

# **Multilevel Deliberative Water Governance within the North American Great Lakes Regime**

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## 1. Introduction

Public policymaking has increasingly been faced two major challenges, which can be observed in particular in the fields of environmental, new technological and security policy. The first challenge relates to phenomenological aspects that characterise the intrinsic conflict potentials of subjects of public policymaking. These conflict potentials are complexity, scientific uncertainty and socio-political ambiguity, which are triggered and amplified by functional and structural interdependencies between human societies and natural, technological, economic, political, social, and cultural systems. The conflict potentials can exceed physical boundaries, disciplinary bonds, territorial statehood, and political spheres of influence. Corresponding effects are pervasive and impacting areas beyond the primary issue area. Policymaking in traditional political institutions is often overstrained to cope adequately with these conflict potentials. The second challenge concerns the shifting patterns of public authority and the transformation of public policymaking from state-centric, interventionist governing to integrative governance and its corresponding institutional change. Policymaking by government has not become obsolete, but it faces alterations, which are the subject of an ongoing debate in political science. This raises challenging research questions how state-driven policymaking is currently being transformed and what kind of transformative effects can be observed and identified. These questions are not yet systematically addressed by generally recognised theoretical conceptions and empirical research. Some scholars ascribe these deficits in social and political science research to the application of methodological nationalism, i.e. the nation state dominates as the central political and social unit and is unquestioned as analytical premise in most instances (Beck 2004; Zürn 2002).<sup>1</sup> A more theoretical-conceptually and empirically based understanding of changes in public policymaking is of essential interest for political science.

This article draws attention to two aspects with regard to the transformation of public policymaking: First, due to the disentanglement of public governance from traditional political institutions, new non-hierarchical and communicative modes and arrangements of governance have been emerged, for which the normative criteria of the traditional political structures and interactions do not seem to be adequate to appraise those new forms. Second, public policymaking is increasingly characterised by a shift from governmentally driven policies and intra- and intergovernmental cooperation to the inclusion of civil-societal and economic actors and new forms of public-private cooperation. The article argues that public deliberation is an adequate, new governance mode which is qualified for handling conflict potentials of complexity, uncertainty and ambiguity in public policymaking and thereby including non-state actors in a horizontal and dialogue-oriented way. For this purpose I pursue an approach that goes beyond the methodological nationalism and lies across different sub-disciplines and controversial theories in political science. The article combines governance theory and deliberative democracy theory<sup>2</sup> against the background of the assumption that a democratic mode of governance

provides a general orientation for good public policymaking (cf. Huntington 1991). In favour of a conceptual perspective that interfaces governance research and public deliberation the following rationales can be argued:

- Public deliberation conceptually overcomes the democratic tension between input, i.e. the participation of citizens, and output, i.e. the product of democratic decision making. Input-oriented quality will not be achieved to the disadvantage of output-quality or vice versa.
- Public deliberation does not rely on a territorially defined polity of a state, it rather constitutes on a functionally defined public space that can exceed national borders.
- Public deliberation disengages from the perspective of state-centrism and pays particular attention to the integration of non-state actors. Within the scope of deliberation public-private networks will be established, which are significantly influenced by non-state actors.
- The conditions of governance across national boundaries do not necessarily feature insurmountable structural restraints for the implementation of public deliberation. There are institutional frameworks in which public deliberation can succeed.

While the implementation of public deliberation has been at least partially realised through public participation procedures of alternative conflict resolution such as mediation, negotiated-rule making, citizen panel or jury, and public advisory council in environmental policymaking, risk and technology assessment and spatial planning in the USA and in Canada (Bingham 1986; Goldberg et al. 1992) and even on the transnational level (Klinke 2006), participatory procedures have been rather rarely and tentatively used in Europe (Weidner 1998). Since the beginning of the 80ies the American Congress has passed several laws to promote the application of alternative resolution procedures. The Administrative Dispute Resolution Act of 1990 is the most innovative approach to put into practice public deliberation because it authorised all federal agencies to apply procedures, which participate affected or interested citizens (Elliot 1998: 61). There is a similar development in Canada observable through the Canadian Environmental Assessment Act, which admits procedures of alternative conflict resolution in environmental policymaking (Sigurdson 1998). The following article draws attention to an empirical case of good practice of public deliberation in environmental policymaking within the Canada-US Great Lakes-regime, from which lessons can be learnt on prerequisites and means how to design institutionally public deliberation in public policymaking in similar cases.

The article is organised as follows. First, I outline the process of transformation of public authority from state-centric policymaking to horizontal modes of governance including non-state actors. Subsequently, I address those phenomenological characteristics of public policy subjects, namely complexity, uncertainty and ambiguity, which trigger conflict potential in

public policymaking. In the next section, I relate the identified conflict potentials to different discourse approaches and explain how the specific rationales of the different discourses foster the resolution of the conflict potentials. In the following section, I develop a normative-analytical model of public deliberation and argue that this approach is most adequate to incorporate the different discourses and to realise a legitimate and effective way of public policymaking. Afterwards, I examine the Great Lakes-regime by means of the categories and criteria of the model of public deliberation. I reveal a multilevel participation and network system of deliberative governance from which lessons can be learnt. The article concludes on prerequisites and means how to design a deliberative governance approach of consecutive public participation forms for public policymaking.

## 2. The Transformation of Public Policymaking and Governance

During the last fifteen years, there has been a dynamic increase of research on governance in political science, in particular in public policy, European integration and international relations, in which different points of view are stressed.<sup>3</sup> The governance research addresses policymaking on the subnational, national, European, international, and global level as well as in multilevel systems. In contrast to the hierarchical enforceability of state-centric policymaking and governing, governance embodies a horizontally organised structure of functional self-regulation encompassing state and non-state actors agreeing on collectively binding decisions and policies without superior authority (Mayer et al. 1993; Wolf 1999). The degree of institutionalisation of the functional self-regulation within and beyond the state as well as the interaction and coordination of different institutions and heterogeneous actors define governance, i.e. the involved actors govern themselves by means of institutionalised arrangements. According to the distinction “governance through government”, “governance with government” and “governance without government” (Czempiel and Rosenau 1992), the spectrum of governance can conceptually be seen as a continuum between mere intra- and intergovernmental cooperation on the one side and the entire civil-societal self-organisation on the other side. The governance research in political science includes an analytical and a normative perspective and can be subdivided into three fields of research (Gehring 2004: 334; Jachtenfuchs 2003; Zürn 2003: 26). The first research field addresses the prerequisites of cooperation through international institutions which are accomplished in the shadow of “anarchy” in the international system. It thus refers to the procedural dimension of politics in governance. The second field of study relates to the substantial dimension of policy, i.e. it deals with the problem solving potential of different forms of institutional cooperation. The discussion on global governance reflects the third field of investigation, in which the symbiosis of different sectoral institutions, the inclusion of non-state actors and new modes of governance aiming at good political order are explored. It accentuates the formal dimension of polity addressing the

criteria of democratic legitimacy and justice. My argumentation for public deliberation in public policymaking mainly addresses the second and third research field of governance.

Traditionally public authority and public policymaking were considered to rest primarily with the government, but this assumption has been challenged by a transformation, which has come under scrutiny theoretically as well as empirically. On the substantial dimension of governance shifting patterns are observable, i.e. the prevalence of public policymaking through state-centric governing has been increasingly displaced by more inclusive and integrated governance involving civil-societal (e.g. science, nongovernmental organisations, epistemic communities, associations) and economic actors (e.g. businesses, industry, transnational and multinational corporations) and the emergence of new forms of public-private cooperation and arrangements. Non-state actors play a growing relevant role and become more importance, since they have decisive advantages of information and resources compared to states (Cutler et al. 1999; Reinicke 1998). Communication, interaction and cooperation between governmental, civil-societal and economic actors are characterised by horizontally and dialogue-oriented patterns. While in the food, chemical and pharmaceutical regulation, for example, governmental institutions are responsible to collect and appraise the data and information required for scientific assessment within the process of public policymaking, industry has been acknowledged the competence and capacity to produce these data and information and even preliminary assessments. The central role of states and the hierarchy between state and non-state actors decrease and public-private cooperation and arrangements emerge to a greater extent. For example, the pharmaceutical company Merck & Co cooperates with the Costa Rica's National Biodiversity Institute on behalf of the government of Costa Rica in order to exploit the genetic resources of the rain forest in Costa Rica. The agreement gives Merck the right to screen the genetic information of plants and animals they collect in the rain forest. Merck did not only commit to sharing any profit with the Government of Costa Rica, it also transfers knowledge to Costa Rica's scientists. So the country can develop own capacities to test plants for genetic and medicinal properties that can be sold to overseas markets.

Governance proceeds in multilevel structures and networks of public and private actors. Governance has been disentangled from traditional political institutions within and beyond the state and has created new forms and arrangements of governance. According to governance research, in which the analytical perspective has evolved from prerequisites of cooperation to problem solving capability, the inclusion of non-state actors and the emergence of public-private cooperation poses challenging research questions. First, the normative criteria of the traditional political structures and interactions do not seem to be adequate for those new forms. Since the structures, interactions and division of functions in public-private arrangements are not yet fully understood, a comprehension of the new patterns and a system of appraisal categories for those need to be elaborated. Second, the increasing authority of economic and civil-societal actors raises questions with regard to their legitimacy and effective-

ness. How can legitimised and effective governance institutions be developed and designed including governmental actors as well as stakeholders representing economic and civil societal interests? The symbiosis of different institutions poses the question how to aggregate institutional arrangements and their outputs for “good” public policymaking in national, European and international governance aiming at democratic legitimacy and effectiveness (Jachtenfuchs 2003).<sup>4</sup>

The governance perspective penetrates the dualism of the hierarchically organised domestic order of the state and the horizontally structured European and international system by accentuating the multilevel and network character. Action of states has been transformed to different territorial levels and relies increasingly on corporative societal actors and public-private cooperation. Therefore a conceptual conjunction of domestic, European and international governance would be instructive. The article pursues an approach that lies across different disciplines in social sciences and controversial theories. An interdisciplinary and integrative perspective of governance addresses a higher level of abstraction and another cognitive interest than the disciplinarily oriented discussions. The combination of so far separated disciplines and their cognitions induces an inclusive perspective (cf. Dogan and Phare 1990).

### 3. Conflict Potentials of Public Policies

The continuous increase of functional interrelations between actions and impacts in the realm of public policymaking entails a plurality of issues, of which specific issues has conflict potentials caused by a high degree of complexity, scientific uncertainty and/or socio-political ambiguity. These characteristics are sometimes immediate and obvious, but more often subtle, latent and lagged. When these characteristics manifest a conflict potential the effects that result can cause a sequence of secondary and tertiary impacts with regard to time and space, i.e. the functional and territorial dimensions of political, social and economic spheres. The cross-border impacts of the conflict potentials exceed the scope of domestic, state-driven public policymaking. To rationalise divergent perceptions of the conflict potential, to harmonise controversial problem understandings, and to find rationally adequate solutions in public policymaking the maximum possible degree of cognitive reliability is essential. For this purpose a distinction and further explanation of the terms complexity, scientific uncertainty and socio-political ambiguity is needed (Klinke and Renn 2002; Renn 1999a). The three characteristics are interlocked to a certain extent and feature some interactions. The following explication thus contains diffuse “grey areas” of fuzziness, which cannot be dissolved theoretically, analytically or empirically.

*Complexity* refers to the difficulty of identifying and measuring links between a multitude of causes and sources and specific adverse impacts. The nature of this difficulty may be traced back to interactive effects such as synergism and antagonisms, long delay periods between

cause and effect, variations regarding different actors and groups, intervening variables, and others. It is precisely these complexities that make sophisticated scientific investigations necessary since the cause-effect relationship is neither obvious nor directly observable. Nonlinear response functions may also result from feedback loops that constitute a complex web of intervening variables. Complexity requires therefore sensitivity to non-linear transitions as well as to scale on different levels. It also needs to take into account a multitude of pathways and the composite effects of other factors and mechanisms that are present in specific situations. Under these conditions, models of scientific assessment (including e.g. hazard identification, exposure characterisation, risk characterisation) are the most appropriate instruments, for example, in environmental, technological and security policymaking to gain a better (but never) complete picture of the relative risks associated with these complex causal chains. In the case of highly non-linear or even chaotic relationships, which cannot be adequately addressed by probabilistic techniques, complexity turns into indeterminacy, which is a component of uncertainty. In this case, the limits of analytical modelling are reached. The same is true, of course, for the component of ignorance, which also describes an element of uncertainty.

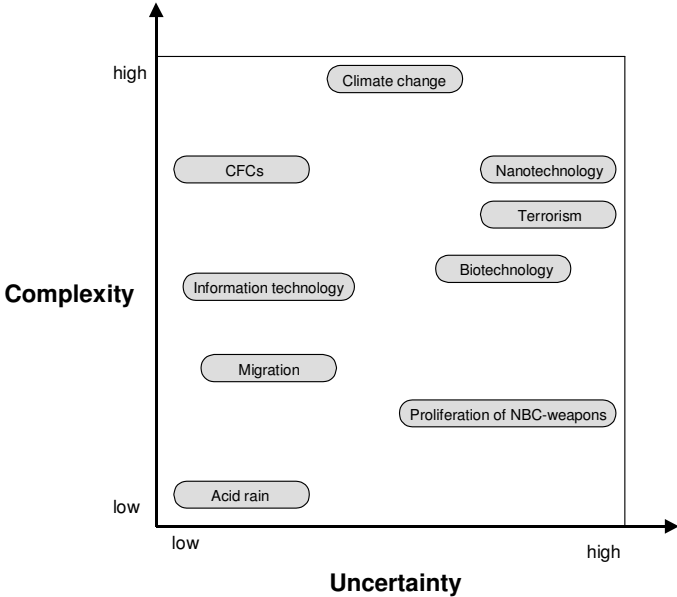
*Uncertainty* is different from complexity. It comprises different and distinct components. These components can be classified as follows (cf. van Asselt 2000):

- *Variability* defines the observed or predicted variation of responses to an identical stimulus among the targets within a relevant group of addressees. In many public policies, safety factors have been used to cover this variability.
- *Systematic and random measurement errors* are the imprecision or imperfection of measurement, problems of drawing inferences from small statistical samples, extrapolations, uncertainties of modelling, including the choice of functional relationships for extrapolating from large to small units. In environmental and technology assessments these are usually expressed through statistical confidence intervals.
- *Indeterminacy* results from a genuine stochastic relationship between cause and effect(s), apparently non-causal or non-cyclical random events, or badly understood non-linear, chaotic relationships.
- *Ignorance* means the absence of data, information and knowledge regarding the prudential definition of system boundaries, the identification of triggering determinants, situation-specific conditions, the exclusion of external influences, measurement impossibilities and others. For example, in the 1950ies politics and societies were unaware of the impacts of chlorofluorocarbons (CFC) upon the stratospheric ozone, which caused the hole in the ozone layer.

These components are often highly correlated. In many instances, however, the four components may produce quite different results. All components have one feature in common, however: uncertainty reduces the strength of confidence in the cause-effect relationship. If com-

plexity cannot be resolved by scientific methods, uncertainty increases. Even simple relationships, however, may be associated with high uncertainty if either the knowledge base is missing or the effect is stochastic by its own nature. Under these circumstances, strategies based on precautionary or resilience management are required. Furthermore, uncertainty of causal connections is often influenced by human behaviour and shifting political structures.

Fig. 1: Complexity-uncertainty matrix showing the positions of various subjects of public policy



The third aspect of the conflict potential is *socio-political ambiguity*. This term denotes the variability of (legitimate) interpretations based on identical observations or data assessments. Scientists from different disciplines and policy makers from different political camps conclude opposed judgements, which leads to controversies and even expert dilemmas in the last resort, i.e. each expertise evokes a counter expertise with converse conclusions such as in the field of genetic engineering in agriculture and food production. But many scientific disputes in the fields of public policymaking do not refer to differences in methodology, measurements or cause-effect relationships, but to the question of what all this means for human health, environmental protection and/or individual or societal security (cf. Harrison and Hoberg 1994: 20-22). Variability of interpretation, however, is not restricted to expert dissent. Laypeople’s perception of risk-related issues often differs from expert judgements because it is also a response to qualitative characteristics such as familiarity, personal or institutional control and trust, assignment of blame, and others. Moreover, in contemporary pluralist societies diversity of perspectives within and between social groups is generally fostered by divergent value preferences, variations in interests and very few, if any universally applicable moral principles, and all the more, if problems are complex and uncertain. Ambiguity may lead to social



mobilisation and conflict. This may be based primarily on conflicting moral perspectives or in the first place on conflicting views of what constitutes a fair distribution of risks and benefits. Again, high complexity and uncertainty favour the emergence of ambiguity, but there are also quite a few simple and almost certain issues that can cause controversy and thus ambiguity.

It is important to note, that the challenges concerning complexity, lack of scientific certainty and socio-political ambiguity can hardly be considered as clearly separated. Instead, the answers to resolve the conflict potentials in public policymaking must be conceived of as being interrelated and supplementary. Accordingly, the following proposed sequential approach of discourses is an attempt to cope with these interrelating challenges through deliberation.

#### 4. An Escalating Sequence of Four Discourse Types for the Handling of Conflict Potentials<sup>5</sup>

Dealing with public policy issues, which are not characterised by the conflict potential described before, requires hardly any changes to traditional policymaking from a phenomenological point of view. The data is provided by statistical analysis, law or statutory requirements determine the general and specific objectives, and the role of public policymaking is to ensure that all necessary remedial actions and measures are implemented and enforced. Traditional cost-benefit analyses including effectiveness and efficiency criteria are the instruments of political choice for finding the right balance between under- and overregulation of public goods. In addition, monitoring the issue area is important as a reinsurance that no unexpected consequences may occur. For this reason, issues which are not associated with a high degree of complexity, uncertainty and/or ambiguity could be handled by an instrumental discourse among departmental and agency staff and enforcement personnel. The aim is to find the most cost-effective method for a desired regulation level. If necessary, stakeholders may be included in the deliberations as they have information and know-how that may provide useful hints for being more efficient.

##### *Epistemological discourse*

Resolving the conflict potential caused by complexity requires deliberation among experts. This sequence is designated as “epistemological discourse”. Within an epistemological discourse experts (not exclusively scientists) of the epistemic community argue over the cognitive basis and the factual assessment of data, information and knowledge. Epistemic communities are scientifically legitimised “networks of professionals with recognised expertise and competence in a particular domain and an authoritative claim to policy-relevant knowledge within that domain or issue-area” (Haas 1992: 3). The objective of such a discourse is the most adequate description or explanation of a phenomenon (for example the question, which environmental, political and/or societal impacts are to be expected by specific actions or events). The more complex, the more multi-disciplinary and the more uncertain a phenome-

non appears to be, the more necessary is a communicative exchange of arguments among experts. The goal is to achieve a homogeneous and consistent definition and explanation of the phenomenon in question as well as a clarification of dissenting views. The discourse produces a profile of the issue in question on selected objective criteria. Second, an epistemological discourse may reveal that there is more uncertainty and ambiguity hidden in the case than the initial appraisers had anticipated. If the discourse includes natural as well as social scientists, future controversial debates may be anticipated. Controversies would occur less as a surprise than now.

### *Reflective discourse*

If public policy issues are associated with high uncertainty, scientific input is only the first step of a more complex evaluation procedure. It is still essential to compile the relevant data and the various arguments for the positions of the different science camps. Procedures such as using the ‘Pedigree Scheme’ by Funtowicz and Ravetz (1990) might be helpful to organise and classify the existing knowledge. In a second step, information about the different types of uncertainties has to be collected and brought into a deliberative arena. Players in this arena are not only scientists, but also directly affected stakeholders and public interest groups (Yosie and Herbst 1998). The objective here is to find the right balance between too little and too much precaution. There is no scientific answer to this question and even economic balancing procedures are of limited value, since the stakes are uncertain. This type of deliberation is denominated as “reflective discourse”. A reflective discourse deals with the clarification of knowledge (similar to the epistemological) and the assessment of trade-offs between the competing extremes of over- and under-protection. Reflective discourses are mainly appropriate as means to decide on risk-averse or risk-prone approaches to actions. This discourse provides answers to the question of how much uncertainty one is willing to accept for some future opportunity. Is taken the risk worth while the potential benefit? The classic question of “how safe is safe enough” is also an integral part of this type of discourse. It might be instructive that policy makers, representatives of major stakeholder groups, and scientists take part in reflective discourses. Political or economic advising committees, who propose or evaluate political options, could also be established to advise this core-group. Special procedures such as negotiated rule-making, mediation and round tables are most appropriate for reaching the desired purpose of reflective discourses (Fiorino 1995). As structuring instruments value-tree analysis and other decision-aiding tools might be used (Renn et al. 1993).

### *Participatory discourse*

The last type of discourse, which is called “participatory discourse”, focuses on resolving socio-political ambiguities and differences about values. Established procedures of legal deci-

sion-making, but also novel procedures, such as citizen advisory panels and citizen juries might be instructive for this category. Participatory discourses are mainly appropriate as means to search for solutions that are compatible with the interests and values of the people affected and to resolve conflicts among them. This discourse involves the subjective weighting of evaluation criteria and an interpretation of the results. Issues of fairness and environmental justice, visions on future technological developments and societal change and preferences about desirable lifestyles and community life play a major role in these debates (Webler 1999). On regional and local levels citizen panels or juries (randomly selected), and voluntary public advisory committees might be appropriate participative procedures. On the national level the Danish model of consensus conferences and other participatory techniques in order to resolve ambiguities and norm and value conflicts might be appropriate procedures (cf. Schneider at al. 1998). On the transnational level a three-step procedure consisting of mediations and citizen panels might be adequate for public participation across borders (cf. Renn and Klinke 2001).

Fig. 2: An escalating sequence of four types of discourse

			<i>Tradeoff Analysis Necessary</i> Balancing Necessary Scientific Assessment Necessary
		<i>Balancing Necessary</i> Scientific Assessment Necessary	<b>Conflict Potential:</b> Cognitive Evaluative Normative
	<i>Scientific Assessment Necessary</i>	<b>Conflict Potential:</b> Cognitive Evaluative	
<i>Routine operation</i>	<b>Actors:</b> Policy Makers External Experts	<b>Actors:</b> Policy Makers External Experts Economic Stakeholders Directly Affected Groups	<b>Actors:</b> Policy Makers External Experts Economic Stakeholders Directly Affected Groups Representatives of the Public
<b>Actors:</b> Policy Makers	<b>Actors:</b> Policy Makers External Experts	<b>Actors:</b> Policy Makers External Experts Economic Stakeholders Directly Affected Groups	
<b>Discourse:</b> Internal	<b>Discourse:</b> Epistemological	<b>Discourse:</b> Reflective	<b>Discourse:</b> Participatory
<b>Simple</b>	<b>Complex</b>	<b>Uncertain</b>	<b>Ambiguous</b>

## 5. Public Deliberation as Model for Public Policymaking

The idea of public deliberation, which will be conceptualised in this chapter as a normative as well as practically adaptive “pragmatic” model, combines procedural claims derived from the ideal proceduralism (Habermas 1996; Cohen 1997) and epistemological claims deduced from epistemic proceduralism (Estlund 1997; Schmalz-Bruns 1995, 1999). Habermas and Cohen define political legitimacy in relation to an ideal consensus (Bohman and Rehg 1997: xv).

While Habermas refers to discursive rationality based on the theory of action that communicative action effectuates an entire consensus in an ideal speech situation, Cohen relies on procedural rationality that “outcomes are democratically legitimate if and only if they could be the object of a free and reasoned agreement among equals” (Cohen 1997: 73). Estlund’s and Schmalz-Bruns’ epistemic proceduralism draws upon the argument that the rationality of the political decision directly relates to the epistemic quality of the deliberative procedure. The public and argumentative character of the democratic procedure is crucial, i.e. only mutually acknowledged and universally valid reasons can attain acceptability.

The pragmatic model accentuates the connectivity to social and institutional prerequisites, i.e. “the success of a deliberative form of democracy depends on creating social conditions and institutional arrangements that foster the public use of reason” (Bohman 2001: 43).<sup>6</sup> The pragmatic approach is based on a dynamic interrelation between procedural fairness and cognitive truth without overstraining the expectations with respect to discursive and procedural rationality and its rationalising effect. Thereby it will be expected that science primarily fulfils the epistemic claim of cognitive reliability to acquire trueness and rightness. Accordingly, public deliberation can be understood as a horizontal, dialogue-oriented process, in which the participants search for an effective output. Such a process is characterised by argumentative procedures, which are accessible for citizens, and in which the use of public reason leads to rationally acceptable and common good oriented problem solving. Such a model of public deliberation, for which three dimensions will be unfolded in the following (cf. Klinke 2006), incorporates the procedural realisation of an epistemological discourse to resolve complexity, a reflective discourse to dissolve scientific uncertainty, and a participatory discourse to account for clearness and a trade-off in ambiguous cases of social and political controversies.

#### *Input-Legitimacy: Equal Opportunity of Access to Political Influence*

The input-dimension refers to the legitimacy derived from the institutionalised equal opportunity of access to political influence for civil-societal and economic actors in public policy-making (cf.: Bohman 1999; Knight and Johnson 1997). This criterion has two dimensions: The procedural dimension raises issues and questions of inclusion and exclusion, gatekeeper-function, representativeness of interests, and forms of direct participation for affected or interested people such as in alternative dispute resolution (cf. Holzinger 2001). Which non-state actors will be selected for participation, and how? Who does play the role of the gatekeeper? Who concedes whom, when and on which political-institutional level access to political influence? When have non-state actors the opportunity to participate directly, when will their interests be represented? Which participatory procedure or combination of different procedures is best adequate? The different forms of citizen participation such as public hearing, consensus conference, mediation, round table, public advisory council, citizen panel or jury, negotiated rule making etc. have their advantages, but all also have disadvantages (cf. Renn et al.

1995). There is no single procedure which fulfils all normative requirements of public deliberation with regard to inclusion, fair representation, dialogue-oriented exchange of arguments, rational argumentation, and problem solving capability. The combination of different participation forms makes possible to compensate the deficits of single procedures and to aggregate their strengths.<sup>7</sup>

The substantial dimension of the input-oriented criterion refers to the effective influence in public policymaking, i.e. the deliberative influence goes beyond mere voting. Influence means something like the effective use of free public reason (Bohman 1999). Deliberative governance is not only based upon the structural character of argumentative-oriented procedures that virtually imposes the participating actors to bring forward publicly justifiable reasons for their interests and concerns, but it also relates to the individual capability, willingness and reliance of the participants to the use of public reason. The use of public reason demands from the participating actors to translate their claims into mutually justifiable language and to distinguish between what they find good and what can reciprocally and generally be argued for (Forst 2001: 362). Moreover, it is the epistemic capability to distinguish good and convincing from bad and unpersuasive reasons (Bohman 1997: 337).

The extent of the input-dimension is conceptualised as a continuum. The variability on this continuum refers on the one side to the ideal of the entire inclusion of “all” actors affected by policymaking. Facing the political reality the approximation of the ideal that “all” should be entitled to participate in public policymaking becomes implausible as soon as the appropriate definition of what we mean by “all” is called into question (Offe and Preuss 1991: 418). The success of the pragmatic approach of deliberative public policymaking does not depend on making every decision the product of deliberation by every citizen (Bohman 1998: 418). Nevertheless, from a theoretical-conceptual perspective the continuum includes this ideal in order to cover new and innovative forms, which enhance inclusion and chances of direct participation. On the other side of the continuum, we find the indirect representation of civil societal and economic interests through representatives of stakeholders. In between is an institutionalised structure of a participatory process, which offers affected and interested citizens the fair opportunity to participate in argumentative-oriented procedures.

Due to the lacking of possibilities of public participation in policymaking on the European and international level the involvement of nongovernmental organisations become more important. Those nongovernmental organisations, which are independent, non-profit actors and which orient their actions on the common good, are often considered as legitimate representatives of civil society and public interests (Take 2002). While nongovernmental organisations primarily exert political influence in the processes of rule generation and implementation, they only play a subordinated role in the most of the actual political decision making processes.

To cope with issues associated with high complexity, scientific uncertainty and socio-political ambiguity, a maximum of cognitive reliability is needed. While governmental policy makers as well as citizens are overstrained, scientific expertise has the potential to provide the necessary cognitive reliability. The systematic integration of independent scientists and representatives of the epistemic community facilitates the development of a common knowledge and information base, which allows rationalising divergent problem perceptions, to harmonise contradictory problem understandings and to find rationally acceptable problem solving. It is the input of valid, causal knowledge for the formation of a collectively acceptable, cognitive basis, which makes more likely to agree on a common problem definition, a reasonable problem evaluation and a rationally adequate and common good oriented public policy. The scientific expert knowledge becomes a public resource that may be democratically shared and publicly verified through reflection (Bohman 1999). Structurally and functionally, deliberative public policymaking is based on a cognitive division of labour between lay people and experts. From an institutional perspective the involvement of independent scientific expertise should be organised preliminary, parallel and downstream to the policymaking process.

#### *Throughput-Proceduralism: Horizontal and Dialogue-Oriented Political Style*

The throughput-dimension of public deliberation corresponds to a horizontal and dialogue-oriented political style, which defines the non-hierarchical, cooperative interaction, relationship and approach to problem solving between state and non-state actors in the public policymaking process. Such a horizontal, dialogue mode can be realised through argumentative-oriented procedures, which foster the public use of reason. The variability of the throughput-oriented criterion is framed on a continuum based on the theory of action. While on the one side of this continuum the action mode of moderate strategic action is still acceptable, on the other side Habermas' ideal of communicative action (1984) is situated. The toleration of moderate strategic action in processes of public deliberation presupposes that the face-to-face communication is still based on arguing instead of bargaining and the participants are at least willing to pursue concessions and compromises to the benefit of everyone. For the development of Habermas' communicative action an ideal speech situation is needed, in which there is no power asymmetries, speakers only try to convince others by the power of the rational arguments, and all actors are willing to change their cognitive, normative and value-related preferences. Such an ideal situation is not realistic and nearly unachievable, but it theoretically points the way toward deliberative democracy. In between we find the mode of argumentative action (Zangl and Zürn 1996), which is less ambitious with regard to discursive and procedural rationality compared to communicative action. The aim of argumentative procedures is the generation of collective preferences on the cognitive level with respect to common problem definition, evaluation of consequences, and factual adequacy and common good orientation of the products of public policymaking. A preference formation on normative and

value-related levels regarding principal beliefs, worldviews and collective identities through communicative action might be possible, but will not necessarily be expected.

#### *Output-Effectiveness: Adequate and Common Good-Oriented Problem Solving*

The output-effectiveness relates to the question how to achieve a public policy that is acknowledged by the affected people as effective. Effectiveness, which emanates from the argumentative procedures, means the discursive capability making “good” and “right” decisions. Since this capability is more than the lowest common denominator of preferences, there are two aspects, which the affected people and the addressees of the policies can approve as epistemic quality of the problem solving. First, the developed public policy should be the substantially adequate reaction to improve the situation and to cope with the conflict potentials. Second, the selected strategies, regulative actions and measures within the public policy have to take into account the common good of the affected people in the issue area and must not promote particular interests. Therewith a public policy will be accepted as common good oriented, it needs a reflexive formation of a public conception of the common good (cf. Cohen 1989). Here, the question of inclusion or exclusion once again arises, whose public good ought to be taken into account and what, substantively spoken, is the public good (Dahl 1989: 306). The reference system of the public good gains validity, accountability and credibility, if the relevant framework of action will be politically, socially and/or territorially specified. Since the substantial dimension of the common good can cover prosperity, full employment, education, health, internal and international peace, social, military and civil security, sustainable use of natural resources, and sustainable growth, it is neither a hierarchy nor a charging for these units possible (Offe 2001: 482). But it is possible to resort to the category of justice, even if it is a relational term and has to be defined as, for example, compensatory, distributional, intergenerational, or procedural justice. Accordingly, output-effectiveness does not rely on an independent standard that is objectively measurable; it rather embodies the result of cognitive reflection and interpretation of the participants in argumentative procedures.

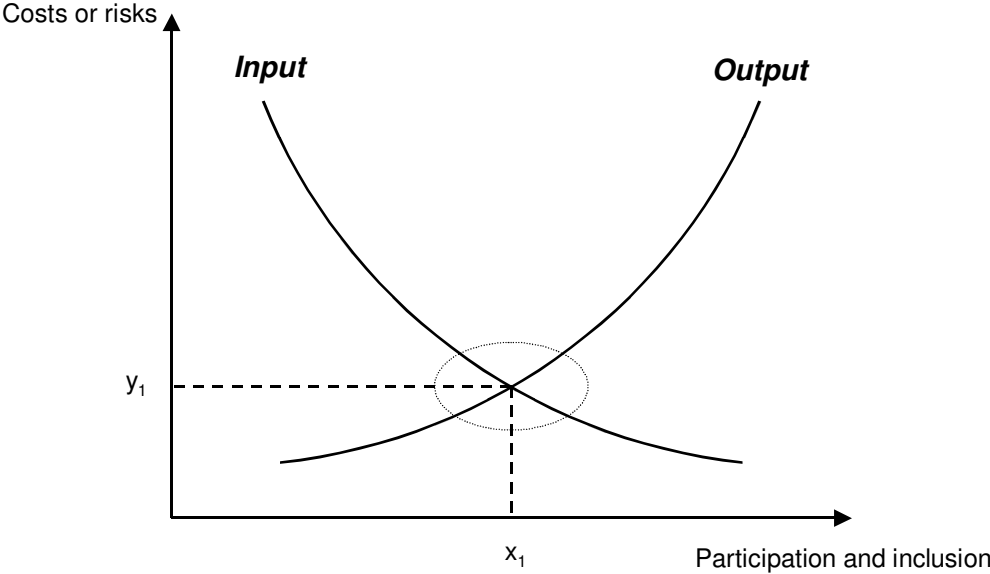
#### *Equilibrium between Input and Output*

The implementation of public deliberation in public policymaking is faced with the challenge to ensure high quality of input-legitimacy and output-effectiveness. But there is a tension between the input-dimension, i.e. the direct participation of actors, and the output-dimension, i.e. the result or product of policymaking. The more actors participate, the more the epistemic quality is at stake, i.e. the capability to achieve “good” and “right” public policies. The quantitative and qualitative enhancement of inclusion raises questions such as: Who is an affected actor? Who is a relevant stakeholder? Which interests should be represented? Who does play the role of the gatekeeper? In most cases governmental actors determine whom they concede

access to political influence. The empirical research on procedures of alternative dispute resolution indicates that argumentative-oriented procedures are effective when the number of participants is limited and when they take place behind closed doors, which would violate democratic principles such as publicity and transparency. Furthermore, there is a lack of mechanisms and procedures to aggregate and integrate the results of participatory procedures taking place on different political-institutional levels.

Fig. 3: Equilibrium between input and output

Source: Klinke (2006)



The simultaneous maximisation of input-oriented legitimacy and output-oriented effectiveness is impossible. From normative and empirical models we know that the increase on the input-side will be achieved to the disadvantage of the output-side. By the same token the enhancement of the output-quality will mostly be achieved at the expense of the input-quality. Therefore, a trade-off between the input and output-dimension is needed. Theoretically, decision-making moves between the decision making through one single actor, which is undemocratic, and the inclusion of “all” affected people, which is unrealistic. The increasing number of participating actors raises the costs and risks of effective decision-making and aggregation. Vice versa: The costs and risks of decision making decline, if the number of participating actors decreases. The challenge is to find a pareto-optimal balance between input and output depending on the respective situation.



## 6. The Practice of Public Deliberation in Environmental Policymaking within the North American Great Lakes-Regime

Within the Great Lakes-regime of the United States and Canada, public deliberation across national borders has been realised for more than two decades, from which lessons can be learnt for public policymaking in sectoral governance. In this section I reveal that the practice of environmental policymaking within the Great Lakes-regime fulfils the normative claims of public deliberation on the input-, throughput- and output-dimension.<sup>8</sup> A transnational network and multilevel participatory governance system has been evolved, whose legal fundament is based upon the contractual framework of the Boundary Waters Treaty (IJC 1909), the Water Quality Agreement (IJC 1989) and the Air Quality Agreement (IJC 1991). The parties have agreed to refer their common environmental policymaking to democratic principles such as cooperation, publicity, public participation, transparency, accountability, and dialogic conflict resolution with regard to the Great Lakes and other transboundary water bodies. These accords also provide the constitutive preconditions for the establishment of a transnational, competent and independent policymaking and advisory system, in which the International Joint Commission (IJC) is the crucial decision making body. There are four major advisory boards, the Water Quality Board, the Science Advisory Board, the Council of Great Lakes Research Managers, and the International Air Quality Advisory Board, which are the principal political and scientific advisor to the IJC with regard to the exercise of all functions, powers and responsibilities assigned to the IJC under the Water Quality Agreement (cf. IJC 1989: Annex 17). In addition, further fourteen boards are responsible for observation, monitoring, inspection, and control of the environmental quality in specific water bodies. All advisory boards are supported by task forces, subcommittees and working groups in order to compile and to ascertain the necessary data and information for scientific assessments. Beside their scientific, technical, juridical, and political-administrative competences, the four major advisory boards are in charge to organise, moderate and aggregate different participatory procedures with the public and external experts with respect to issues and questions of environmental policymaking. The boards compile a regular report including the scientific and public input from a two years working cycle, on which the IJC's biennial report for the two governments is based. The IJC biennial report reflects the scientific assessments regarding the current state of the environment and a rational analysis of the public arguments, interests and preferences, it summarises progress and shortcomings with regard to the implementation of the agreements, and it sets priorities by recommending policy options.

Three procedural types of public participation across the national boundaries are implemented (Klinke 2006): declamatory, discursive and consultative-intermediatory procedures. Declamatory procedures are public hearings, at which all affected or interested persons are entitled to be heard and all issues and questions can be raised, but only minor quality of dialogue is realised. An argumentative exchange in the deliberative sense of the "give and take of reasons"

(Bohman 1996: 32), which would lead to a rational analysis of arguments, is practically not possible. The public hearings are organised on the bi-national level always at the end of a two years working cycle. They are embedded in a series of workshops and meetings, in which specific issues are discussed and a rational analysis of arguments takes place. Despite the deficiencies with regard to exchange of arguments, the affected and interested people perceive the public hearings as one of the cornerstones in the public participation process. The considerable response of regular 400-500 attendees underscores the central role of the hearings in the multilevel participatory governance system. Public hearings will also be held whenever such action would be helpful to the IJC in complying with terms of reference. According to the Boundary Waters Treaty the IJC has to fulfil an investigative function, if one of the governments request that by means of a reference (IJC 1989). Since 1995 the Commission made three such examinations including public hearings.

Discursive procedures are problem-oriented meetings, workshops, round tables, focus groups, and consultations on specific issues and questions during the two years working cycle, in which affected and interested citizens, representatives of stakeholders and external experts participate. These procedures are characterised by dialogue and exchange of arguments and a rational analyse of reasoning in reference to public acceptability. The communication indicates arguing, mutual understanding and learning processes. The overall objective is to achieve a collective preference formation on the cognitive level with respect to problem definition, evaluation of consequences of action, and factually adequate and public good oriented problem solving. Discursive procedures are the most frequently and most widespread used form of public participation, which take place in different cities in the Great Lakes basin on both sides of the border. US citizens can thereby participate in procedures on Canadian territory and vice versa. Within a two years working cycle more than 30 are organised on average. The discussed subjects vary from environmental and health issues over ecological indicators to normative questions regarding the revision of the Water Quality Agreement.

On the regional level of the Lakes and the local level of 43 so-called “Areas of Concern” consultative-intermediatory procedures in form of permanent public advisory bodies have been established which represent environmental, tribal, industrial, business, health, and academic interests. For three of the five lakes bi-national public forums were constituted in order to develop and implement “Lakewide Management Plans” in cooperation with regional and sub-national governments of the U.S. federal states and the Canadian provinces. The national governments determined “Areas of Concern” on the local level because they contain contaminated sediment, wastewater, pollution, or degraded habitats to greater degree than the rest of the Great Lakes. In 41 “Areas of Concern” public advisory councils has been formed to generate and realise “Remedial Action Plans” in cooperation with the local governments. Public advisory councils are the conciliating link between the public and the policy makers in the local governments. The regional and local governments in cooperation with the respective

public advisory body develop and implement “Lakewide Management Plans” and “Remedial Action Plans”, which pursue long-term management strategies and measures to restore and maintain the integrity of the fresh water resources and the environment.

Recapitulating the practice of public participation, the institutionalisation of advisory boards and the involvement of the epistemic community in the policymaking process, a remarkably high quality of normative claims of public deliberation has been realised. The cornerstone is the contractual framework, in which democratic principles such as cooperation, publicity, public participation, transparency, and dialogic conflict settlement reflect the agreement of the USA and Canada on shared normative beliefs to protect and restore the integrity of the environment. The deliberative arenas of the political and public opinion and will formation are based on this common understanding. The principles are conceptually realised through a network and multilevel participation system. The IJC and its advisory boards form a stable and enduring institutional governance arrangement with responsible and accountable decision makers that strengthened and consolidated the role and influence of the public and the epistemic community in public policymaking. The different procedural types of public participation institutionalised in the multilevel system have both merits and disadvantages. On this account it is not a single participatory form, but the functional and structural combination of different procedures that fulfils the requirements of the three-dimensional model of public deliberation with respect to equal access to political influence, argumentative action and effective policymaking. In other words, an integrative form of deliberative governance in environmental policymaking has been established, which integrates an epistemic discourse to resolve complexity, a reflective discourse to dissolve scientific uncertainty and a participatory discourse to account for mutual understanding and common clearness.

## 7. Conclusions

The Great Lakes-regime represents an extraordinary, exemplary case of transnational public deliberation in environmental policymaking whose analysis allows drawing conclusions and implications on prerequisites and means how to design a deliberative approach of public policymaking. The institutionalisation of deliberative governance for public policymaking depends on shared normative beliefs with respect to democratic claims such as cooperation, participation, publicity, transparency, mediation of interests, and dialogue-oriented conflict resolution. The more these democratic principles are translated into general and specific norms, rules and decision making procedures, the more likely is the success of public deliberation. The arrangement of deliberative arenas with argumentative-oriented procedures as platforms, on which the public can canalise its opinion and will formation and exert political influence on processes of public policymaking, is a cornerstone of public deliberation. The hierarchy between state and non-state actors can be dismantled; it evolves a horizontal, dialogue and problem solving oriented form of communication and interaction between governmental,

civil-societal and economic actors. It would be the task of public authorities to organise such deliberative arenas. For this purpose an institutional multilevel structure consisting of an independent decision-making body and an advising “comitology” system, which is publicly accepted, might be instructive. Such an institutionalised system would have the formal authority and necessary resources to organise, moderate and coordinate different argumentative procedures on different political-institutional levels and to aggregate the outcomes of the public opinion and will formation processes. Against the background of the empirical findings in the Great Lakes-regime and the theoretical-conceptual considerations I would like to propose a participatory approach structured in three consecutive elements, which emphasises the strengths of the Great Lakes and tries to avoid its shortcomings (Klinke 2006).

- In *public, dialogue-oriented hearings* at the beginning of a working cycle “all” affected people would have access and are entitled to be heard in order to frame issues, to set an agenda and to determine topics and priorities for the public participation in the forthcoming working cycle. First, representatives of the decision making body and the advisory committees as well as participants from the public would have the chance to declaim those issues and questions, which are relevant from their perspectives. In a discussion the participants would then filter out those aspects, which are of collective interest and should be treated in argumentative procedures.
- In *discursive procedures* specific problem-oriented, cognitive and/or normative issues, which were selected in the public hearings, will be discussed and clarified. On the basis of systematic expert and lay knowledge the participants develop a common problem definition, evaluate consequences of action and elaborate problem solving options. For this purpose the transnational advisory boards compile a catalogue of respective questions. In a first segment of the discursive procedure recognised experts from different areas would answer these questions to provide an acceptable cognitive basis. In a second segment representatives of stakeholders would bring forward their opinions and views and justify them with publicly acceptable reasons. In the third and last segment experts, stakeholder representatives and the public in the plenum would discuss the reasons and suggestions in the answers in order to find out the scope of consensus or dissent.
- In a linkage of *public advisory bodies* and *citizen panels* affected people on a regional and local level would develop tangible problem solving concepts in the rule implementation process. The results from the discursive procedures, which take place in an overall context, would be transferred to decentralised units. The objective is to tailor and to implement the proposed problem solving options from the discursive procedures to the regional and local prerequisites and means. The public advisory bodies are the link between the local governments and the affected population. In cooperation with local authorities they organise citizen panels for a specific period in order to work out concrete coping mechanisms and measures.

Within the multilevel participation system the different deliberative arenas with the different participatory procedures are loosely coupled, i.e. the opinion and will formation in a deliberative arena may not produce a mandatory decision for other deliberative arenas (cf. Benz 1998: 215). Thus, the important function of aggregation of public input and the political decision making remain in the hands of a transnational decision making body and advisory boards. The political influence of the public is based on the convincing power of reasons and proposals. The reasoning through publicly acceptable common good rationality is the political influence that motivates political bodies to consider the proposed problem solving. For the success of public policymaking through public deliberation it is important, that the decision-making and advisory bodies take into account and condense unadulterated and reliably the public input. Thereby they can (re)gain credibility and trustworthiness.

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## Notes

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- <sup>1</sup> The Collaborative Research Center 597 at the Universities of Bremen, which is promoted by the German Research Foundation, examines “The Transformations of the State” in 15 subprojects. See the website <http://www.sfb597.uni-bremen.de/>.
- <sup>2</sup> Cf. for example de la Porte and Nanz (2004), Eriksen and Fossum (2000), Joerges and Neyer (1997), Klinke (2005), Neyer (2003), Schmalz-Bruns (1999), and Teague (2001).
- <sup>3</sup> For the different perspectives on European and international governance see for example Grande and Jachtenfuchs (2000); Héritier (2002), Kennedy et al. (2002); Kohler-Koch and Eising (1999), Sinclair (2004), Wilkinson and Hughes (2002), and Zürn and Joerges (2004).
- <sup>4</sup> The EU formulated an idea of good governance in its White Paper (Commission 2001).
- <sup>5</sup> Regarding the classification of discourse types see also Klinke and Renn (2002) and Renn (1999b).
- <sup>6</sup> For pragmatically oriented approaches to deliberative democracy cf. e.g. Bohman (1996, 1998), Christiano (1996, 1997) and Knight and Johnson (1994, 1997).
- <sup>7</sup> See, for example, the three-step procedure participating stakeholders, experts and citizens in a successive course (Renn et al. 1993).
- <sup>8</sup> The data and information regarding the empirical case study result from the literature and document analysis, the discourse and speech act analysis, and interviews with representatives of the bilateral commission (IJC), the bilateral advisory boards, NGOs, and citizens within the scope of my doctoral thesis at the Darmstadt University of Technology (Germany). See Klinke (2006).