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The Legal Institutionalisation of Public Deliberation and the Embeddedness in the Democratic System: The Italian Case

Stefania Ravazzi

Department of Culture, Politics and Society, University of Torino, Italy

Correspondence: Stefania Ravazzi (stefania.ravazzi@unito.it)

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Abstract

Over the last few decades, the setting up of deliberative processes has gained prominence in many democratic countries. These processes, which can be considered as small parentheses in longer and complex policy-making processes, are designed and managed so that citizens can discuss and confront a plurality of viewpoints and arguments together with politicians, public officials, experts, and stakeholders, and can then convey reasoned recommendations to improve the design and implementation of public policies. Research on deliberative democracy has dealt with several issues pertaining to the quality, legitimacy, effectiveness, and sustainability of these democratic innovations. One of the issues that has attracted the attention of scholars concerns the legal institutionalisation of these practices, a recent and controversial phenomenon, which could strengthen or weaken the embeddedness of public deliberation in democratic systems. This article is aimed at addressing the issue of whether legal institutionalisation helps to embed public deliberation in democratic systems. It presents the findings of an empirical analysis of Italian deliberative processes, where a legislative framework made so-called "public debates" compulsory throughout the national territory between 2021 and 2023. Thereafter, in 2023, a new reform was introduced that substantially dismantled the policy. The short parabola of Italian public debates on major public works offers an opportunity to analyse the short-term effects of legal institutionalisation. The empirical findings of this case study suggest that the legal institutionalisation of public deliberation involves several trade-offs in the short term, so that embeddedness may be strengthened and weakened at the same time.

Keywords

deliberation; institutionalisation; mini-publics; participation; public debates

1. Introduction

The scholarly debate on public deliberation has evolved over the years towards the concept of a deliberative system (Landwehr & Schäfer, 2025; Mansbridge et al., 2012; Parkinson & Mansbridge, 2012). Within this framework, one of the most debated issues today is the *legal institutionalisation* of public deliberation (Bherer et al., 2021; Courant, 2022). Interest in this phenomenon is also growing because several experts, professionals, and representatives of civil society organizations have begun to advocate for it as a response to the crisis of representative democracy (Abels et al., 2022; Chvalisz, 2021). This recent movement towards the legal institutionalisation of deliberative practices stems from the belief that the *embeddedness* of public deliberation in contemporary democracies, i.e., the capacity to "sit in a productive relation to the other institutions of the deliberative system" (Bussu et al., 2022, p. 137), also requires the codification of formal rules aimed at encouraging or imposing the implementation of deliberative processes to support public decisions. However, institutionalisation can fail in this endeavour and can even work against it (Bussu et al., 2022; Courant, 2021; Dean et al., 2020; Johnson, 2015).

This article aims to contribute to this debate by discussing the findings of an empirical research on the legal institutionalisation of Italian public debates on major public works. The Italian government institutionalised public debates through a new legal framework that was implemented between 2021 and 2024. The research has been conducted to address the following main research question: Did this legal institutionalisation help to embed public deliberation in the national and local infrastructure and transport policy-making systems? It is possible to state that no case of legal institutionalisation is currently truly comparable with any other one, given the variety of combinations of regulatory, constitutive, and incentive components of the existing regulatory frameworks. The Italian case is unique when compared to such contexts as Denmark, Belgium, Ireland, and Australia. However, the legal institutionalisation of public deliberation has often resulted from policy transfer processes from one context to another. Participatory budgeting was first trialled in Porto Alegre and then inspired hundreds of other cities and regions in South America and around the world; the French law on *débats publics* was inspired by the Canadian law on *audiences publiques*; some Spanish regional laws were inspired by the Italian regional legislation of Tuscany; and the Italian law itself was clearly influenced by the French law and the previous institutionalisation experience in Tuscany (Bherer et al., 2021; Dias, 2014; Font et al., 2014;). Consequently, analysing the Italian case can be useful to give insights for future attempts to institutionalize public deliberation. Moreover, Italy is currently the only example of short-duration legal institutionalisation and can therefore be useful to reflect on the short-term effects that would be difficult to detect in other contexts characterised by a more consolidated legal framework.

The analysis has been conducted by combining a three-year-long ethnographic research (Curato & Doerr, 2022; Escobar, 2017) during the implementation of the law with semi-structured interviews with public debate coordinators and the chief planners of construction companies immediately after the dismantling of the legal framework.

This article begins with a theoretical background on the concept of institutionalisation and goes on to explore the current debate regarding the implications of the legal institutionalisation and its relationship with the concept of embeddedness. The second section presents the research design and methodology, while Section 3 describes the legal institutionalisation that was in force in Italy from 2021 to 2024. The subsequent two sections present the main research findings, which are summarised in the concluding section.

2. Institutionalising Public Deliberation: An Open Debate

Institutionalisation is generally understood as a social process in which certain principles of conduct are internalised and socialised. This process gives meaning to actions and helps define objectives and methods (Bell, 1973; Eisenstadt, 1964; Parsons, 1990). It involves the cultural assimilation of values and social norms, which occurs through learning and requires time to develop fully. However, Weber (1922) used the term to refer to the authoritative establishment of principles or types of behaviour through the introduction of norms or the creation of public organisations aimed at promoting and protecting these principles and behaviour. Since then, the term has also been used in this sense. The expression "institutionalisation of public deliberation" has recently been used by most deliberation scholars to refer to its legal meaning, i.e., the adoption of laws that introduce specific rights for public participation and deliberation and/or that incentivise/obligate the realisation of participatory-deliberative processes to integrate policy making. Deliberative processes are usually "one-off and *ad hoc*" (Bussu et al., 2022, p. 137; Ravazzi, 2023), but their legal institutionalisation has become central in the scientific debate, and the few real legal frameworks on deliberative democracy (Abizadeh, 2020; Bächtiger & Goldberg, 2020; Chvalisz, 2021) have become a controversial piece.

In this context, Denmark was the first country to institutionalise public deliberation in policy making (in 1986 with the Danish Board of Technology), followed by France (in 1995 with the Barnier law on Débats Publics) (Fourniau, 2011; Revel et al., 2007) and finally by Australia, Belgium, and Austria (Chvalisz, 2021; Niessen & Reuchamps, 2019). Italy introduced a normative framework for public debates on major public works in 2016 in the wake of the French experience, but the real implementation of public debates started in 2021 (Citroni, 2024).

According to some scholars, legal institutionalisation promotes cultural institutionalisation through the so-called embedding process (Abizadeh, 2020; Allegretti et al., 2021; Bächtiger & Goldberg, 2020; Bherer et al., 2021; Buchstein, 2010; Courant, 2022; Escobar, 2017; Fagotto & Fung, 2014; Gastil & Wright, 2019). *Embeddedness* develops when deliberative processes are regularly repeated over time (*temporal embeddedness*), encompass—i.e., span several policy issues and connect them to broader civil society (*spatial embeddedness*)—envisage different possible forms (*practice embeddedness*), and manage to affect policies (*policy effectiveness*). Regularity or frequency should improve the alignment between the logic of policy makers and the needs of civil society; the application of public deliberation to different issues should favour the anchoring of deliberation in the community; and the heterogeneity of the designs should help to adapt public deliberation to different contexts and issues (Bussu et al., 2022). From a critical perspective, other scholars have warned about the risks of legal institutionalisation: "sterilisation," i.e., a tendency to plan and realise such practices in order to merely fulfil normative dictates (Lewanski, 2013, p. 14), and routinisation (Smith, 2018). Sterilisation can have two main consequences: first, it can lead to a loss of sight of the purpose that deliberative processes are supposed to serve; and, second, it can weaken the tailored approach that should allow deliberative processes to be designed and implemented specifically according to the characteristics of the context and the issue under discussion (Davidson & Stark, 2011). Routinising deliberative processes in policy making can generate standardisation of the processes and weaken that "rational disorganisation" effect that they usually exert on political and administrative systems, which usually helps to boost creativity and innovation (Dzur, 2012, 306). These risks can weaken both temporal and practice embeddedness by somehow depriving public deliberation of its innovative and generative nature.

The following sections will show that, at least in the short term, the legal institutionalization of public deliberation can both reinforce and undermine its embeddedness in a democratic system.

3. Research Design and Methodology

The Italian case of legal institutionalisation was characterised by certain distinctive features. First, it was a regulatory policy that introduced the *obligation* of carrying out deliberative processes during the planning of major works and the obligation of construction companies to present a new project at the end of the public debate, in which they gave a detailed justification of the final design choices and reasoned responses to citizens' criticisms and suggestions (Citroni, 2024). Therefore, in terms of empowerment, the Italian case differed, for example, from the Belgian one, which provides for a permanent citizen council that is responsible for organising three citizen panels each year on relevant issues, but which does not oblige any public institution to take on board the recommendations made by the panels (Chvalisz, 2021). Second, the National Commission created by Italian law had no direct power to initiate or set up deliberative processes at the local level, and it only had the power to monitor and report to parliament. From the autonomy perspective, the Italian case differed from the French one in that the independent Italian authority has less control and capacity to intervene (Revel et al., 2007).

Overall, looking at the cases of legal institutionalisation mapped out in Chvalisz (2021), they could be placed along a continuum that goes from the softest forms (when the law establishes the right to participate in policy making or allows the initiation of a deliberative process to be requested through a sign-in) to the most binding forms (when the law introduces one or more obligations, such as the obligation to realise deliberative processes for specific policy issues or to create public organisations that are responsible for the realisation of deliberative processes or even to comply with specific methodological criteria). Since each case is characterised by particular features, none seems comparable to the others and can be somewhat considered unique. However, most of them are partly connected as the various laws were formulated by taking a leaf out of the other existing experiences' books (Chvalisz, 2021; Citroni, 2024; Ravazzi, 2017; Smith, 2018). From this perspective, the Italian case seems useful both to reflect on its specificity (the short-term legal institutionalisation) and on more general aspects that could become a source of inspiration for other future attempts at institutionalisation.

The research involved gathering information through ethnographic fieldwork and semi-structured interviews with key informants. The ethnographic research was carried out from January 2021 to December 2023 in the National Commission of Public Debates (NCPD), where I was nominated by the Minister of Transport and Infrastructures as a member together with other eight members. Observing social and political phenomena from behind the scenes carries the risk of identifying with the protagonists of the story and of narrowing one's perspective, but also allows certain aspects and dynamics to be observed that would not be visible from the outside (Hammersley, 2006). Indeed, being a member of the NCPD allowed me to participate in nine joint sessions of the NCPD and a dozen section meetings, to have 13 informal conversations with NCPD members and experts involved as consultants, to conduct over 100 hours of participant observation in public debates, to analyse 48 internal documents, and to consult four draft decrees of the minister and drafts of the reforms of the law. Moreover, observing the processes within the NCPD allowed me to listen to the discussions triggered by the legislation within the parliamentary context and among the bureaucrats and experts who interacted with the ministry of infrastructure and the council of state from backstage.

Details about the material produced as a member of the NCPD (the minutes of the plenary meetings and of the section I coordinated, and the contents of the monitoring reports) are not used for the analysis, for obvious reasons of professional ethics and confidentiality regarding the work carried out within the NCPD, but this material helped me identify some key issues on which to focus during the second phase of the inquiry. I complemented the ethnographic research with semi-structured interviews with the public debate coordinators and the chief planners who were involved in all of the 16 public debates: 11 public participation professionals and 7 chief planners. The research would also have benefited from interviews with civil society actors who had participated in public debates, but, during my tenure as an NCPD commissioner, I was not allowed to conduct academic research during public debates, and, at the end of my term, it was not possible to trace the identities of the participants. The interviewees were asked to address issues such as their relationships with clients, their methods and techniques, and the social and political dynamics within the deliberative processes, by comparing their experiences before, during, and after the implementation of the national law. Similarly, the chief planners were asked to compare the engineers' approaches to planning and their modes of interaction with local communities before, during, and after the implementation of the law.

As a final validation of the collected empirical evidence and of my analytical interpretation, I presented a synthesis of my findings to all the interviewees and asked them whether they agreed with my interpretations concerning their contributions and comments. All the points of my analytical interpretation were fully approved by all the interviewees, except for one point, which I then slightly reframed, thanks to some further information from two public participation professionals. This point (concerning the impact of institutionalisation on the legitimation of the expertise of public participation professionals) was then approved by all the interviewees.

4. The Institutionalisation of Public Debates on Major Public Works in Italy

The process that led to the legal institutionalisation of public debates on major public works in Italy was undoubtedly inspired to a great extent by the French experience. Italy first held two public debates in 2007 and 2009 (Bobbio, 2010; Floridia, 2008; Pomatto, 2020) and some Italian regions introduced specific laws to promote public participation at the local level (Tuscany in 2007, Emilia-Romagna in 2010, and Apulia and Sicily a few years later), but it was only in 2016 that the Italian Parliament intervened with Law No.50, which introduced the compulsory nature of public debates. It also made it obligatory for the public administrations and private companies responsible for the design and construction of infrastructures to pay for the realisation of the public debates and to allow public participation professionals to design and manage the processes. The law also established the creation of the NCPD, which was tasked with supervising and monitoring the effective implementation of the law. The Italian commission was created with different functions from the French commission, which, for decades, has played a direct role in activating, organising, and supervising *débats publics* through the Commissions Particulières du Débat Public. In 2018, the president of the council of ministers issued the executive decree No.76, which established the modalities for the application of Law 50/2016, the status and functions of the NCPD, the thresholds above which the public debate should be applied (specific cost thresholds were established for different kinds of infrastructure, ranging from €50 million for sea and coastal defense works to €500 million for motorways and railway sections), the activation procedure, and the connection with other public consultation procedures, such as the Strategic Environmental Assessment. However, the effective appointment of the

NCPD did not come about until the end of 2020, with Ministerial Decree No. 627, and thus the first public debates regulated by the national law only started in 2021.

This normative framework prefigured a policy that was characterised by certain regulatory elements—the compulsoriness of public debates and their financing by construction companies—and some constitutive ones—the creation of the NCPD and the definition of public debates as administrative procedures (Lowi, 1972). It was mainly focused on the principles of transparency and participation, but did not define them in terms of informed judgment and inclusion rights. However, public debate exhibited clear deliberative traits. First, a public presentation phase of the project and design alternatives were required to convey information in a way that was understandable to non-experts. In addition, the entire discussion process was required to guarantee full publicity and access to information about the project, the public debate process, the actors involved, and the results of the design phase. Professional management of public debates was required by law, and this led to processes that were ultimately designed and managed by public participation professionals. The law also required people to discuss each infrastructure, its alternatives, and its impacts, and to provide policy-makers with justified criticisms and recommendations. The law did not mention random selection as a necessary or privileged method to select participants. This could be seen by some scholars as an aspect that made Italian public debates less deliberative than others (Escobar & Henderson, 2024; Grönlund et al., 2015). However, this presumed and inseparable link between deliberation and randomness has no clear ground, since many empirical studies have demonstrated that the deliberative ideals (equal expression of viewpoints, information sharing, exchange of arguments, and search for highly shared solutions) may be reached through a variety of methods, settings, and techniques (Schwarz, 2016; Steiner et al., 2017), and that random selection could even be less effective than other recruitment methods (Parkinson, 2006; Ravazzi & Pomatto, 2014). The law also required construction companies to submit a new project dossier after the public debate, in which they had to provide detailed explanations as to why any criticisms and suggestions made by the local communities had not been taken on board.

After only three years of implementation and 16 public debates effectively realised (see Table 1), the national government intervened with a new reform of the Public Contract Code in 2023. This reform declassified public debates into mere procedures to access project documents and substantially cancelled the deliberative traits that had been envisaged in the previous legislation. The sudden termination of the legal institutionalisation left many members of civil society, academics, and public participation professionals astonished, but the technicians and managers of construction companies also declared their disappointment with the reform. Several public participation professionals and academics, together with some politicians, protested publicly, but the new governing majority did not listen to their arguments or motivations. As emerged during informal discussions held during the ethnographic research, the Council of State appears to have played a leading role in this reform, without being aware of the public deliberation theory or the effective implementation of public debates. However, the real background to the dynamics of this reform process remains unknown.

Table 1. The Italian public debates set up under Law 50/2016.

Infrastructure	Subject of discussion	Implementation
1. Trento Railway ring	feasibility project	2021
2. "Garganica" road	feasibility document of project alternatives	2021
3. New tram line in Padua	feasibility project	2021
4. "Mediterranean" high-speed road	feasibility document of project alternatives	2022
5. Florence Airport expansion	feasibility project	2022
6. Rome Railway ring	feasibility project	2022
7. Salerno–Reggio Calabria high-speed railway 1	feasibility project	2022
8. "Adriatica" road	feasibility project	2022
9. Gela–Agrigento road	feasibility document of project alternatives	2022
10. Orte–Falconara railway	feasibility project	2022
11. Doubling of the Rome–Pescara railway	feasibility project	2022
12. Quadrupling of the Tortona–Voghera railway	feasibility project	2023
13. Caserta–Benevento connecting road	feasibility project	2023
14. Salerno–Reggio Calabria high-speed railway 2	feasibility project	2023
15. New Milan–Inter stadium	feasibility project	2023
16. Battipaglia–Romagnano railway	feasibility project	2023

5. Strengthening Embeddedness

The public debate regulation led the institutional actors (project managers, political representatives, and technicians) to consider the interaction with local communities as something that had to be *managed*, thereby fostering a certain predisposition towards the approach of cultivating conflicts, instead of dulling them (Dubiel, 1998). In short, the introduction of an official and compulsory procedure encouraged institutional actors to take collaborative governance and its management seriously. Some public debate coordinators described this change in attitude by recalling concrete and tangible differences between the deliberative processes held before the implementation of the Law and during the public debate season:

> I have been running deliberative processes for decades. I have dealt with managers and technicians of large companies and been called upon to confront stakeholders and citizens several times. The staff of these large companies were always relatively cooperative, but you could clearly perceive that most of them didn't take the interaction with ordinary citizens seriously, that is, they didn't believe in it or consider it important. I'm not saying that, with the introduction of the 50/2016 Law, managers and technicians started to believe in the usefulness of these practices, but I perceived a clear change in attitude. The management of relations with local stakeholders and ordinary citizens suddenly became an official and structured process and therefore, in their eyes, worthy of respect and seriousness, worthy of attention and commitment. (I.2)

> The legislation did not change our way of working very much, but it gave us a capital of authority, freeing us from building it up step by step over time and through long interactions and negotiations with clients. (I.6)

> I would say that one clear effect was the recognition, by the construction company designers, that managing discussions with citizens was something serious and professional. I remember that the planners refused to confront citizens directly in two previous deliberative processes on public works, and in another case, when we managed to get them around the table with residents and stakeholders, their commitment was far less professional than that of the planners I worked with in the 2022 public debate. (I. 19)

This change in perspective of some of the institutional policy makers also led them to have a more conscious recognition of the role of public participation professionals, not only as generic guarantors of informed and dialogic public participation, but also as "professionals of quality deliberation" (I.1), who were capable of implementing methods, techniques and strategies that were apt for the context, the objective and the issues at stake, just like any other professional. Most of them exercised all the leeways that the executive decree gave to pick holes in the works of the planners, raising criticisms on several initial project dossiers because of the complexity of the language or the unbalance of the contents, and asking the professionals of the companies to change sentences and even entire parts. The chief planners agreed to change the project dossiers in 14 out of 16 cases. However, even in the cases in which some resistance arose, it was dealt with by the public participation professionals. One of them recognised that before the law, "pressure or resistance by the clients was dealt with through long and difficult negotiations. With the new legal framework, we were able to protect the processes simply by mentioning the law and its principles" (I.10).

The stronger commitment of institutional policy makers probably also emerged as an indirect effect of the legal institutionalisation process, because the introduction of the new legal framework led to numerous dissemination, information, and awareness-raising activities. During the three years in which the legislation was implemented, many occasions of dissemination about deliberative processes arose: debates in parliamentary commissions; parliamentary and ministerial hearings with experts; seminars and conferences promoted by civil society actors, universities, and parties; articles in the mass and social media; and training/updating courses for public officials. Environmental associations, the Italian committee of the World Road Association, and the Italian section of the International Association for Public Participation also organised several meetings, together with other professional associations, to discuss and reflect on the characteristics of the Italian regulatory framework and on concluded or still ongoing public debates. In three years, a device that had previously only been known to a few specialists became known among politicians, bureaucrats, and members of associations.

Although some public participation professionals pointed out that the new national law helped them in their relationships with citizens and stakeholders, compared to the pre-law period, others did not highlight any difference between the institutionalisation period and the pre- and post-law periods, and this issue therefore still remains open. Public participation professionals are often viewed with suspicion by the most critical fringes of civil society: being hired directly by public administrations and working in close contact with policy makers, they are frequently accused of bias and collusion with those in power. Moreover, Law 50/2016 certainly did not help to dispel these fears, as it provided that public participation

professionals were to be hired and paid by construction companies and that the NCPD would only have substitute powers in exceptional circumstances.

The legitimation of conflict management and public deliberation by the chief planners helped to at least increase the practice dimension of the embeddedness process, since the design of almost all public debates was formulated in a highly autonomous manner from the construction companies, and this led to the setting up of diversified methods (world cafés, open space technologies, focus groups, question-and-answer sessions, technical working tables, etc.) and techniques (post-it, visual facilitation, planning for real, participatory inspections of the sites, etc.).

Moreover, the legal institutionalisation of public debates helped to increase their influence on final projects, compared to the pre-law period. This influence was recognised by chief planners and local politicians. One project manager recalled that:

> Finally, we were able to tell those mayors who were trying to backtrack on certain aspects of the project that they couldn't do it, because the law had provided a specific and official window of discussion, that is, public debate meetings. (I.14)

One coordinator recalled that a mayor mentioned that:

> Now we feel more protected from the large construction companies, which usually invade our territory with the power of their skilled staff and the money they offer for project development.... In the end, they have to listen to us because everything is written down in black and white and is lodged on the table of the Conference of Services.....You can't hide from what is published and written in official documents. (I.5)

An analysis of the coordinators' conclusive reports reveals that no project was radically contested; however, citizens and local stakeholders frequently voiced specific criticisms and requests for changes. No projects were radically changed, but most of the technically feasible proposals for adaptation, partial modification, and/or additional measures that emerged during the local meetings were accepted by most of the construction companies: various changes to motorway and road stretches (public debates nos. 2, 4, 8, 9 and 13), environmental compensation measures (public debates nos. 14 and 16), cancellation of railway stations and slight diversions of railway layouts (public debates nos. 1, 6, 10, 11 and 12), changes of urban integration works (public debates nos. 5 and 13), and even one cancellation of an entire section of work planned as a derogation from the regulations on protected areas (public debate n. 2). According to the public participation professionals, the projects that have undergone the fewest changes are those related to railways, partly due to the inflexibility of railway company engineers and partly due to the objective limitations of railway design, which is subject to such a large number of structural and legal constraints that the engineers' freedom of design itself is limited.

Several modifications were incorporated by the engineers and designers during the public meetings, even before the final dossiers had been written, thanks above all to repeated interactions with the local communities, which partly changed the engineers' perspectives. The design of a major project normally follows the national guidelines drawn up for the evaluation of investments in public works. Indeed,

construction companies, which have to follow some basic inputs from the political system, are usually charged with formulating infrastructural project ideas (a new highway stretch, a new energy plant, the doubling of a railway line, etc.). The ministry of infrastructure signs three-year agreements with these companies on the basis of their project ideas and then establishes indicative budgets. The project ideas are then developed into project hypotheses on the basis of the characteristics of the infrastructure, the orographic characteristics of the territory, and the physical and structural constraints of the environment. Subsequently, these hypotheses are refined considering more specific constraints, such as hydraulic and landscape constraints, and different layout or location options are formulated, thereby generating what is called a feasibility document of project alternatives. The construction costs are estimated for each alternative, and cost-benefit and multi-criteria analyses are carried out to compare them. The best option is identified on the basis of these estimates and is screened, through further analyses, to find the most precise definition of the structural characteristics, and of the impact on the territory and the costs, thereby transforming the feasibility document of project alternatives into a feasibility project. At this point, the feasibility project is presented to the local institutional organisations that are responsible for granting authorisations and which can ask for ancillary works to integrate the infrastructure into the territory. Once they have given their approval, the project is submitted to the ministry of the environment (for an environmental impact assessment) and the ministry of culture (for a review of any architectural and archaeological encumbrances). All these planning stages are carried out using information and data that are mainly obtained from specialist literature and public administration archives. According to this model, planners and project managers are required to be professional, technically competent, and efficient, but are not required to put themselves in the shoes of the inhabitants of the areas where the infrastructure and construction sites are to be located.

The new regulation forced designers to come to terms with their "insensitivity" towards the needs and perspectives of local stakeholders and residents, meeting after meeting and public debate after public debate. This generated some gradual changes in their ways of approaching local communities and in their ways of planning infrastructural projects.

First, having to explain the characteristics of public works, the underlying motivations and results of their assessments and forecasts to stakeholders and citizens gradually led some designers to develop what Bartels (2015, p. 6) called a "communicative capacity," namely "the ability to recognise and break habitual patterns of communication by adapting the nature, tone and conditions of conversations to the law of the situation." According to the interviewees, it was mainly those who took part in several meetings, and in particular in more than one public debate, who developed a greater awareness of the need to translate technical language into a more conversational style, albeit without losing insight and richness. As two coordinators recalled:

> When planners confronted with citizens, they came out of the first meetings terrified, because they had received very challenging questions and comments. You can stay in your office in Rome or Milan and everything is fine, but when you make contact with local people, sooner or later you'll meet "Mrs Mary" next door, who seems innocent and harmless, but who can give you a hard time. Less sensitive and more rigid planners returned to the next meetings much better prepared to avoid making a fool of themselves; more sensitive and thoughtful planners returned not only better prepared about the project features and their implications, but also better able to explain them in understandable terms, and more curious and willing to listen to what the fantastic Mrs Mary had to say. (I.10)

> In several cases, it was the citizens themselves who made the planners realise the uselessness of their ultra-technical and hermetic language, forcing them to translate for non-experts. During a meeting on expropriations, a citizen mocked the project manager for his complicated jargon: "To find out how many houses you're going to expropriate, shall I have to ask you how many nests of the bipedal mammal you're going to destroy?" (I.4)

An analogous interpretation of a certain evolution of the communicative capacity of planners and engineers, but even of local politicians, also arose from the chief planners of the construction companies. The following quotations are representative of a shared viewpoint:

> In my opinion, forcing interaction with local people was very useful for even the most rigid and obtuse designers, because it forced us to confront our inability to communicate and made us think. However, we would have needed a few more years of systematic application of this law to see the concrete effects on our communicative capacity. (I.12)

> In the beginning, we presented the project outlines, but they weren't understandable to ordinary people. By forcing us to meet citizens, the law somehow forced us to change our ability to communicate the infrastructure we were designing. So, little by little, instead of saying 'livelletta' (a technical word meaning a road stretch with a different slope), we used the extensive definition of the term, and in addition to maps, we brought photo simulations and 3D renderings. On the other hand, the local politicians also improved their communication skills, compared to the way they usually express themselves in the Conferences of Services. In the Conferences of Services meetings, mayors are usually hermetic and you don't really understand what you need to read between the lines. In the public debate meetings, which were more direct and less formal than the Conferences of Services meetings, political representatives expressed themselves more clearly. This helped us to understand their needs and requests more explicitly and more rapidly. (I.15)

Second, direct and repeated interaction with stakeholders and citizens allowed designers to experience first-hand elements of an infrastructure that they would normally see at a distance or from a purely technical perspective. The designers were induced to look at the infrastructure through the eyes of the local inhabitants and, in a sense, put themselves in the shoes of citizens directly affected by the public works and the construction sites. This new perspective helped planners to recognise small design errors, which did not necessarily depend on the planners' capacity, but more often on the systematic gap between the cartography and the real context, and on issues that are impossible to intercept through cost-benefit analyses or multi-criteria analyses. As a result, the legislation, by inducing planners and designers to interact with citizens in deliberative arenas one day after another, indirectly influenced the quality and feasibility of the projects and helped planners to anticipate and prevent future implementation problems.

Two examples are worthy of mention. The first pertains to a road infrastructure. The engineers and specialists who designed the project were quite confident that the infrastructure would have been welcomed by the local community, since it suited their long-requested need for a road connection, and it included cutting-edge features from the technological and environmental points of view. Moreover, although the new road would have involved the expropriation of some land used for agriculture and grazing, a great deal of money had been allocated for very generous compensations, so that the owners could have bought other agricultural

land in an area not far from the expropriated land. Therefore, according to the designers, there was no reason to engage directly with local communities, and when they were forced to take part in the public debates because it was required by law, they were "quite annoyed" (I.12). However, during the first meetings, the engineers realised that the land that had to be expropriated was given over to very specific pastures that were suitable for the production of Mozzarella di Bufala Campana, a product with Protected Designation of Origin, which can only be certified if the raw material, in addition to being processed according to very strict rules, comes from specific geographical areas with specific geographical and environmental characteristics. After talking to the farmers, the planners realised that it would have been very difficult for the farmers to find other land nearby with similar characteristics to that area. Such information was not available in the national archives or in the geomorphological maps of the municipalities, and it could only be reconstructed in detail through direct dialogue with the local farmers. The designers realised that "they would never have been able to build that route without seriously damaging the buffalo mozzarella producers in that area" (I.12). Thus, they modified the feasibility project during the public debate process, even before the final report was published by the public debate coordinator. The new line of the road was less linear and slightly more expensive, but it allowed the connection time to be significantly reduced and most of the buffalo pastures to be preserved.

In the second example, some citizens helped planners to identify archaeological artefacts that they had not noticed during the planning phase, because the maps of the ministry of culture had not been updated after the discovery of some Roman foundations in a green area where the new infrastructure was to be built. In this case, the modification of the project implied "saving time and money, which would have increased considerably if these issues had emerged after work had started" (I.13).

Naturally, it is the implementation phase that ultimately determines whether the changes that have been incorporated in the final dossiers will be effectively acknowledged and what any deviations from the plans will depend on.

The launching of several public debates throughout the country in a relatively short period also encouraged new professionals to enter the public participation market, thereby increasing the pluralism of coordinators and promoting "the experiential development of new skills in less experienced professionals, without significantly lowering the quality of the deliberative processes" (I.2). New decision-making spaces and responsibility roles also emerged in construction companies. Local political representatives, representatives of civil society organisations, and ordinary citizens gained new visibility, protagonism, and antagonism spaces. Overall, thousands of professionals, civil servants, politicians, experts, and ordinary citizens had the opportunity to "exploit" public debate arenas and processes in various ways. This contributed to increasing practice embeddedness. Although the new regulatory framework effectively foreshadowed a common format, which provided first for an information phase and then for a dialogue phase, it nevertheless allowed different processes, each resulting from a particular mix of characteristics of the local contexts, the expertise of public participation professionals, the skills of the designers, and the dynamics of local civil society, to be implemented.

6. Weakening Embeddedness

The legislation introduced an official procedural dimension into deliberative processes (see Figure 1). Proceduralisation is a necessary step in any legal institutionalisation, because each and every legislation

involves formalising roles and deeds and assigning responsibilities. Proceduralisation can help to unfold the beneficial effects of temporal embeddedness, since bureaucratic procedures tend to involve repeated interactions and contribute to making a novelty a normal practice. However, the proceduralisation of public deliberation can also reduce practice embeddedness.

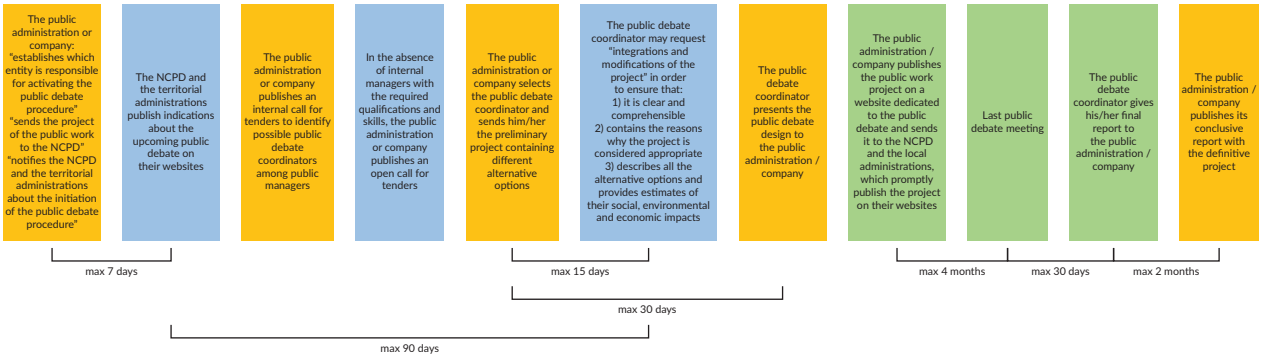

Figure 1. Public debate procedure established by the Law No.50/2016 and by the Executive Decree No.76/2018.

The public debates of the 2021–2023 period became genuine administrative procedures and, as such, were subject to the rights and obligations established by the administrative law in force. This contributed to changing the system of constraints and opportunities, compared to the *ante legem* context, because public debates became subject to possible recourse to the administrative tribunal if there were any procedural irregularities. As all the interviewed coordinators pointed out, this element contributed to partially stifling the processes, i.e., making them less flexible. Two quotes clearly illustrate this effect:

> If the rule stipulated a certain number of days for a certain action or phase, exceeding this time limit exposed you to the risk of an appeal being made to the Regional Administrative Court, and you knew that anyone who wanted to boycott the process would have exploited this opportunity. I had to hold a meeting in mid-August (much of Italy closes down in mid-August for "Ferragosto," a public holiday celebrating the Assumption of Mary) because, otherwise, we would have missed the deadline due to the starting date of the procedure, but this made no sense for the quality and feasibility of the public debate! (I.4)

> One of the clearest differences between the public debates I coordinated before and after the introduction of the law was the need to pay great attention to the procedure. I'm used to changing and modifying single aspects of the processes as I go along and following the pace that seems appropriate to me as the situation evolves. But, after the introduction of the law, I paid much more attention to the timeline and all the other procedural rules, because I knew that anyone who wanted to boycott the infrastructural project would have had an easy time of it if there had been a procedural error and could have blocked the public debate. (I.16)

This juxtaposition between the deliberative process and the administrative procedure, by limiting flexibility, contributed to weakening the capacity of public deliberation to become embedded in the planning processes of major works. Any deviation from the structure and methodology agreed upon with the contracting authority

and filed with the NCPD was essentially avoided at the outset, as an appeal could have been made to the Regional Administrative Court, and this could have led to the entire process being blocked for months.

Proceduralisation also contributed to initiating the classical attitude of bureaucratic compliance. The NCPD, which was largely composed of senior civil servants appointed by various ministries and representatives of the regions and local authorities, was entrusted with monitoring and analysing the public debates. When the NCPD began to design a model and a form to monitor and analyse the processes, all the bureaucrats focused on procedural aspects, through a purely administrative compliance approach: transparency was interpreted as timely communication of the initiation of the procedure or timely publication of the project dossier, not as comprehensibility, completeness or effective accessibility of information about the infrastructure and the public debate function and steps; participation of local communities was interpreted just as a number of public debate meetings instead of the true publicity of all the issues that emerged during the process or the effective development of deliberative dynamics (Table 2). It was only thanks to the pressure of the NCPD members who came from outside public administration (two social scientists and a public participation professional) that the monitoring form was modified to also include substantial issues. The tendency towards bureaucratic compliance depended on the fact that the NCPD was largely composed of senior civil servants. However, this composition was itself a direct consequence of legal institutionalisation, since such independent bodies are always an expression of the state and, as a result, the appointment of commissioners is typically the prerogative of ministries and senior public agencies. Legislative frameworks that do not provide for the introduction of

Table 2. The initial monitoring scheme of the NCPD.

Requested deeds	Expected deadline	Effective date
Initiation procedure		
A building contractor requests the initiation of a procedure to the NCPD		
The NCPD publishes the news on its website and the procedure officially starts		
The NCPD president nominates two members who are responsible for coordinating the monitoring activity		
The building contractor sends the project documents to the NCPD		
Public debate—Phase 1		
The building contractor hires the public debate coordinator		
The public debate coordinator presents the process design		
The building contractor emails the definitive project dossier to the NCPD and publishes it on the public debate website		
Public debate—Phase 2		
A press conference is launched		
Meeting 1		
Meeting 2		
Meeting …		
Public debate—Phase 3		
The public debate coordinator emails the final report to the building contractor and to the NCPD		
The building contractor emails the final project dossier to the NCPD		

such bodies may be immune to these dynamics, but at present, almost all regulations provide for some kind of independent body in public participation (Bherer et al., 2021; Chvalisz, 2021).

A final critical element that immediately became apparent during my ethnographic fieldwork is what can be called "attention capture." The legal institutionalisation of public debates largely catalysed the attention of policy makers on the legislative framework and lowered interest in and curiosity about the concrete dynamics of the ongoing public debates. This mechanism spread among NCPD members, politicians, law experts, councilors of the Council of State, and even exponents of associations and civil society organisations. A number of reform proposals were submitted to the minister and parliament even before the first public debates could be fully conducted, and all the reform proposals were submitted to them before the NCPD could publicly report to parliament. Only the most widely supported reform proposals are mentioned here: a proposal was made for a new decree that would allow a register of public participation professionals to be created, a reform proposal was made to reduce the size and cost thresholds for public works subject to public debate (this draft law actually became an executive decree of the minister and was approved in 2022), a reform proposal was suggested to reduce the timeline of the procedure (this also became an executive decree in 2022), while another was made to change the status of the NCPD, extend its powers and provide it with a dedicated budget, while other reform proposals were made to change the types of public works subject to public debates. This eagerness to legislate may in part be due to the prevailing legal-formal culture that has always characterised the Italian political system, but a new law always triggers political and scientific debate about its interpretation, its practical implications, its ability to be integrated into the body of established rules, etc. It is therefore reasonable to deduce that this premature legislative euphoria and the lack of attention to the substance of the processes underway were at least in part due to legal institutionalisation.

All this contributed to undermining the foundations of the concrete embedding process of public deliberation in the democratic system. Indeed, the 2023 new Public Contract Code included a reform of Law N. 50/2016 that was the result of a debate that had been confined to the chambers of the council of state, and which did not take into consideration the real implementation of public debates: no hearings or informal meetings with members of the NCPD were requested by the council of state councillors, and the draft reform was handed over to the new minister before the NCPD could report on it to parliament.

7. Conclusions

More than 20 years ago, Blaug (2002, p. 102) stated that "whether designed to counter democratic deficits, falling voter turnouts, the paucity of feedback on public policy or to consolidate democratisation abroad, making more democracy takes the form of finding new places for participation and new forms of participation within them." One of these forms has been the proliferation of attempts to legally institutionalise participatory and deliberative practices (Chvalisz, 2021). The legal institutionalisation issue has recently become even more central, with numerous proposals of social scientists and civil society organisations to institutionalise "citizen assemblies" in national political systems, in European Union treaties, and at the global level (Abels et al., 2022).

The legal institutionalisation of deliberative processes has generated both expectations and fears, but empirical analyses of the real effects of this phenomenon have still been widely neglected. The findings of this research provide some empirical evidence about the potential and pitfalls of the legal institutionalisation

of deliberative processes and about the relationships between the legal institutionalisation of public deliberation and its embeddedness in our democratic systems.

According to what has emerged from the empirical analysis of the Italian case, it is possible to state that the legal institutionalisation of public debates fostered a legitimation process in institutional policy makers: the involvement of citizens in policy making began to be seen by politicians and construction company managers as legitimate and relevant, even though not necessarily useful or meaningful, and the idea that conflicts can be managed constructively and not simply dulled began to be perceived and sometimes even internalised. This legitimation process favoured public deliberation embeddedness in the infrastructure and transport policy-making system, at both the local and the national level, because it somehow "normalised" conflict management and participatory-deliberative governance.

Moreover, the repeated face-to-face meetings with local communities, fostered by the compulsory provision, modified the ordinary work of Italian planners: they learned to listen more carefully to the citizens' issues and behave more actively, and they developed a better communicative capacity and a greater sensitivity to social aspects, not just structural and environmental ones. This contributed to increasing the impact of public deliberation on policy decisions (although no public work was in fact either strongly opposed by local communities or definitely abandoned by the construction companies as a result of the challenging criticisms of inhabitants and/or civil society associations) and to making interactions between technicians, stakeholders, and citizens more constructive.

However, the warning regarding the risk of sterilisation proved to be rather sound. Legal institutionalisation induced public debate coordinators to pay more attention to procedural aspects, thereby reducing public debate flexibility. Moreover, the introduction of an administrative procedure triggered the classic attitude of compliance in several bureaucrats involved in the implementation of the law. Finally, the presence of a new legal framework on a matter that had not been codified until that moment catalysed the attention of many political and civil society actors on the content and form of the law instead of the substance of public deliberation. All these dynamics contributed to weakening public deliberation embeddedness in the democratic system, to worsening the practice embeddedness, and to disjointing the alignment between the normative dimension and the practice dimension.

Nonetheless, since the compulsoriness of public debates probably forced some construction companies to pay for something that they would have neither financed nor promoted in the absence of the legal obligation, and since this legal institutionalisation only lasted three years, it is plausible to suppose that non-regulatory policies would probably have had a more limited effect (both in the positive and the negative sense) on all these aspects, and that research conducted on longer-lasting legal institutionalisation cases could lead to different conclusions. I hope that research on other case studies will be conducted in the future to gradually build an evidence-based theory on the institutionalisation of public deliberation that can offer concrete and reasonable food for thought for policy makers who have the intention of regulating the field.

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About the Author

Stefania Ravazzi is an associate professor of public policy and director of the Laboratory of Policies at the University of Turin. She has published articles and books on policy analysis, deliberative democracy, urban governance, and emergency management.