and strong deliberative public spheres to institutionalise it. Section two explains the key features of the OMC, while section three discusses how the OMC creates hybrid public spheres at the transnational level, which point the way to approximating deliberative democracy in practice. The benefits of the social OMC, particularly in the UK, are highlighted in section four, before section five highlights the failings of the process, and outlines potential improvements.

TRANSNATIONAL DELIBERATIVE DEMOCRACY AND THE PUBLIC SPHERE

There are two key elements of deliberative democracy; ‘democracy’ and ‘deliberation.’ The democratic part is collective decision-making through the participation of all relevant actors. The deliberative strand is the making of the decisions through the give-and-take of rational arguments (Elster, 1998, p. 8). Deliberative democrats believe that through deliberative interaction and communication, and therefore the consideration of those with differing preferences, existing preferences can be transformed and new preferences formed. In fact this preference transformation is thought to be the defining mark of deliberative democracy (Elster, 1998, p. 6). Therefore in order for deliberation to have taken place, communication between participants must induce ‘reflection upon preferences in a non-coercive fashion’. This deliberation is democratic if these reflective preferences influence collective decisions and all have had an opportunity to participate equally (Dryzek, 2000, p. 2; Elstun, 2006). It is further thought that these preferences will become more rational and public after ‘running the gauntlet’ of collective debate with participants taking on the considerations of others (Barber, 1984). Following these core beliefs, deliberative democracy has received a number of normative justifications. Included is the prudential justification which suggests that deliberative democracy enables preferences of the participants to become more autonomous by overcoming inequalities in information and rationality (Elstun, 2006; Festenstein, 2002, p. 103). There is also the epistemic justification which suggests, that deliberative democracy, by generating public reason, is the decision-making method most likely to lead to decisions that are true, well justified or commensurate with justice, needs or the common good (Bohman, 1998, p. 403; Festenstein, 2002, p. 99; Warren, 2002, p. 192; Elstun, 2006). A further justification is that deliberative democracy produces just decisions, as it represents a set of fair procedures in which all have been able to participate equally in debate, which encourages participants to consider the preferences of others (Elstun, 2006; Festenstein, 2002, pp.102-103; Warren, 2002, p. 193).

It is these normative ideals which makes deliberative democracy increasingly the standard of good and legitimate governance at all levels of governance. Nonetheless features of complexity, namely scale, number, dispersion, diversity and inequality of citizens, and the need for expertise are significant barriers to achieving deliberative democracy and are all accentuated by a further feature of complexity, globalisation (Femia, 1996; Elstub, 2007), which itself creates the need for transnational democratic processes (Bader and Bartlett, 2005; Dryzek, 2006; Bohman, 2007).

In order for the theory of deliberative democracy to be approximated in practice at any level of governance, and for these normative goals to be generated, there must be public debate between participants that leads to decision-making. This public debate element is present in public spheres; 'the space in which citizens deliberate about their common affairs, and hence an institutionalised arena of discursive interaction' (Fraser, 1992, p. 110), that combines face-to-face and mediated communication (Bohman, 2007, p. 79). Public spheres are secured by rights of freedom of speech and assembly and are potentially open to the participation of all (Eriksen, 2000). Public spheres must meet three criteria. There needs to be a social space for communication, which must 'manifest the commitment of participants to freedom and equality', and address an indefinite audience, but with an expected response (Bohman, 2007, p. 60). The resulting flows of communication can influence the opinions of the public and state sector actors and will be more likely to be based upon reason and be publicly orientated as, in order to convince others of the validity of their concerns and preferences, participants must be able to 'employ and appeal to norms of publicity', limiting their potential to act as strategic actors (Habermas, 1996, p. 364). As Bohman argues 'at the very least such public deliberation can add to, and change, the pool of reasons available to deliberation' (Bohman, 2007, p. 61). These public spheres can appear at local, national, transnational, international or functional level, making them vital to democracy in the global era, as institutions and modes of governance and debate increasingly occur at these multilevels. They also help overcome the scale problem as the public sphere transcends elements of time and space, potentially enabling all to participate in an anonymous discourse (Elstub, 2007).

Currently throughout the EU's dominant closed committee system, there is a lack of public processes, so interest groups have great leeway to assert private interests and manoeuvre themselves to gain vested state powers through funding political parties, lobbying and private consultation that leads to the subversion of the formal representative institutions. When bargaining with EU and national government officials, they can use sanctions and rewards to apply pressure. However, inside public spheres the effect of interest groups is limited due to the 'public' nature of these processes and these private techniques become increasingly ineffectual as convincing reasons become increasingly influential at transforming preferences and mobilising public opinion. Not only then is public opinion generated through discourse in public spheres, these opinions are also more likely to be based upon reason and be publicly orientated; essential aspects of deliberative democracy (Elstub, 2008).

There are two broad types of public sphere, which reflect two types of deliberation: informal public spheres involve participation in opinion formation, where a dialogue is conducted across space and time, potentially involving a huge array of civil society actors. Here we find macro deliberative democracy which involves informal and unstructured, and spontaneous discursive communication, aimed at opinion formation, between partisan deliberators and occurs across space and time, within civil society, outside and often against

the formal decision-making institutions of the state (Hendriks, 2006). This role of civil society associations, like NGOs, as communicators in the informal public sphere is an intrinsic one, as they are established through communication between individuals themselves and because they must try to influence the preferences of the general public and members of other associations by representing and voicing the views and interests of their members to gain influence (Elstub, 2007; Habermas, 1996, p. 369; Warren, 2001, pp. 78-80). In contrast, formal public spheres are characterised by discussion within institutionalised and decision-making processes, which generates micro deliberative democracy, which are more likely to resemble ideal deliberative procedures, occur within small-scale structured arenas within the state, be orientated to decision-making, and include impartial participants deliberating together in one place and at one time (Hendriks, 2006). Here we see the relevance of Fraser's distinction between weak and strong public spheres, with strong publics having a decision-making role, and weak publics involved in opinion formation (Fraser, 1992). Formal public spheres, and micro deliberation, tend to be too elitist, but strong as they result in binding decisions, laws and policy, but exclude too many participants. The informal public spheres, with macro deliberation, are more open, but there is a failure to sufficiently empower citizens and make their participation effective in terms of influencing decision-making, meaning such public spheres are weak. Consequently, if deliberative democracy is to be effectively approximated in the EU, and both the deliberative and democratic elements are to be combined, informal public spheres and its macro deliberative communication must be linked to formal public spheres and decision-making and micro deliberative venues (Hendriks, 2006; Elstub, 2008).

Achieving the mediated communication required to form a public sphere at transnational level is extremely challenging given the intensification of the features of complexity at this level, and for Bohman new institutions are required to contribute to this mediation, as the same methods used at the level of the nation-state will be inadequate (Bohman, 2007, p. 79). He argues that at the transnational level public spheres contribute to democracy by forming distributed, but communicative networks that interact with dispersed institutions (Bohman, 2007, p. 61). For Dryzek the best mechanism of creating a transnational public sphere that can approximate the norms of deliberative democracy is the informal networks of communication and association of NGOs that form around and counter 'international regimes' (Dryzek, 2006). Such counter-publics are then weak, informal, and at best foster macro, but not micro deliberation. Bohman is critical of this approach for these very reasons, suggesting Dryzek's transnational public spheres can only be 'contestatory': 'Dryzek thus ends up with a kind of institutional minimalism that also omits the dimension of active and empowered citizenship' (Bohman, 2007, p. 43). Although already established transnational and formal decision-making institutions, such as the United Nations, World Trade Organisation, and the EU, are included in Dryzek's theory, there is an insufficient link between the deliberation in the weak and informal public sphere that the NGOs generate and these strong and formal decision-making institutions. Nor are these institutions democratic or deliberative themselves. Therefore micro and macro deliberation are not linked in this approach. Dryzek is right to see the need for transnational public spheres to be embedded in a larger institutional context. As Bohman argues this embeddedness is required to 'secure the conditions of publicity', and to promote the interaction that will generate deliberation (Bohman, 2007, p. 81). The argument here is that, in line with Bohman, they need to be embedded more than Dryzek suggests.

However, the OMC, part of the social policy dialogue in the EU, points the way to how this balance can be achieved. The next section outlines its key features, context, and background.

SOCIAL POLICY DIALOGUE IN THE EU & THE OPEN METHOD OF COORDINATION

The nature of the policy tools and governance mechanisms, which the EU develops, are consequential for the development of democracy in the European Union. If a transparent, accessible, and a participatory social dimension can be created the public perception of the value of the EU can be transformed and thus give substance to the EU's articulation of its democracy, legitimacy and good governance agendas, as well as moving the EU towards the incorporation of the norms of deliberative democracy.

At the Lisbon European Council meeting, in March 2000, the EU took a clear step forward in developing these themes in more meaningful ways, which was reflected in the formal commitments to a 'good governance' agenda and the recognition of the need to 'mainstream' the Union's social cohesion objectives (embed the social in all other relevant policy). The Lisbon Council effectively enabled the continuing development of new forms of more participatory, accessible and responsive governance and underlined its commitment to recognising 'the social' as a distinct field of important policy activity approximating a participatory, multi-level governance policy space (Tsakatika, 2004). Specifically, the policy tools elaborated through the Lisbon strategy hold clear potential to be an influential model of deliberative democracy at the transnational level (Bohman, 2007). It is argued that the social dimension of the EU points the way for the delivery of a substantive approximation of deliberative democracy, through the elaboration of the OMC for social inclusion, which establishes a model for social dialogue enabling formal mechanisms for advancing 'the mobilisation of all actors' and thus the direct input of the voice of those with direct experience of poverty and social exclusion. In fact one of the principal aims of the OMC was to increase levels of transparency and participation in decision-making (Lisbon European Council 2000 *Presidency Conclusions* [100/1/00], p. 7).

The OMC, "involves establishing policy guidelines, setting benchmarks, concrete targets and a monitoring system to evaluate progress through peer-review" (De la Porte & Pochet, 2002, p. 346). The OMC sets guidelines for the Union combined with specific timetables for achieving the goals set. As a means of promoting best practice it establishes common quantitative and qualitative indicators and benchmarks. There is periodic monitoring, evaluation and peer review, organised as exchange of experience and mutual learning (De La Porte, Pochet and Room, 2001, p. 293). Crucially, rather than 'hard law', the OMC is a 'soft' process of coordination. It involves agreeing common objectives, developing common indicators to measure progress, developing national plans, establishing Community action programmes and preparing European reports on the processes and the challenges (Tsakatika, 2004, p. 91). The OMC includes a transnational exchange programme, which has recently undergone reform. Additionally, there is a programme of inter-governmental '*peer review*' of good practice (in which a limited number of NGOs can participate). The OMC process also includes innovative developments such as the now annual '*people experiencing poverty*' conference organised under the relevant Presidency of the EU with secretariat provided by the

European Anti Poverty Network and a sister NGO, ATD Fourth World. There is an annual 'round table' of all actors also organised by the Presidency.

Importantly it may be possible to argue that the requirements of deliberative democracy (deliberation, the appeal to technical expertise, addressing issues of an inequality of skills, creating a consensus and a genuine public space) can be met within the new governance tools developed at Lisbon. In particular the OMC lends itself to the creation of national modes of consultation which should be formative in the Commission's and Council's policy development stage. Despite the stakeholder consultations for the OMC being devolved to the member state level through the development of separate National Action Plans (NAPs), the national consultations feed in to a pan-European policy strategy (producing a *Joint Report* from the Commission) based on cross-national peer-review and policy-learning. Although the extent of success of these frameworks thus far is a mixed picture the established consultations within member states do have value in their own right, (in terms of creating public space for deliberation and delivering a level of expertise), but also in the way their combined pressure has produced results at the EU institutional level. This means that despite a slightly rocky start, the positives that can be drawn from the experience of these policy tools at this point, allow us to be optimistic about their continued utility and their potential to provide a clear template for more explicit attempts at a deliberative democracy type mode of governance within the EU.

In line with the timing of the National Reform Programmes (strategic objectives around broad economic policy guidelines) Member states will then produce three year Plans to 2011. A social inclusion strategy was developed around a set of four objectives on the fight against poverty (access to resources, rights, goods, services and employment, preventing poverty risks, addressing situations of poverty and mobilising all actors including NGOs). The National Action Plans on Social Inclusion (NAPSI), produced by Member States, are the core mechanism for addressing the objectives. The European Commission prepares a Joint Report assessing the Plans, which is then adopted by the Spring European Council.

The OMC process then implies a form of 'policy learning' by policy actors in the national and European context, whilst maintaining some flexibility in the national routes to achieving the Lisbon goals. Specifically, the 'policy learning' should be achieved through the reporting mechanism of NAPSI which report every two years. The conclusions of the Lisbon Council stipulate that the new OMC process is a means of spreading best practice and of achieving greater convergence of different member states and sectors. The structure and operation of NAPSI in particular, as part of the OMC mechanism, offers some potential for a genuinely consultative and deliberative policy-making process. NAPSI gave a specific role to stakeholder consultation and participation, which was a mechanism for reflecting the broader commitment to the 'mobilisation of all actors'. This attempted institutionalisation of consultation is potentially very important for both the development of the social policy trajectory but also for establishing a possible model of deliberative democracy in a transnational context. The 'mobilisation of all actors' strategy is a response to the need for stakeholders in the social field to have some direct input into policymaking. In particular it is increasingly evident inside the EU that closing the democratic gap is urgent if the EU is to retain legitimacy in the face of falling voter turnout at European elections. Also the EU, by its very nature, has a need and a capacity for transnational alliance building. This is particularly the case in policy areas which require advocacy to achieve maximal, rather than minimal, policy responses. These tend similarly to be those areas where there is effectively a

requirement for consultation with affected publics or their advocates, in order to make meaningful claims to democracy, legitimacy, and responsiveness. Consequently, in the social field, the direct insertion of the voice of those with experience of poverty, for example, is essential. In line with this, deliberative democracy aims to include all preferences and experiences in public dialogue. The next section will consider the relationship between the OMC and deliberative democracy in detail.

THE SOCIAL OMC AS A TEMPLATE FOR TRANSNATIONAL DELIBERATIVE DEMOCRACY

The OMC, as a broad policy tool, has been equated with deliberative democracy (De la Porte and Nanz, 2004; Bohman, 2007) and been described as a decentralised, bottom-up process of public deliberation that resembles what Cohen and Sabel term ‘directly deliberative polyarchy’, where policy debates in local settings occur; meaning normal citizens are not disenfranchised from the process completely (Cohen and Sabel, 1997). The EU social OMC, might not be a ‘full’ or close approximation of deliberative democracy at transnational level yet, but the argument, here, is that it points to the direction transnational, and consequently EU institutions and policy processes must move towards to achieve this. Currently, the EU is limited in its generation of open inclusion and transparent public spheres as the OMC is only one aspect of decision-making institutions within the EU as a whole, and elsewhere public processes are easily avoided.

Bohman (2007, pp. 44-5) argues that the OMC facilitates interactions, communication and the exchange of information between institutions and publics by fostering dispersed, collaborative, and empowered decision-making processes. Although Bohman acknowledges that the OMC could and should be more democratic, he praises it for ultimately being deliberative and reflexive, enabling EU citizens to deliberate at these dispersed locations ‘so that solutions to problems generated by other deliberators can provide alternatives or can be used as premises for the deliberation of others’ (Bohman, 2007, p. 85). In the OMC deliberation therefore occurs at a variety of levels, amongst different actors, where local and contextual information, reasons and experiences can be shared, and yet still reflected on at higher levels, which also enables collective learning (Bohman, 2007, p. 85). Bohman’s influential, and normative work, is an excellent starting point to discuss the relationship between the OMC and transnational deliberative democracy. However, there is still more that can be said about the OMC and its relationship to transnational, and deliberative, public spheres.

In terms of informal public spheres in the EU, their absence has been one of the causes of the EU’s democratic deficit. The key rights of freedom of speech and assembly were in place, but other factors which provide fertile ground for the development of informal public spheres were not present. For example there is an insufficient collective identity, an unsubstantial European media, no genuine European political parties and no common first language (Schlesinger and Kevin, 2000). Where informal public spheres had managed to emerge in the EU they had not been particularly deliberative (Blichner, 2000, p. 148). With its broad institutional mix and plurality of decision-making arenas, the EU potentially has many formal public spheres. However, most of these arenas are not deliberative in character, are

insufficiently public and transparent, are infiltrated by private or national interests groups, are elitist and dominated by experts and bureaucrats and, consequently, there is little preference change.

By bringing together many NGOs, national government actors, and EU representatives to discuss common social policy affairs in 'institutionalised discursive action' the OMC is helping to change this by creating European, transnational public spheres; firstly through the NAPs at national level and then across transnational borders at the broader level of pan-European policy strategy (Tsakatika, 2004, p. 93). These NGOs therefore form multiple crisscrossing networks of communication, which contribute to opinion formation at national and transnational level (Eriksen, 2000, p. 62). In particular mechanisms and frameworks for civic dialogue have been developed through the process for the Community and National Action Plans, which enable channels of access at the national level that were not previously available (of which the '*Get Heard*' programme in the UK is an excellent example); as well as offering increasing opportunities for transnational dialogue and sharing of best practice through formal mechanisms like joint reports, conferences and roundtables, which in turn have bred continuous, and less formal modes of public communication and networks, which include a range of organisations, that resemble informal public spheres. However, there are significant differences in national approaches, which mean that not all are as inclusive, public or transparent as each other.

In addition it is necessary for the formal, and informal, public spheres to be linked and therefore for the macro deliberation and opinion formation generated in the informal public spheres to be connected to EU decision-making through the formal public spheres where micro deliberation is developed. The OMC does help achieve this link as it resembles what Blichner (2000) describes as a 'hybrid' public sphere, not quite as weak as informal public spheres isolated in civil society, nor as strong as governmental formal public spheres, as it has no formal legislative authority, meaning they are not strong publics as they are not decision-making arenas themselves (Blichner, 2000, p. 150), producing soft policy decisions instead. However, the OMC's public spheres are not completely disenfranchised from decision-making arenas due to their close links to national and EU representatives. Perhaps the decision-making aspect of deliberative democracy is therefore not fully incorporated in the OMC and, as mentioned above, the national government's submissions to the Commission have not always reflected the NGOs' input. However, the evidence from social policy suggests that the decisions made by the formal EU institutions can still be, and in fact has been, influenced by the discourses emerging from the national and transnational public spheres (Dryzek, 2000, p. 132). Hybrid public spheres may then be the most effective way of approximating deliberative democracy, and combining public opinion formation, with decision-making, at transnational level, by ensuring that the dispersed public spheres are embedded in a larger institutional context, through distributed institutions as Bohman (2007) requires. In this sense the hybrid nature of the OMC avoids the weaknesses Bohman identified in Dryzek's approach to transnational deliberative democracy.

Dryzek argues that NGOs should only deliberate in weak, informal, counter-publics, as he fears they will be co-opted if they are included in strong, decision-making publics. Consequently, Dryzek sees all projects that attempt to include civil society organisations in formal policy making processes as exclusive and unable to challenge inequalities, with these actors only ever achieving symbolic inclusion (Dryzek, 2000, p. 85). Furthermore, he suggests that having groups excluded from legislative bodies such as the EU aids democracy,

as when NGOs remain excluded they are forced to engage in public protest; meaning they can provide a more potent threat to legislative bodies than if included. According to Dryzek, EU and national government policy is never completely undetermined as imperatives of accumulation and legitimation, must be fulfilled. Due to this Dryzek believes entry of NGOs will only occur, when the EU/ national government recognises the interest of the group as a challenge to its legitimacy or when their interest is directly related to EU/ national government imperatives, but not because it recognises the interest as legitimate in its own right. Consequently, the group is incorporated if and only if the EU/ national government is pursuing a certain public policy that overlaps with the claims of the NGO. In this sense there is not a significant transfer of power to the NGOs through processes like the OMC, and, due to the inclusion, the NGO no longer remains as a challenge to the EU's, or relevant national government's, legitimacy in the informal public sphere, leading to 'the erosion of some existing democratic accomplishments, and a reduced likelihood of further democratisation in future' (Dryzek, 2000, pp. 87-8).

However, the innovation of the Lisbon's strategy's social OMC is the development of hybrid public spheres at transnational level as soft policy processes, meaning that the NGOs that have participated in the NAPs and OMC gain influence and not decision-making power per se. Consequently, the NGOs are still in a good position to challenge EU decisions and might even be in a better position to do so, having been involved in the OMC and received more information throughout this process than they would otherwise have had access to. It is also worth noting the relative success of the UK NAPSI in terms of providing real leverage for the NGO sector in direct negotiations with government, notably the Treasury and the Department of Work and Pensions.

In addition there does seem to be more scope for NGOs being included into the EU social policy process than Dryzek gives credit for. The state imperatives of legitimation and accumulation, although restricting, are very broad and leave plenty of scope and plenty of alternatives for EU social policy, particularly as these imperatives can be in conflict meaning trade-offs need to be made. Consequently, civil society could play a relevant role in deciding where the trade-offs between these imperatives should be made, even if it is inevitably constrained from abandoning one altogether (Elstub, 2008). Moreover, if these NGOs were not included at all in relation to decision-making in the OMC their influence on final decisions would be reduced. Once again, because the OMC generates hybrid public spheres, neither completely weak, nor strong, it enables the NGOs to influence EU social policy legislation, while still remaining in civil society where it can counter-act the EU and contribute to critical discourses.

As discussed above the inclusion of NGOs in a transnational public sphere was thought essential by Dryzek (2006) and Bohman (2007) if the norms of deliberative democracy were to be approximated at a transnational level. The fact that the social policy OMC's hybrid public spheres are formed through the inclusion of NGO facilitates the approximation of deliberative democracy in a number of ways. A key aspect of deliberative democracy is that it aims to equally include all voices and opinions in debate. The OMC helps broaden democratic deliberation, through these hybrid public spheres, between the NGO sector and therefore helps move towards this goal. NGOs are increasingly diverse in terms of geographical location, organisational type, membership, identity, size and aims which makes them incredibly important to achieving pluralism and to representing a wide variety of preferences and beliefs in deliberative communication within the hybrid public spheres of the

OMC. The more and the broader the range of NGOs the OMC can include, the more it will represent the plural nature of the EU and the closer the approximation of the ideal of deliberative democracy it will be. NGOs represent interests that are not territorially based which would go un(der)-represented through party politics and, therefore, can overcome the restrictions, limitations and inequalities of territorial representation. Therefore, these NGOs provide an excellent vessel for plural representation at transnational level. Although, NGOs also enable dominant groups to voice their concerns, the OMC, by incorporating NGOs, brings in new speakers to public debate, which then changes the parameters of debate. NGOs therefore enable those with similar beliefs, preferences and needs to combine their voice and therefore increase the chance that they will be heard (Elstub, 2007). This means that the EU social policy process becomes more deliberatively democratic as it includes the preferences of a broader range of citizens and not just those from dominant groups, technical experts and political elites.

One of the main reasons why the EU has a democratic deficit is that it gives experts a privileged position in decision-making through its complex committee system. This has led to 'steering without democracy and governance without government' (Eriksen and Fossum, 2000, p. 14) as mechanisms that link the opinions of experts with the preferences of the affected citizens are absent (De la Porte and Nanz, 2004, p. 271). The EU committee system, therefore, needs increased levels of participation and deliberation to gain legitimacy (Vos, 1999, p. 31). This is why the OMC, and Lisbon strategy as a whole, are promising processes, as they attempt to combine expertise from a range of sources, by incorporating a diversity of NGOs, making the process more democratic. NGOs are particularly useful at forming and organising information due to the fact that they specialise in certain areas which are of particular relevance to their members which they then represent to other citizens, to the state and transnational institutions like the EU. Furthermore, NGOs create a division of labour in the collection and organisation of information, achieving economies of scale that enable citizens to acquire levels of information that they would be unable to obtain by themselves (Cohen and Rogers, 1995, pp. 42-3; Hirst, 1994, pp. 34-40; Warren, 2001, pp. 71-2; Elstub 2007). Indeed a case may be made for the social policy NGO sector and the associated stakeholders to be understood as an epistemic community in their own right. In addition, due to their close involvement with their members, NGOs can provide information that would otherwise be unavailable to the distant EU committees (Cohen and Rogers, 1995, p. 43). All this information helps NGOs hold the EU officials, bureaucrats, and institutions accountable. Moreover, the more public the OMC process, the more likely preferences will be based on public reasons, which is not the case with specialists operating in private committees.

Fraser argues that socio-economic inequalities cause the cultural ethos developed by socio-economic groups to be unequally valued. She further suggests that in everyday life, and within the public sphere, such powers are magnified because inequality in the political economy affects opportunities for access to participation, meaning public spheres are not and cannot be neutral and equally 'expressive of any and every cultural ethos' (Fraser, 1992, p. 120). This inequality severely limits a public sphere's potential to fulfil both deliberative and democratic roles. The OMC helps with this problem, to some degree, by helping to form multiple public spheres around a variety of social policy issues and at various levels of governance, due to its dispersed and distributed transnational, and multilevel mechanisms. Multiple public spheres provide subordinate groups with the arenas to deliberate and form collective preferences, goals, strategies and identities away from the unequal influence of

dominant groups (Fraser, 1992, p. 123). Nevertheless, they aim to disseminate their beliefs and communicate these to as broad a public as possible through networks with associations and between public spheres, which is the key criteria that makes them a public (Fraser, 1992, p. 124).

There are, however, considerable weaknesses with the OMC process and essential improvements that need to be made, if the promise to approximate deliberative democracy at a transnational level is to be achieved. However, before considering the failings of the social OMC, the chapter will turn to the benefits that have emerged from the process, especially in the UK.

HARNESSING THE BENEFITS OF THE SOCIAL POLICY OMC PROCESS

In terms of the measurable impact of these policy tools, there has been a range of experiences across the member states. However, for the OMC and the NAPSII in the UK for example, the national NGO sector has made significant use of the channels available through the OMC, and thus demonstrates what is possible to achieve if the NGO sector and other stakeholders maximise the potential of these formally instituted processes. In more general terms, creating policy discussion and interaction space between national government officials, the NGO/charitable sector in the social policy field, as well as formal EU institutional involvement through the Commission's Joint Report, the social OMC has been a (qualified) success. In addition, the leverage it has allowed NGOs, in their relationship with the member state governments, has, in some member states – notably the UK – also been significant. That is, in some member states the point of pressure for social policy development has shifted from applying pressure for at least minimal convergence on national governments via the EU to maintaining pressure on the EU to develop measures to protect the European Social Model (ESM) via national governments. In other words the national policy space has become, in some member states, the more important location for action to expand EU competency in the field. This is interesting for two reasons: firstly in terms of the implications it has for subsidiarity and EU integration and policy convergence; and secondly, as noted by de la Porte, Pochet & Room (2001, p. 298), the pressure for convergence is coming, not from centralised and imposed European frameworks but from the pressure to improve (be least worst) arising from the peer review, policy learning dynamic of the OMC process.

'The soft processes involved in OMC, emphasising transparency, accountability and effectiveness, would seem to have an obvious relevance to principles of good governance. OMC also seems well attuned to the currently fashionable debates on 'multi-level governance', with the actions of independent public actors at different levels articulated with each other to reach shared objectives' (De la Porte, Pochet and Room, 2001, p. 300)

In addition the OMC has encouraged very positive policy consultation processes. Again looking at the example of the UK, the NAPSII required the 'feeding in' of expertise to government through broad consultation with stakeholders. Consequently the UK unit of the European Anti Poverty Network launched a consultation, "*Get Heard*", which held open

forums with 47 social and community groups in order to define targets and shape priorities in the UK NAPS (see Cochrane, 2006). This was a very successful consultation in two key ways: Firstly it established a functioning network of stakeholders and representatives of the NGO sector which can provide a reservoir of expertise on the issues surrounding social inclusion both now and in the future. This has helped enhance the profile of the NGO/social policy lobby sector in terms of its relations with government, because it is accessing national government departments through the legitimacy of the stakeholder/good governance agenda established by the EU. Secondly, and of particular importance in terms of deliberative democracy which aims at preference change, the *Get Heard* process held the important function of 'policy learning'. In addition to allowing people access to genuine policy consultation, it provided the tools for skills' development in this area. In a practical sense the *Get Heard* project created a 'toolkit' for those groups wanting to participate, which provided core information and context as well as methods and frameworks for getting the most out of the process. This is of utmost importance for continuing the commitment to the mobilisation of all actors and the real establishment of deliberatively democratic processes. To ensure that the 'mobilisation of all actors' has real meaning it is important to give people the tools to allow their voice to be genuinely heard. This should, longer term, allow community groups and social actors to take greater ownership of the process of consultation.

It is also worth noting the relative success of the UK NAPS in terms of providing real leverage for the NGO sector in direct negotiations with government. Although there has been a certain amount of (deserved) criticism of the 'feeding out' end of the process – that is the extent to which the NGO input is reflected in the government's NAPS submission to the Commission – the sustained pressure and work of the social policy NGO sector in the UK has paid off in terms of further and better access to key government departments. There is a clear difference here in terms of the experience of the social policy NAP compared to that of the Employment and Pensions NAPs (see De la Porte and Nanz, 2004). Although there has been pressure to 'roll up' all three NAPs into a single reporting mechanism to the Commission, the social policy NGO sector successfully argued for a separate NAP in the social field; this is in large part founded on the need to retain a distinct social dimension as the third side of the Lisbon triangle, rather than to see social inclusion measures integrated into a broad sweep of economic, specifically labour market, reforms. As a consequence there has been a different experience of the OMC in these fields. There are two clear reasons for these contrasting experiences. Firstly the transnational and domestic commitment to maintaining distinct measures for combating poverty and promoting social inclusion in the framework of the ESM can be seen in the work of network actors, as well as having some advocacy at the level of the institutions, notably through Commissioner Spidla (DGV) and in ECOSOC. Secondly the responsiveness of the relevant government department has also been a key feature. It has been the case that the Department for Work and Pensions (involved in the UK NAPS) has been more open to consultation with lobby network actors than the Department for Trade and Industry (involved in the EES NAP) for example. In this way we may be able to start to identify something closer to the typical policy community model in the social field than has previously been the case in the EU; but one which is enhanced by having harnessed the input of a range of actors normally excluded from direct intervention in the policy process and also one that is more public and transparent than the private negotiations and bargaining than usually occurs in government consultation.

Further evidence that the OMC process has ‘paid off’ in the social field lies in the conclusions of the Spring European Council, 2006. There was criticism from within the Commission, as well as from actors in the broader policy network of the mid-term review of Lisbon in 2005. The mid-term review led by the Kok Report seemed to indicate a clear shift in priorities away from the three equal sides of the triangle, towards labour market reform packages to achieve the goals of the growth and competitiveness agenda. Such a drift in priorities clearly unpicked the previously established consensus on the need for separate action in the social field to tackle poverty and social inclusion on the basis that (a) there is a *ESM* to be defended by such measures and (b) that economic reform could not tackle all social inclusion issues, such as in-work poverty. However, the Spring European Council 2006 shows some indication of at least a partial ‘rowback’ on the position adopted at the mid-term review. Specifically the then Commission President Barroso, in his reflections on the first round of Member State *NAP*SI, noted the weak consultation in some member states and has called for greater stakeholder participation in the future. Taken together then, the initial Lisbon strategy is somewhat back on its original path and the credit for rerouting the EU institutions on this matter must, for the most part, be attributed to the policy deliberations of the network actors in the social policy NGO sector which has had greater impact as a consequence of the establishment of the OMC framework. There are then strengths of, and benefits provided by, the social OMC, suggesting it is a promising process to enhance democracy in the EU. But it is just a promise. Its success is limited. The process has significant failings, to which we now turn.

LIMITS OF THE SOCIAL OMC

The social OMC was preceded by OMCs in the fields of employment and pensions (de la Porte and Nanz, 2004). It is certainly the case that the OMC varies considerably in accordance with the policy area (Tsakatika, 2004, p. 96). It seems lessons have been learnt from these, and improvements made with respect to democracy and legitimacy, but there are still significant failings of the social OMC, with plenty of scope for improvement in the future. According to recent research though, in terms of the European Employment Strategy (EES) and Pensions OMCs, the key elements of deliberative democracy have been enhanced to varying, but limited degrees. For example transparency is still poor (although this has been improved since 2003 with an EES website), but it remains one of the key areas advocated for improvement (Tsakatika, 2004; de Búrca and Zeitlin, 2003). Public debate is still partial and often ignored by the relative national governments. Social participation, although much increased (especially at the level of implementation), is still low in relation to the incentives offered, due to the lack of a formal role for the NGOs and social participants, and calls are made for it to be ‘upgraded’ (Tsakatika, 2004, p. 95; de Búrca and Zeitlin, 2003). It is suggested this would be made easier if the process was made more transparent (Tsakatika, 2004, p. 97). Finally, both processes are being driven by the national governments with the process being centralised and top-down. Despite these factors, those who do participate in both the EES and pensions OMCs have been willing to alter their preferences, including member states, although this feature manifests itself much less when member states see the issue as particularly sensitive (de la Porte and Nanz, 2004). Nevertheless, the social policy

actors have been more successful at harnessing the OMC process and particularly in terms of making the most of the potential to 'feed in' from the broader community in to the national social strategy in the NAPSI, although there is plenty of evidence of the same problems of an elite-led process (specifically in relation to the extent of the 'feeding out' from the national plans to the Commission Joint Report) as experienced in the in the EES and Pensions OMCs.

The impact of the Kok Group 2004 and the mid-term review of the Lisbon strategy 2005 highlighted the fact that the Lisbon strategy can be by-passed by elites as a key constraint for the EU's potential to approximating deliberative democracy. The strategy only suggests the deliberations and resulting opinions of the OMC be 'taken into account', which means democracy is compromised as power is not dispersed and it could lead to NGOs only being symbolically included. The public spheres that are generated through the OMC do not 'emerge spontaneously' from civil society but are created by the EU institutions. This compromises their ability to form inclusive and oppositional networks (Dryzek, 2000, pp. 134-5), as a key requirement of informal public spheres is that they are 'not prior to or independent of decision-making agencies but created and formed in opposition to them- as a vehicle to test the legitimacy of legal provisions and as a counterweight to government power' (Eriksen, 2000, p. 55). We must therefore be sceptical as to whether the NGOs included in the social policy OMC have real ownership of a process established by government to serve government interests.

The OMC was not formalised in the draft constitution and the strategy could consequently be more inclusive (Tsakatika, 2004). There are no specifics about who should be included in the debates within the policy process, meaning many affected are not represented and therefore remain excluded, which severely compromises deliberation and democracy. The problem lies in the absence of incentives for member states to have truly inclusive NAPs, except for morality and peer pressure (Zeitlin, 2005). Currently member states cannot fail in their NAPs, given the lack of specific targets to meet, which points to the need for considerably more stringent requirements of inclusion.

We see the need for inclusion in the NAPs to be removed from the power of national governments who currently exclude from the OMC process the more critical NGOs, and therefore, to a degree, frame deliberation and decision-making in the OMC. This both undermines democracy, as there are those who are affected by the resulting social policy that are excluded, and undermines deliberation as relevant views, information and reasons are not heard. Moreover, the groups excluded from the OMC are those who are currently excluded by other EU, and national government, decision-making processes. In order to avoid this, the OMC processes must be well advertised across a diversity of media so that relevant NGOs are aware of the forums. It will also be necessary for the OMC organisers to identify and contact key stakeholders, and hopefully, with the establishment of networks between NGOs, recruitment will also be aided. A possible solution is to have targets for inclusion in the OMCs and targets not be set by the EU or national governments themselves, but perhaps the only way to ensure the OMC is not determined by the potential bias of the adversarial EU and National government political processes is if participants, in the OMC, are self-selecting (Elstub, 2008).

Bohman also sees weaknesses of the OMC, again indicating that this EU process has not as yet successfully approximated transnational deliberative democracy. Firstly the OMC process is only semi-public as it is dominated by administrative agencies and private policy experts, with insufficient opportunities for citizen participation, who inevitably are in a

hierarchical relationship with the officials. To make the OMC more democratic, and enable more citizen deliberation Bohman suggests integrating minipublics into the OMC process (Bohman, 2007, pp. 87-8). Minipublics are small groups of randomly selected citizens that are 'small enough to be genuinely deliberative and representative enough to be genuinely democratic'. These include citizens' juries, deliberative opinion polls, consensus conferences and planning cells (Goodin, 2008, p. 11). For Bohman this would help compensate for the self-selection inevitable with the participation of NGOs, due to their use of random sampling, and reduce the influence of experts. Bohman also thinks that the internet could play an important role in transnational deliberative decision-making processes like the OMC, which would extend the public sphere and make it more inclusive (Bohman, 2007, p. 89), and the ESS website has helped this but could still be a more deliberative and interactive site. Finally the employment of adjudicative and judicial institutions, which enable rights of appeal, and therefore enhances accountability, but also contribute to the public sphere by encouraging contestation of discourses within civil society, should be included (Bohman, 2007, p. 90).

CONCLUSION

The EU suffers from a significant democratic deficit. As the credence of deliberative democracy continually grows it increasingly represents the criteria which must be met, by a decision-making process, to be considered legitimate. However, due to complexity, deliberative democracy is difficult to achieve in practice, and these features of complexity are even more significant at a transnational level. The social OMC approximates deliberative democracy, to a degree unprecedented at EU level, by generating distributed and dispersed hybrid public spheres that generate opinion forming debates, through which citizens can participate, that have formal links to policy making arenas, and formal public spheres. Consequently, the two essential aspects for the approximation of deliberative democracy are, to a degree at least, achieved. Macro deliberation is generated through the informal discursive public spheres and micro deliberation through the formal decision-making public sphere. The OMC leads to multiple, multilevel, public spheres, which helps to improve access to these debates for subordinate groups. The vital participants in these hybrid public spheres are NGOs which enable plural representation of expert and lay information, which also helps facilitate the approximation of deliberative democracy.

However, this is not to say that the OMC cannot be improved and the norms of deliberative democracy approximated more closely. The argument here is that the Lisbon Strategy points to the type of institutional structures that are needed to institutionalise deliberative democracy at transnational level and help illuminate where the trade-off between theory and practice should be made. There are, however, considerable weaknesses with the OMC process and essential improvements that need to be made, if the promise to approximate deliberative democracy at a transnational level is to be achieved. The extent of the EU's leadership and various national governments' commitment to developing genuine deliberatively democratic policy processes is in doubt as, to date, the OMCs have only been employed in areas where the EU does not have great levels of power. The social OMC itself needs to be adapted to make it more deliberative and more democratic, most notably in terms of power of decision-making and in the inclusiveness of the process, but the generation of

hybrid public spheres is nonetheless an important development in EU democracy and to the plausibility of approximating deliberative democracy at transnational level. This is still a long way from being an approximation of deliberative democracy, but the social OMC provides an important template on which to improve in order to take some further, concrete, steps towards embracing the deliberative model of democracy in a transnational context.

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