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**PUBLIC PARTICIPATION AND ENVIRONMENTAL
IMPACT ASSESSMENT IN ROMANIA:
THE CASE OF ROȘIA MONTANĂ**

A Call for the Institutionalisation of Public Participation

2 Volumes
Volume 1

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PUBLIC PARTICIPATION AND ENVIRONMENTAL IMPACT ASSESSMENT IN ROMANIA: THE CASE OF ROȘIA MONTANĂ

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Keywords: Public Participation, Consultation, Romania, Environmental Impact Assessment, Democracy, Bureaucracy

Abstract: In this thesis I develop a critical theory of public participation and deliberation in post-communist Romania. Primarily, this theory is developed from a critical assessment of two intermediate-level Romanian institutions: the deliberative system that has formed to debate the authorisation of a proposed gold mining project in Roșia Montană, Romania and the legitimacy claims of the series of hybrid forums that were convened as part of that project's Environmental Impact Assessment (EIA). The hybrid forum legitimacy claims were assessed based on a standard of hybrid forum legitimacy developed in this thesis from deliberative democracy theory and practice. Grounded in new institutionalism theory, this thesis describes the historical and contemporary socio-economic conditions that have shaped Romanian public participation and deliberation.



Miners' Statue in Baia de Arieș (Dragomir, 2007)

This work is dedicated to Joseph W. Reffner

Acknowledgements: I thank my parents for their unwavering and unconditional support. I am grateful for my sister, Sharon, who pulled me back from the ledge on more than one occasion. I am fortunate for the support given to me by the staff and volunteers at Community Accord, especially Olau Thomassen and Lorraine Knott. I have learned so much working with Community Accord's parties and stakeholders, especially Dave Melling and the Rombalds Forum. I appreciate the advice from faculty members of Babeş-Boyai University, especially Drs. Gabriel Badescu and Cosmin Marian. I am thankful for the hard work of the students of Babeş-Boyai University who provided research assistance for this project, especially Ramona Dragomir and Cris Ciupe. Finally I am privileged to have worked with my patient and excellent mentors and guides, Dr. Sarah Perrigo and Professor Tom Gallagher.

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TABLE OF CONTENTS

VOLUME 1

Table of Contents	iii
Chapter 1: The Introduction	1
Chapter 2: The Roşia Montană Case Study	12
The Project	12
The Company	27
Civil Society Associations	30
The Positions.....	40
Chapter 3: Romanian Zoning & Project Authorisation	61
Romanian Experience with the EIA Process	66
Roşia Montană Commune and RMGC Zoning Authorisations.....	70
RMGC Project Authorisation.....	75
Chapter 4: The Methodology	93
Research Questions	94
Philosophy – Critical Theory	95
Historical Institutionalism	102
Methodology	117
Data Collection	121
Ethical Considerations	137
Data Analysis.....	150
Possible Methodological Issues.....	156
Chapter 5: Deliberative Democracy & Deliberative Systems	162
Theory Genesis and Development	163
Deliberative Democracy and Communicative Action	179
Deliberative Venues.....	196
Deliberative System.....	219
Chapter 6: Deliberative Legitimacy	225
Institutional Forums	260
Everyday Talk.....	264

Broadcasted Discourse.....	272
Associational Forums	277
Hybrid Forums	282
Chapter 7: Hybrid Forum Legitimacy in Practice	287
Hybrid Forum Models	288
Early Participation.....	297
Free from Coercion.....	298
Equal	300
Inclusive.....	310
Reciprocal.....	321
Transformative.....	323
Informed	327
Reasonable	329
Consensus and the Common Good.....	336
Influenced	337
Influential	338
Public/Transparent.....	347
Environmental Assessment Case Studies	349

VOLUME 2

Table of Contents.....	ii
Chapter 8: Institutional Analysis of Romanian Public Participation and Deliberation	366
Historical Development.....	369
Revolution.....	387
Contemporary Socio-Economic Context.....	391
Theory of Ideology	419
Institutional Change?	427
Chapter 9: Roșia Montană Deliberative System.....	439
Everyday Talk.....	440
Broadcasted Discursive Arena	441
Institutional Forums	467
Associational Forums	482
Hybrid Forums	492

Chapter 10: Conditions that Guide Deliberator Relations	511
Romanian EIA Hybrid Forum Structure	513
RMGC EIA Hybrid Forum Structure.....	515
Free from Coercion.....	518
Equal	534
Inclusive.....	541
Reciprocal.....	558
Transformative.....	565
Chapter 11: Conditions that Shape Deliberative Content.....	572
Informed	573
Reasonable	614
Early Participation.....	626
Chapter 12: Conditions that Link the Forum to the Deliberative System.	630
Influenced	631
Influential	634
Public/Transparent.....	651
Chapter 13: The Conclusions	663
Bibliography.....	681
Appendix A – Interview Introduction Guide.....	712
Appendix B – Semi-Structure Interview Guide.....	714
Appendix C – Participant Thank You	717
Appendix D – Self Completed Survey (Romanian)	719
Appendix E – Self Completed Survey (English).....	720
Appendix F – Speaker and Survey Database Fields	721
Appendix G: Keywords for Newspaper Searches.....	723
Appendix H – Information Request 1	725
Appendix I – Information Request 2.....	727
Appendix J – Qualitative Analysis Codes.....	730
Appendix K – Analysis of Meeting Minutes.....	734

CHAPTER 1: THE INTRODUCTION

In this thesis I develop a critical theory of public participation and deliberation in post-communist Romania. This theory derives from an investigation of public participation and deliberation around a single case study, the authorisation decision for a proposed gold mining project in Roşia Montană, Romania. Drawing from new institutionalism theory, the critical theory constructed in this thesis explains the historical and contemporary socio-economic conditions that have shaped public participation and deliberation in this case and in post-communist Romania more generally. In order to construct this theory, I expand on two deliberative democracy theories – deliberative systems and deliberative legitimacy. I expand on deliberative systems theory by distinguishing the five distinct but interrelated deliberative venue types that make up a deliberative system. This expanded deliberative systems theory was used to systematically describe the deliberative system that has been formed to debate the authorisation of the proposed Roşia Montană project. Drawing on the theories of communicative action and deliberative democracy and on deliberative democracy in practice, I elaborate on deliberative legitimacy theory by creating legitimacy standards for each of the five deliberative venue types, focusing on the deliberative legitimacy of hybrid forums. The hybrid forum deliberative legitimacy standard developed in this thesis was used to critically assess the legitimacy claims of the series of hybrid forums that were convened as part of

the proposed Roşia Montană project's Environmental Impact Assessment (EIA) process.

I examine public participation and deliberation in post-communist Romania through the lens of a single case study – the case of Roşia Montană. Roşia Montană is the name of a commune - and the village that is its administrative centre - in the remote Apuseni mountain range of Romania. This area is part of the *Golden Quadrilateral* of Transylvania just west of the Carpathian Mountains. Extraordinary archaeological evidence shows that people have been mining in this area for copper, silver and gold since before Roman times. Now a Canadian gold mining company wants to extend an existing communist period open pit gold mine and build three more pits surrounding the village. They want to create a 400 hectare waste management pond that will occupy a valley and require the resettlement of another Roşia Montană village, Corna. Some members of the community support the proposed project for the jobs and state revenues it will generate. Others oppose the project because of its impacts on the environment and on the communities that live there. It has been 12 years since the company obtained the license to exploit the resources at Roşia Montană and nearly 8 years since the company launched their Environmental Impact Assessment process.

I chose the case of Roşia Montană because it involves a policy decision – the project authorisation decision – and a public dispute. I also selected this case because it is based in Romania, a country with a rich and fascinating history. When I selected the Roşia Montană case, Romania had only 15 years earlier begun its transition from a command economy to a market one and had begun

to substitute its totalitarian style of governance with democracy. I was curious to see if this history had shaped Romania's approach to democracy. I also wondered if Romanian society had designed its governance institutions and practices to include the most recent developments in public participation and deliberative theory. Finally, I thought a study of Romanian public participation and deliberation might provide insight into the state of Romania's transition to democracy.

This research demonstrates that, in general, many of the Romanian institutional, socio-economic and attitudinal conditions formed during the communist era continue, even after the 1989 Revolution, to block Romanian public participation and deliberation. The fragmentation of Romanian society under the communist regime and the inability of the Romanian public to form political associations and solidarity ensure that attempts at public participation and deliberation by the Romanian public are most often ineffective. The public's inability to penetrate public institutions, influence public decisions and make any meaningful difference has led to cynicism and complacency, further immobilising public participation and deliberation. Finally, despite foreign financial support and guidance, Romanian public participation and deliberation remains stagnant because state actors resist the improvement or democratisation of formal political institutions.

However, the case of Roşia Montană is different. In this case the participants seemed to have overcome their distrust and fear and are forming alliances. Participants have demonstrated experience with and knowledge about political processes. The participants have overcome their cynicism and complacency

and are actively working to influence the authorisation decision of the Roşia Montană project. Rather than proving submissive and dependent, participants have stood their ground, protecting their interests against those who oppose them. This activity has resulted in a rich and complex deliberative system. While it may be too early to tell for sure, the Roşia Montană public dispute may well be the critical junction for Romanian public participation and deliberation that one might have expected from the 1989 Revolution but that never materialised.

The citizen activists participating in the deliberative system to debate the authorisation of the proposed Roşia Montană gold mining project have run up against many obstacles in their attempts to participate in authentic and productive debate. One such obstacle was the structure of the hybrid forums that were convened as part of the proposed project's EIA process. This thesis demonstrates that the hybrid forums were not legitimate in the view of many of the participants – both those who support and those who oppose the project - nor were they legitimate based on the normative claims of deliberative democracy theory and practice. While the participants understand that the forums were not legitimate and know why, they are frustrated in their efforts to reform the forums. The structure of the hybrid forums privileged the project owner over everyone else. Like all proponent-led public meetings, the meetings were structured – meeting room layout, format, logistics and procedures - to actually discourage equal and productive debate and to ensure that the company's arguments dominated the arguments of those who oppose the mine. Without clear and specific regulations, guidelines and penalties, hybrid forums can be organised in ways that structure power to the advantage of the project

owner/meeting convener. The project owner took advantage of this opportunity to dominate civil society activists and lay citizens and the Romanian Ministry of the Environment let them.

The work described in this thesis embodies my own research and forms a unique contribution to the knowledge of public participation and deliberation in general and in post-communist Romania specifically. While the theoretical literature for deliberative democracy is massive, it has only been within the past decade that researchers have gone out to the field to empirically investigate actual deliberative practices - for example: Gastil and Levine (2005), Cornwall and Coelho (2007), Hendriks (2002, 2005), Parkinson, (2004), Ryfe, (2002), *Policy and Society* (2009, Issue 3). This work provides a distinct contribution in three ways.

First, this thesis provides an expansion of deliberative theory's idea of the deliberative system. This thesis may include the first systematic description of any deliberative system formed to debate a public policy issue. In this thesis, I identify five distinct deliberative venue types that mutually interact within a network. Each deliberative venue type is open to a different set of political actors – state, economic, civil society and individual citizens. Various deliberative activities are performed in each of the deliberative venue types, for example: opinion formation, opinion bundling and mobilisation, participant education and enlightenment, association and solidarity formation and agreement for action. Some of the venues are private and some are public. Some of the venues are based on jurisdictional association and some on voluntary association. Some of the venues are fully inclusive and some of them

are representative. Some of the venues types are structured formally and some are structured more informally. Some of the venues result in binding public decisions, some in agreements for action; some result in influence; and some simply result in opinion expression. The variation among the venue types means that the standards of legitimacy for each venue type are also different.

This research offers a complete hybrid forum legitimacy standard based on deliberative theory and practice and uses the standard to critically assess a series of hybrid forums. Critiques of the deliberative legitimacy of hybrid forums are crucial for three reasons. New institutionalism argues that institutional structural features shape power relationships, participant behaviour and outcomes. Hybrid forums are used to frame, discuss and analyse public issues and to design, implement and evaluate public solutions that sometimes impact many people; the legitimacy of deliberative process plays an important role in the legitimacy of its outcomes. Proper critique of the legitimacy of hybrid forums and identification of the factors that impact their legitimacy can raise issues and solutions that may ultimately improve deliberative practices in general. Critiquing deliberative practices may create and reinforce the norms of communicative rationality and the ideal speech situation and may highlight the degree to which strategy and power manipulate public discourse.¹ It is hoped that this critique yields a methodology for designing, facilitating and evaluating hybrid micro deliberative forums and perhaps public deliberation more broadly. While it may not be possible for any participatory process to reach ideal legitimacy, the critique methodology developed for this thesis can be used to evaluate the gradations of legitimacy of public deliberation.

¹ Dryzek, 2001; 663

Finally, drawing on new institutionalism this thesis offers a unique theory of public participation and deliberation in post-communist Romania. Through a review of Romanian historical and political literature and an investigation of public participation and deliberation for a single case study, this thesis attempts to describe the historical and contemporary socio-economic conditions that shape public participation in post-communist Romania generally. The aim of any critical theory, including this one, is enlightenment and emancipation. As with all critical theories, the critical theory constructed for this thesis actually includes four theories: the theories of crisis, ideology, emancipation and education. Critical theories begin in those areas of society where people live under domination and repression, those areas where people are frustrated in their attempts to meet their needs, interests and desires. The *theory of crisis* (chapter 8) describes the domination and frustration experienced by the actors. The *theory of ideology* (chapter 8) describes the participant ideologies and social institutions that dominate the actors and frustrate their ability to fulfil their needs and interests. The critical theory constructed for this thesis offers an alternative situation for the Romanian public through the hybrid forum deliberative legitimacy standards developed in chapters 6 and 7; these deliberative legitimacy standards serve as this critical theory's *theory of emancipation*. The *theory of education* (chapter 13) describes an approach for realising the theory of emancipation. It is hoped that the results of this research may be used to improve the design of Romanian hybrid forums in way that liberates and motivates individuals and associations to participate in the decisions that impact their lives and the lives of their communities.

In Chapter 2, I describe the Roşia Montană case. This research investigates the deliberative system that has been formed and the hybrid forums that were convened to debate the authorisation of the proposed Roşia Montană gold mining project. In this chapter, I provide a summary of the project as it is proposed by the developer. I briefly describe the various voluntary associations (economic and civic) that are participating in the deliberative system. I elaborate on the arguments supporting and opposing the mine.

In Chapter 3, I describe Romania's zoning and project authorisation processes. This description is based on relevant international conventions, European directives and Romanian law. I provide a brief description of Romania's experience with EIA processes in general. Finally, I describe the status of the specific activities associated with the ongoing authorisation processes for the proposed Roşia Montană gold mine.

In Chapter 4, I describe the methodology used for this research. In this chapter, I describe the epistemological and theoretical foundation for the design of this research project and justify a single case study methodology. I describe the ethical considerations for a sensitive topic research project and the data collection and data analysis methods employed. Both qualitative and quantitative data collection methods were used in this project, including: semi-structured interviews of public officials, observer-as-participant observations of public meetings, self-completed surveys for meeting participants, complete-participant observations of Romania's freedom of information request process and public archive research.

In Chapter 5, I review deliberative democracy theory and its foundational theory, communicative action. I describe the genesis and development of deliberative democracy theory. I provide an overview of deliberative systems theory and expand on the theory by distinguishing the five deliberative venue types that make up a deliberative system. I use deliberative democracy theory to describe the ways the various deliberative venues interrelate.

In chapter 6 and 7, I develop the legitimacy standard for hybrid forums that will be used to critically assess the legitimacy claims of the public meetings that were convened as part of the proposed Roşia Montană project's EIA process. Based on an overview of the idea of legitimacy in deliberative democracy theory in Chapter 6 I create deliberative legitimacy standards for each of the five deliberative venues that make up a deliberative system. I argue that the aim and format of each of the deliberative venues are different which means that the legitimacy conditions for each venue type are different too. In Chapter 7, I elaborate on hybrid forum deliberative legitimacy based on the normative claims offered by deliberative practitioners. For Critical Theorists the union of theory and practice is important. I describe the various types of hybrid forums, with a focus on public meetings – the type of hybrid forum typically used in EIA processes. I describe some of the experiences, methods and best practices employed by practitioners to ensure deliberative legitimacy. In this chapter, I compare and combine the normative claims of deliberative theorists with those of deliberative practitioners to develop the hybrid forum legitimacy standard that will be used to critically assess the legitimacy claims of the hybrid forums convened as part of the proposed project's EIA process. The legitimacy standard developed for this thesis makes up the *theory of emancipation* for the

critical theory of public participation and deliberation in post-communist Romania.

In Chapter 8, I draw on new institutionalism theory to describe the historical and contemporary socio-economic conditions that shape Romanian public participation and deliberation. This explanation serves as the *theory of ideology* for the critical theory constructed in this thesis. After that I describe the domination and suffering experienced by the participants of the deliberative system to debate the authorisation of the proposed Roşia Montană gold mining project and the domination and suffering experienced by the participants of the EIA hybrid forums. These descriptions serve as the critical theory's *theory of crisis*.

In Chapter 9, I describe the deliberative system that has been formed to debate the authorisation of the proposed Roşia Montană gold mining project. For each of the five venue types, I provide examples from the Roşia Montană deliberative system. These examples elucidate the venue types of a deliberative system as well as provide a context for the series of hybrid forums convened as part of the proposed project's EIA process.

In Chapters 10-12, I critically assess the legitimacy claims of the hybrid forums that were convened as part of the proposed Roşia Montană project's EIA process. Largely based on the claims of the participants themselves, I apply the eleven condition deliberative standard that was developed from deliberative theory and practice in chapters 6 and 7 of this thesis. This standard is compared to the structural features of the RMGC hybrid forums and highlights

the elements that caused the domination and repression experienced by the RMGC hybrid forum participants. This analysis demonstrates that the hybrid forums convened as part of the proposed Roşia Montană project cannot be considered legitimate based on the claims of the participants nor can they be considered legitimate based on the normative claims of deliberative theory and practice.

CHAPTER 2: THE ROȘIA MONTANĂ CASE STUDY

In this chapter I describe the case that is examined in this thesis in order to describe the stage on which the deliberative system and the hybrid forums play out. Here I provide a summary description of the proposed gold mining project. This summary is based on the description of the project as it has been presented in the project documentation submitted by the project owner and based on the written and spoken statements and opinions of the participants themselves. I describe the most active civil society associations working to influence the authorisation decision for the proposed project and provide an overview of the substantive debate around the project authorisation.

THE PROJECT



Photo 1: Roșia Montană (Gold Futures, 2009)

A private publically traded Canadian company, Gabriel Resources (TSX GBU), and its Romanian subsidiary, Roșia Montană Gold Corporation (RMGC)², hold the exclusive rights³ to conduct mining operations in the

² Gabriel Resources, 2000

³ Gabriel Resources, 2000

commune of Roşia Montană in Transylvania, Romania.⁴ As part of Romania's privatisation efforts, Minvest S.A., the state owned mining company that originally held the title to the Roşia Montană mining license, transferred the license to the Gabriel Resources subsidiary in October 2000.⁵ RMGC plans to construct and operate four open pit mines⁶, a gold processing plant⁷ and a complex waste management system⁸ at the site. In order to obtain the environmental agreement needed to begin the project⁹, RMGC initiated its Environmental Impact Assessment (EIA) Process in December 2004 with the submission of its Project Presentation Report¹⁰ and continued the process with the submission of its EIA Report¹¹ more than two years later in May 2006.

Evidence shows that people have been conducting alluvial and underground mining operations in Roşia Montană for more than 2000 years.¹² Roşiamin (Minvest's subsidiary in Roşia Montană) constructed an open pit mine at Cetate in 1975¹³ and closed its underground mining operations in 1985¹⁴. In May 2006, coinciding with the submission of the RMGC authorisation, Roşiamin

⁴ RMGC, 2006a; Ch I map 1.3

⁵ Gabriel Resources, 2000

⁶ RMGC, 2006a; Ch I pg 10

⁷ RMGC, 2006a; Ch I pg 4

⁸ RMGC, 2006a; Ch I pg 42

⁹ Romanian Ordinance 860/2002 Annex I.1

¹⁰ RMGC, 2004

¹¹ RMGC, 2006a

¹² PACE, 2004; 1; Câmpeni Public Meeting

¹³ RMGC, 2007 Volume 28 page 9. Although in another place Gabriel Resources says that mining at Cetate started in 1970. (Gabriel Resources 2010 Annual Information Form; 12) In another place the company says that Minvest had been operating an open pit mine at Cetate since the 1960s. (RMGC, 2006b; 23)

¹⁴ Gabriel Resources 2010 Annual Information Form; 12

ceased all Roşia Montană mining operations¹⁵ and dismissed nearly 400 employees¹⁶.

The exploitation license held by RMGC covers approximately 23.88 square kilometres, representing 38% of the surface of the Roşia Montană commune.¹⁷ Zoning for the project area includes a project zone, a protected zone and buffer zones.¹⁸ Activities that are permitted in the project zone include mining quarries, an ore processing plant, a wastewater treatment plant, a Tailings Management Facility (TMF), waste rock dumps, access roads, power lines, pipe lines, electrical substations, offices and workshops.¹⁹ The protected zone has been set aside to protect a number of buildings, churches and ancient mine access points that have architectural or historical significance.²⁰ Buffer zones are strips of land around certain elements of the project to buffer the protected zones, as well as the areas not included in the license, from the impacts of the project.²¹

RMGC plans a large scale open-pit mining operation using explosives²², hydraulic shovels and large haul trucks.²³ Mining will occur in four open pit mine sites along the Roşia Montană valley: Cetate (the open pit mine that had been operated by Roşiamin), Cârnic (where much of the historic underground

¹⁵ Gabriel Resources 2010 Annual Information Form; 13

¹⁶ RMGC, 2006b; 23 and Bucharest Daily News 30 June 2006 Retrieved 30 November 2011 from <http://www.highbeam.com/doc/1G1-147673528.html>

¹⁷ RMGC, 2006d; 11; Bankwatch Roşia Montană Gold Mine (2002) Retrieved 30 November 2011 from <http://bankwatch.org/documents/rosiamontana.pdf>

¹⁸ RMGC, 2006d; 27

¹⁹ RMGC, 2006d; 56-58

²⁰ RMGC, 2006a Cultural Heritage Plan and Roşia Montană Commune (2009)

²¹ RMGC; 2006a Cultural Heritage Plan

²² RMGC, 2006a; Chapter 2 page 54-57

²³ RMGC, 2006a; Chapter 2 page 12

mining has occurred) and the new areas of Orlea and Jig.²⁴ The mine and processing plant will operate 24-hours a day, but the activity will be reduced at night and the blasting at the mines will occur only during daylight hours.²⁵ Construction of the mine and processing facilities is expected to take 2 to 3 years.²⁶ Mining is expected to continue for 16 years²⁷ and area rehabilitation is expected to begin in year 5 of operations and continue 5 years after mining operations cease.²⁸

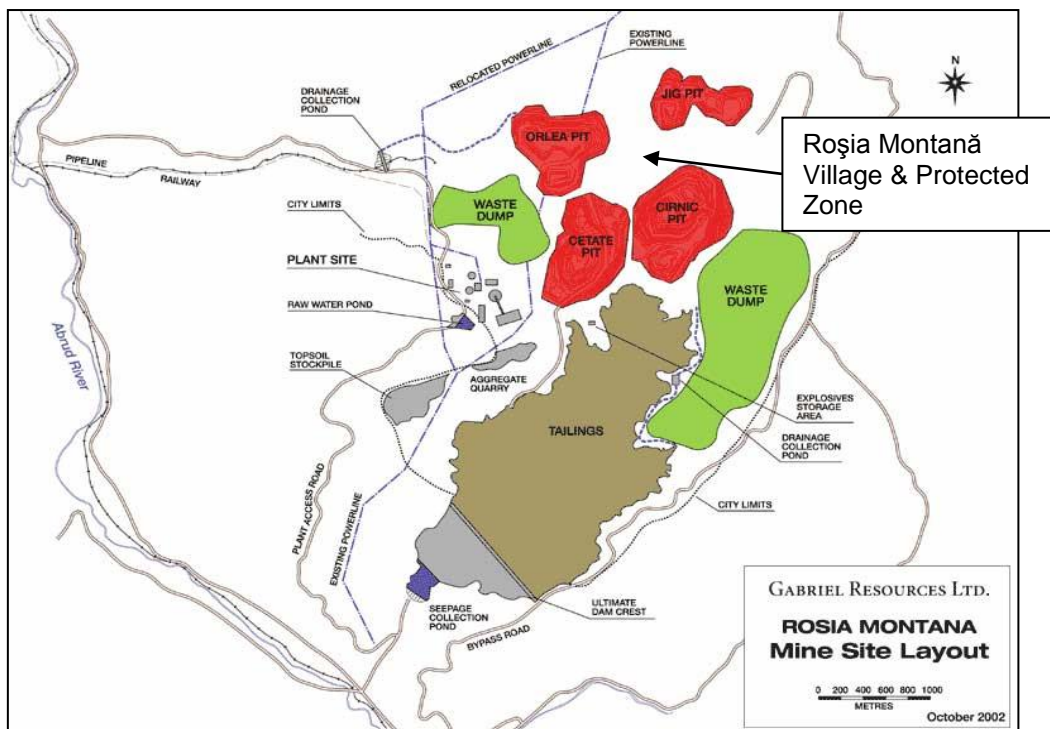


Figure 1: RMGC Project Site (RMGC, 2004; 96)

²⁴ RMGC, 2006a; Chapter 2 page 54; Alba Iulia Public Meeting; Câmpeni Public Meeting

²⁵ RMGC, 2006a; Chapter 4.3: Noise and Vibration page 14; Câmpeni Public Meeting; In addition, at the public meetings, RMGC promises only 2 or 3 blasts per week. (Alba Iulia Public Meeting) The anticipated operating schedule for the other mining activities (extraction and hauling) is not made clear in the EIA documentation. (RMGC, 2006a; Chapter 1, RMGC, 2006a; Chapter 2 or RMGC, 2006a; Chapter 4.3: Noise and Vibration)

²⁶ RMGC, 2006a; Chapter 1 page 11

²⁷ RMGC, 2006a; Chapter 1 page 12

²⁸ RMGC, 2006a; Mine Rehabilitation Plan page 109-113

The onsite processing plant will have the capacity to accommodate up to 13 million tonnes²⁹ of ore per year³⁰ – operating 7 days per week and 24 hours per day³¹ – for 16 years.³² The processing plant will crush and grind the ore generated from the mining activities.³³ A process of cyanide leaching³⁴ and then electro-winning³⁵ will be used to extract the metals from the ore and the precious metals will be converted to doré bars³⁶. The processing plant will require approximately 11,000 to 13,000 tonnes of cyanide per year.³⁷ Waste rock will be deposited at either the Cetate or the Carnic waste dumps.³⁸

The treated tailings³⁹ - cyanide and water waste – generated from the processing plant will be pumped to the Tailings Management Facility (TMF).⁴⁰ The TMF includes a pond supported by a large dam and a secondary containment dam to collect seepage from the main dam.⁴¹ The TMF will be

²⁹ This figure was raised to between 13 million and 15.5 million in the Updated Technical Report published in March 2009.

³⁰ During the Bucharest public meeting, a participant pointed out that the current exploitation license only allows for production of 400k tonnes a year. RMGC responded that production limits would be determined after the environmental authorisation. (Bucharest Public Meeting) In a contestation to the EIA Report another participant claims that the production limits for the RMGC license is 400k tonnes per year. (RMGC, 2007; Volume 65 page 145) The company responds that it the license has a 20 year limit with the possibility to extend and that the license gives them the right to exploit the resources within the perimeter defined in the license. (RMGC, 2007; Volume 65 page 204)

³¹ RMGC, 2006a; Chapter 2 page 21

³² RMGC, 2006a; Chapter 2 page 75

³³ RMGC, 2006a; Chapter 2 page 62-66

³⁴ RMGC, 2006a; Chapter 2 page 67-72

³⁵ RMGC, 2006a; Chapter 2 page 73-75

³⁶ RMGC, 2006a; Chapter 2 page 75

³⁷ RMGC, 2006a; Chapter 2 page 116

³⁸ RMGC, 2006a; Chapter 1 page 18; Alba Iulia Public Meeting; Câmpeni Public Meeting

³⁹ The tailings treatment process is called INCO. (RMGC, 2006a; Chapter 2 page 13; Alba Iulia Public Meeting) According to the company this process will reduce the concentration of cyanide to 5 to 7 parts per million (RMGC, 2007; Volume 2 page 43; Alba Iulia Public Meeting). The process will reduce cyanide acid emissions to 134.2 kg/day (RMGC, 2007; Volume 2 page 78). At the public meetings the cyanide acid emissions would be reduced to 3-4 hundred micrograms and European regulations allow no more than 5 thousand micrograms. (Alba Iulia Public Meeting)

⁴⁰ RMGC, 2006a; Chapter 2 page 15-20

⁴¹ RMGC, 2006a; Chapter 2 page 15-20; Câmpeni Public Meeting

located in the Corna Valley⁴² in the Roşia Montană commune and will have a capacity of 250 million tonnes of waste material⁴³. According to the EIA Report, the surface area of the entire TMF is projected to be about 363 hectares.⁴⁴ The pond has been designed to withstand earthquakes up to a magnitude of 8 points on the Richter scale⁴⁵ and water volumes that would result from a probable maximum precipitation event of 450mm/24 hours⁴⁶. Sulphuric acid - leached from the waste rock dumps and from previous mining operations - will be routed through ditches to the TMF or to another pond behind the Cetate dam⁴⁷ or the water will be reused in the processing plant or it will be treated in a waste water treatment plant and discharged into the environment.⁴⁸ Approximately 47 million tonnes of the 257 million tonnes of waste rock that will be generated from mining activities⁴⁹ will be used to construct the dam for the facility.⁵⁰ At completion the main TMF dam will rise 180 metres above the floor of Corna valley.⁵¹

The company estimates that the site holds reserves of about 10.1 million troy ounces (314.15 tonnes) of gold and 47.6 million troy ounces (1480.5 tonnes) of silver.⁵² RMGC predicts that the mines will produce an average of 500,000 troy ounces (16 tonnes) of gold and 1.8 million troy ounces (15 tonnes) of silver per

⁴² RMGC, 2006a; Chapter 2 page 15; Alba Iulia Public Meeting; Câmpeni Public Meeting

⁴³ RMGC, 2007; Volume 3 page 137; Alba Iulia Public Meeting

⁴⁴ RMGC, 2007; Volume 5 page 9; The surface area of the pond was 316 hectares at the public meetings. (Alba Iulia Public Meeting)

⁴⁵ RMGC, 2006a; Chapter 7 page 26-27 and RMGC, 2007; Volume 4 page 1; Alba Iulia Public Meeting

⁴⁶ RMGC, 2006a; Chapter 7 page 39; Alba Iulia Public Meeting

⁴⁷ RMGC, 2006a; Chapter 3 page 35; Alba Iulia Public Meeting

⁴⁸ RMGC, 2006a; Chapter 9 page 40; Câmpeni Public Meeting

⁴⁹ RMGC, 2006a; Chapter 3 page 31

⁵⁰ RMGC, 2006a; Chapter 3 page 32

⁵¹ RMGC, 2006a; Tailings Facility Management Plan page 45

⁵² RMGC, 2006a; Chapter 2 page 75 These figures were reduced to 7.9 million troy ounces of gold and 29 million troy ounces of silver in the Updated Technical Report, RMGC (2009b).

year over the 16 year life of the project.⁵³ In the EIA Report, the company says that it has invested more than \$150 million in the RMGC project⁵⁴; by July 2009 it says it had invested \$350 million⁵⁵. The company estimates that it will cost an additional \$638 million to build the mine⁵⁶ and \$284 million for working capital costs during mine operation and closure⁵⁷. These capital expenditures cover pre-production, mining equipment, mine exploration and development, processing plant and TMF construction, infrastructure improvements and village resettlement. RMGC estimates that operating costs for mining, processing, waste management and administration will exceed \$2 billion over the life of the project⁵⁸ and will average about \$237 per ounce of gold over the life of the mine⁵⁹.

The project requires 16.64 square kilometres of land in Roşia Montană, Abrud, Bucium and Câmpeni – including 974 households and 1,947 non-residential⁶⁰ properties.⁶¹ The project requires the displacement of households in the

⁵³ RMGC, 2006a; Chapter 9 page 5 In another place the company predicts that it will produce the full reserve (10.1 million troy ounces of gold and 47.6 million troy ounces of silver). (RMGC, 2006a; Chapter 2 page 75)

⁵⁴ RMGC, 2006a; Chapter 9 page 7 At the public meetings that number was \$160 million. (Alba Iulia Public Meeting) In the Annex to the EIA, the company says that it has invested \$200 million in the project. (RMGC, 2007; Volume 65 page 1)

⁵⁵ Gabriel Resources (2009) 6 July 2009 Press Release, Retrieved 8 May 2010 from <http://www.gabrielresources.com/s/PressReleases.asp>.

⁵⁶ RMGC, 2006a; Chapter 9 page 7 This figure was changed to \$876 million in March 2009. (RMGC, 2009b; 180) This capital expenditure estimate does not include a cost overrun facility, the land rehabilitation financial guarantee and hedging programmes potentially required by investors. These additional items could increase the cost estimate by another US\$ 150 million. (Gabriel Resources 2010 1st Qtr Report; 2)

⁵⁷ RMGC, 2006a; Chapter 9 page 7 This figure was increased to \$366 million in March 2009. (RMGC, 2009b; 180)

⁵⁸ RMGC, 2006a; Chapter 9 page 7

⁵⁹ Gabriel Resources 2006 1st Qtr Report; 5 This figure was not quoted in the EIA and was changed to \$335 per ounce of gold over the life of the mine in March 2009. (RMGC, 2009b; 183)

⁶⁰ RMGC, 2006b; 36

⁶¹ RMGC, 2006b; 9; Establishing ownership of some Roşia Montană properties has been difficult because property records in Transylvania were in Hungarian before the end of WWI and because during the communist regime properties were expropriated and land owners evicted.

villages of Roșia Montană (about 713 households), Corna (ca. 150 households), and in the Abrud Commune the village of Gura Corneii (ca. 111 households).⁶² The non-residential properties are mostly agricultural and public facilities, including facilities like Roșia Montană's Town Hall, schools, the police station⁶³, public water, sanitation and power facilities⁶⁴ and the public football field. The company expects that 34 small and medium sized businesses will be impacted by the project.⁶⁵ According to the company's Relocation and Resettlement Action Plan (RRAP), 'RMGC has decided to acquire land on a willing seller/willing buyer basis, and to avoid, as far as practical, the use of expropriation'.⁶⁶

Effectuated land and business owners can choose between resettlement and relocation.⁶⁷ In the case of relocation, the company compensates the effected owner for their property and loss of income and the owner moves to a location of his/her choice.⁶⁸ In the case of resettlement, the company compensates the owner for their property and loss of income and the owner purchases a property in one of two resettlement sites - Piatra Alba and Recea Alba.⁶⁹ Piatra Alba will

(RMGC, 2006b; 26; Alba Iulia Public Meeting) Roșia Montană land owners have been enduring the land restitution process experienced by many Romanians. (RMGC, 2006b; 26)

⁶² RMGC, 2006b; 9

⁶³ RMGC, 2006b; 36

⁶⁴ RMGC, 2006b; 40

⁶⁵ RMGC, 2006b; 40; Examples of the business impacted include, grocery and general stores, bars, a locksmith, fish farming, wood plank processes, a hairdresser and a car repair shop.

⁶⁶ RMGC, 2006b; 9

⁶⁷ RMGC, 2006b; 42 Property owners within the Project-Impact Area defined in the Urbanistic Certificate and the Industrial Area PUZ are eligible for compensation. (RMGC, 2006b; 42)

⁶⁸ RMGC, 2006b; 43

⁶⁹ RMGC, 2006b; 43

be located within the Roșia Montană Commune⁷⁰ and Recea Alba will be built in the nearby city of Alba Iulia - 77km from Roșia Montană⁷¹.

According to the RRAP, the Roșia Montană public facilities will be re-established at the Piatra Alba resettlement site.⁷² Impacted religious congregations can choose between compensation for their facilities or the reconstruction of their facilities in Piatra Alba.⁷³ A new cemetery will be reconstructed in Piatra Alba and family members can choose to either relocate impacted graves to Piatra Alba or to another existing cemetery.⁷⁴ The company has promised to build a school and a gymnasium, a town hall, police station, post office, community centre, medical centre and public plaza in Piatra Alba.⁷⁵

The company has promised to compensate property owners and businesses for their non-movable assets, to compensate effected people for their loss of income and to provide assistance and training to help resettled and relocated people restore their livelihoods in their new communities. Resettled or relocated households are entitled to two trips in a company provided vehicle to move their possessions, livestock and harvested produce.⁷⁶ Farmers and orchard owners have ten days from the property transfer date to harvest their crops.⁷⁷ Employees who lose their jobs will receive the equivalent of three months' salary.⁷⁸ The company has created a Skills Enhancement Fund to

⁷⁰ RMGC, 2006b; 54

⁷¹ RMGC, 2006a; 8; The original location for the Alba Iulia Resettlement site was called Furcilor Hill. (RMGC, 2006a; 54)

⁷² RMGC, 2006b; 43

⁷³ RMGC, 2006b; 46

⁷⁴ RMGC, 2006b; 46

⁷⁵ RMGC, 2006b; 64

⁷⁶ RMGC, 2006b; 52

⁷⁷ RMGC, 2006b; 53

⁷⁸ RMGC, 2006b; 45

improve the education and training of people displaced from the project area.⁷⁹ A Small Business Fund has been established by the company to provide micro-finance and small business loans to business owners impacted by the project.⁸⁰ The company will monitor displaced people – especially vulnerable people – after the resettlement or relocation to identify needs and to supplement government assistance if necessary.⁸¹

According to the RRAP, by May 2006 Gabriel Resources had purchased 401 of the 974 (41%) required residential properties⁸² and 483 of the 1,947 (25%) non-residential properties.⁸³ Meeting participants argue that the company only owns 17% of the *land* it requires to build the project.⁸⁴ Because of the suspension of the RMGC EIA process, the company discontinued its home purchase programme in February 2008.⁸⁵ Construction of the La Recea settlement site began in July 2007⁸⁶ and was completed in the autumn of 2009⁸⁷. By the 1st quarter of 2010, 124 of the 125 homes had been turned over to their new owners.⁸⁸ As of the 1st quarter of 2010, the company had still not obtained the permits needed to begin construction of the Piatra Alba Resettlement site.⁸⁹

⁷⁹ RMGC, 2006b; 66

⁸⁰ RMGC, 2006b; 66; Câmpeni Public Meeting

⁸¹ RMGC, 2006b; 67-71

⁸² By 2010, the company says that it has acquired 77% of the residential properties or 750 properties. (Gabriel Resources 2010 Annual Information Report; 22) In 2009, the company only needed 892 residential properties and had purchased 794 (89%) of them. (Gabriel Resources, 2009b; 13)

⁸³ RMGC, 2006b; 36;

⁸⁴ Câmpeni Public Meeting; Field Notes 7 August 2006

⁸⁵ Gabriel Resources, 2007 4th Qtr Report; 3

⁸⁶ Gabriel Resources 2009 4th Qtr Report; 4

⁸⁷ Gabriel Resources 2010 Annual Information Report; 6

⁸⁸ Gabriel Resources 2010 1st Qtr Report; 4

⁸⁹ Gabriel Resources 2010 1st Qtr Report; 4; I was not able to find any justification for the permitting delays.

A considerable amount of archaeological sites, structures and objects can still be found in Roşia Montană. Roman underground mining galleries, waxed tablets, ancient mining equipment, baths, temples, sanctuaries and cemeteries are some examples of the objects and structures found at the site.⁹⁰ In the EIA Report, the company identifies the 7 archaeological sites in the project's footprint that are listed as Historical Monuments.⁹¹ The company also identifies 13 archaeological sites⁹² that they have investigated through their 'archaeological rescue programme'.⁹³

Since 2001, RMGC has partnered with Romania's Ministry of Culture and funded its *Alburnus Maior*⁹⁴ *National Research Programme*.⁹⁵ In the EIA Report, the company says it had spent \$9 million in archaeological research programmes and that it planned to spend \$25.7 million more.⁹⁶ By the end of 2008, RMGC had spent \$11 million on its archaeology project.⁹⁷ A team of researchers from 21 Romanian institutes and 3 foreign ones⁹⁸ studied the subterranean archaeology, ethnography, oral history and historic monuments.⁹⁹ The company established a database and GIS location system for archaeological research, funded a series of publications, prepared movable exhibitions and established a school for Romanian archaeologists.¹⁰⁰ Some

⁹⁰ PACE, 2004; 1; Alba Iulia Public Meeting; Câmpeni Public Meeting

⁹¹ RMGC, 2006a; Cultural Heritage Management Plan page 43

⁹² Some of the 13 archaeological sites overlap with the 7 listed Historical Monuments.

⁹³ RMGC, 2006a, Cultural and Ethnical Conditions page 22

⁹⁴ Alburnus Maior is the Roman name for Roşia Montană. (PACE, 2004; 1)

⁹⁵ PACE, 2004; 3; Câmpeni Public Meeting

⁹⁶ Câmpeni Public Meeting; RMGC, 2006a; Cultural Heritage Management Plan for Archaeological Heritage Plan page 50

⁹⁷ Câmpeni Public Meeting ; Gabriel Resources 2008 4th Qtr Report; 9 In the Annex to the EIA, the company estimates that it will spend \$25 million on its entire Cultural Heritage Management Plan. (RMGC, 2007; Volume 2 page 2)

⁹⁸ RMGC, 2007; Volume 2 page 101

⁹⁹ PACE, 2004; 6

¹⁰⁰ PACE, 2004; 3

finds will be preserved in-situ.¹⁰¹ Moveable objects will be preserved and displayed at a new mining museum to be funded by the company.¹⁰² One of the ancient Roman mining galleries will be made accessible to the public.¹⁰³ For those monuments that will be destroyed¹⁰⁴ (Roman mining galleries and impacted unmovable objects) the company will fund the construction of replicas¹⁰⁵ or 3D computer representations¹⁰⁶.



Photo 2: Orthodox Church (RMGC, 2006a; Cultural Heritage Management Plan page 30)

In the EIA Report, the company identifies the cultural sites that are located in the footprint of the project – 41 historic buildings¹⁰⁷, 7 churches¹⁰⁸, 3 prayer houses¹⁰⁹ and 12 cemeteries¹¹⁰. Of these cultural sites, 6 buildings¹¹¹, 4 churches¹¹², 3 prayer houses¹¹³ and 6 cemeteries¹¹⁴ are located outside of the protected

¹⁰¹ RMGC, 2006a; Chapter 6 page 45

¹⁰² RMGC, 2006a; Chapter 6 page 45

¹⁰³ RMGC, 2006a; Chapter 6 page 45

¹⁰⁴ Roşia Montană Public Meeting

¹⁰⁵ RMGC, 2006a; Chapter 6 page 46

¹⁰⁶ RMGC, 2006a; Management Plan for Archaeological Heritage page 14

¹⁰⁷ RMGC, 2006a; Cultural Heritage Management Plan page 23 One of these historic 'buildings' is the market of Roşia Montană. (RMGC, 2006a; Cultural Heritage Management Plan page 43) In 2007, ARA requested that an additional 50 buildings be listed as significant by the Ministry of Culture and Religion. This request automatically put these buildings in a protected state until the Ministry makes its final listing decision. As a result, the company has been required to conduct emergency maintenance works for the nominated protected houses it has purchased in the historic centre of Roşia Montană. (The Association Architecture. Restoration. Archaeology Press Release 9 October 2007 Retrieved 2 December 2011 from http://www.rosiamontana.ro/doc/cidrm/ARA_PR_091007_engl.pdf)

¹⁰⁸ RMGC, 2006a; Cultural Heritage Management Plan page 24 Two of the 7 churches are also historic buildings. (RMGC, 2006a; Cultural Heritage Management Plan page 14)

¹⁰⁹ RMGC, 2006a; Cultural Heritage Management Plan page 24

¹¹⁰ RMGC, 2006a; Cultural Heritage Management Plan page 24

¹¹¹ RMGC, 2006a; Cultural Heritage Management Plan page 23

¹¹² RMGC, 2006a; Cultural Heritage Management Plan page 24

¹¹³ RMGC, 2006a; Cultural Heritage Management Plan page 24

¹¹⁴ RMGC, 2006b; 40 However, in the In another place, the company claims that 5 cemeteries will be affected by the project. (RMGC, 2006a; Cultural Heritage Management Plan; 35)

area. Of these sites in the industrial zone, the 6 buildings¹¹⁵, 2 of the churches and a prayer house¹¹⁶ will not be impacted by the project; although they will be inaccessible during the life of the project. This means that 2 churches, 2 prayer houses and 6 cemeteries will be destroyed as a result of the project.¹¹⁷ The company has offered to build a new cemetery at the Piatra Alba Site and to relocate the 410¹¹⁸ effected graves.¹¹⁹ The churches and prayer houses that will be destroyed - as well as the churches and the prayer house that will be inaccessible during the life of the project¹²⁰ – will be replaced by the company at Piatra Alba.¹²¹ However, those congregations with too few members for a new building will be offered compensation for the building.¹²² In the EIA Report, RMGC commits to funding the restoration of the buildings – that are in relatively good structural condition - in the protected area and to maintaining all 41 of the historic monuments in their present condition.¹²³

The company plans certain measures to minimise the impact of the project on the Protected Zone. Barriers will be built around the protected area to reduce sound levels, minimise vibrations and limit the visual impact of the mining operation.¹²⁴ Roads will be moistened to protect the area from dust that would

¹¹⁵ RMGC, 2006a; Cultural Heritage Management Plan page 23; At the Câmpeni Public Meeting, the company said that the 6 buildings outside of the protected zone would be affected. (Câmpeni Public Meeting)

¹¹⁶ RMGC, 2006a; Cultural Heritage Management Plan page 24

¹¹⁷ Câmpeni Public Meeting; RMGC, 2006b; 40 In another place, the company claims that 5 cemeteries will be affected by the project. (RMGC, 2006a; Cultural Heritage Management Plan; 35)

¹¹⁸ RMGC, 2006a; Cultural Heritage Management Plan page 35; Câmpeni Public Meeting

¹¹⁹ RMGC, 2006a; Cultural Heritage Management Plan page 35

¹²⁰ RMGC, 2006a; Cultural Heritage Management Plan page v

¹²¹ RMGC, 2006a; Cultural Heritage Management Plan page 25; Câmpeni Public Meeting

¹²² RMGC, 2006a; Cultural Heritage Management Plan page 25

¹²³ RMGC, 2006a; Cultural Heritage Management Plan for Historic Monuments pages 76-94; Câmpeni Public Meeting

¹²⁴ Alba Iulia Public Meeting; Câmpeni Public Meeting; I couldn't find this measure in the EIA Report.

otherwise be generated by the trucks.¹²⁵ Trucks will reduce their speed in the protected areas.¹²⁶

Into the 5th year of mining operations¹²⁷, RMGC promises to begin to rehabilitate the site and return it to productive use – ‘physically, chemically and biologically’.¹²⁸ Closure also includes a monitoring programme lasting ‘decades’ to ensure that the rehabilitation efforts remain effective.¹²⁹ The Cetate pit will be flooded, using treated tailings pond water, to form a lake.¹³⁰ RMGC plans to landscape and cover the waste rock heaps and the remaining open pits with soil, grass and trees.¹³¹ The tailings pond will be drained (into the Cetate pit)¹³², filled, covered and re-vegetated¹³³. Water treatment installations will continue to treat the local water - that has been contaminated with heavy metals and sulphuric acids from the exposed rock - after the mining and processing operations cease.¹³⁴ The company estimates that it will spend \$70.1 million to restore the landscape and \$1.3 million per year after mining operations are complete for environmental monitoring and water treatment.¹³⁵ The funds required to cover the closure costs will be ensured by an Environmental Financial Guarantee (EFG).

¹²⁵ RMGC, 2006a; Air Quality Plan page 11; Alba Iulia Public Meeting; Câmpeni Public Meeting

¹²⁶ RMGC, 2006a; Chapter 9 page 45; Alba Iulia Public Meeting

¹²⁷ RMGC, 2006a; Mine Rehabilitation Plan page 28; At the public meetings, rehabilitation was to begin in the 9th year. (Alba Iulia Public Meeting)

¹²⁸ RMGC, 2006a; Chapter 9 page 6

¹²⁹ RMGC, 2006a; Chapter 9 page 6

¹³⁰ RMGC, 2006a; Chapter 9 page 37; Alba Iulia Public Meeting

¹³¹ RMGC, 2006a; Chapter 9 page 37; Câmpeni Public Meeting

¹³² RMGC, 2006a; Chapter 9 page 40; Câmpeni Public Meeting

¹³³ RMGC, 2006a; Mine Rehabilitation Plan page 77

¹³⁴ RMGC, 2006a; Chapter 9 page 37

¹³⁵ RMGC, 2006a; Mine Rehabilitation Plan page 130 In the Annex to the EIA, the figure was increased to \$76 million. (RMGC, 2007; Volume 2 page 52) During the public meetings this figure was \$73 million. (Zlatna Public Meeting) This figure is increased to \$137 million in 2010. (RMGC, 2010; 8)

According to the EU Mine Waste Directive¹³⁶, RMGC must provide (prior to the commencement of operations) a financial guarantee (for example, a financial deposit) to cover the rehabilitation of the project site. These funds must be 'readily available' at all times.¹³⁷ The amount of the guarantee may need to be adjusted periodically, by independent and qualified third parties, to accommodate the on-going changes to the environment over the course of the project life.¹³⁸ This protects the community in the event that the project owner cannot fulfil its obligations to rehabilitate the site.¹³⁹ This guarantee ensures that the site is returned to a safe and stable environment and that measures are in place to prevent on-going pollution.¹⁴⁰ According to RMGC, the calculation of its EFG should be based on the costs of the rehabilitation described in the previous paragraph.¹⁴¹

The EU Environmental Liability Directive establishes liability for the prevention and remedying of environmental damage with the project owner.¹⁴² Based on the 'polluter pays' principle, an operator - whose activities cause damage to the environment - is held financial liable for the repair of that damage.¹⁴³ Member states are directed to encourage operators to purchase insurance to cover the prevention and repair of pollution caused by their operations.¹⁴⁴ While the company mentions the EU Directive, RMGC makes no mention of its own environmental liability insurance in the EIA Report. In the EIA Annex, RMGC

¹³⁶ EU Mine Waste Directive 2006/21/EC Article 14

¹³⁷ EU Mine Waste Directive 2006/21/EC Article 14

¹³⁸ EU Mine Waste Directive 2006/21/EC Article 14

¹³⁹ RMGC, 2006a; Mine Rehabilitation page 128

¹⁴⁰ RMGC, 2006a; Mine Rehabilitation page 128

¹⁴¹ RMGC, 2006a; Mine Rehabilitation page 130

¹⁴² EU Environmental Directive 2004/35/CE

¹⁴³ EU Environmental Directive 2004/35/CE Preamble paragraph 2

¹⁴⁴ EU Environmental Directive 2004/35/CE Preamble paragraph 27

claims that no applicable insurance product exists in Romania, because the relevant European directives had not been transposed to Romanian legislation.¹⁴⁵ RMGC promises to purchase environmental liability insurance as soon it is legally required under Romanian law and as soon as the products are available.¹⁴⁶

THE COMPANY

Roşia Montană Gold Corporation (RMGC) holds the title for the Roşia Montană exploitation license (no. 47/1999¹⁴⁷).¹⁴⁸ RMGC, as the titleholder, has exclusive rights to conduct mining operations in a 23.88 square kilometre area¹⁴⁹ of the Roşia Montană commune extending into the neighbouring communes of Abrud and Lupşa.¹⁵⁰ The title was transferred from the state owned mining company Minvest to RMGC in 2000.¹⁵¹ RMGC (then known as EuroGold¹⁵²) was founded

¹⁴⁵ RMGC, 2007; Volume 1 page 28

¹⁴⁶ RMGC, 2007; Volume 1 page 28

¹⁴⁷ The term and perimeters of the original exploitation license are not entirely clear because the National Agency for Mineral Resources will not release copies of the license citing 'state interests'. (RMGC, 2007; Volume 65 page 222 and NAMR Roşia Montană Correspondence 12 September 2007 Retrieved 3 December 2011 from http://www.namr.ro/Comunicate_ANRM/RosiaMontana.pdf)

The National Agency for Mineral Resources did not respond to my Freedom of Information Requests for a copy of the license. (FIR 20 March 2007 and FIR 9 May 2007)

¹⁴⁸ RMGC, 2006a, Volume 1 page 4 According to an EVZ 22 May 2002 newspaper article, Gabriel Resources bought the Roşia Montană license in 1997 for \$3 million. (Roşia Montană Local Council 1 Interview) According to the article, the deal also promises an additional payment of \$400 million and more than 25,000 jobs for the local population over the life of the mine.

¹⁴⁹ RMGC, 2006a; Chapter 1 page 4

¹⁵⁰ RMGC, 2006a; Ch I map 1.3

¹⁵¹ Gabriel Resources, 2000

¹⁵² Gabriel Resources changed the name of its subsidiary from EuroGold to RMGC in 2000. (RMGC Website Retrieved 3 December 2011 from <http://en.rmgc.ro/media/quick-facts.html>) Gabriel Resources first refers to its subsidiary as Roşia Montană Gold Corporation in its March 2000 press release about the Baia Mare mining accident in January 2000. (Gabriel Resources Press Release 31 March 2000) Interestingly, the majority owner of the ore processing subsidiary and private/public partnership (then called Aurul) responsible for the Baia Mare accident was an Australian corporation then called Esmeralda. (NYTimes 14 February 2000) In June Aurul restarted operations at its Baia Mare plant. (BBC News 14 June 2000 Retrieved 4 December 2011 from <http://news.bbc.co.uk/2/hi/europe/790547.stm>) In October 2001, Aurul changed its name to Transgold and in May 2002 Esmeralda changed its name to EuroGold. (EuroGold, 2004; 12) I was not able to find a connection between the Roşia Montană EuroGold

in 1997 and had been an affiliate of Minvest since 1998.¹⁵³ RMGC's previous affiliate status allowed it to conduct exploration and development activities and prepare feasibility studies while Roşiamin continued its small scale government subsidised mining operations in the area.¹⁵⁴ The Roşia Montană exploitation license has an initial term of 20 years, renewable for 5 year terms.¹⁵⁵

Gabriel Resources¹⁵⁶ (GBU:TSX) – a Canadian company based in Toronto¹⁵⁷ – was founded in 1986¹⁵⁸ and the company owns 80.46% of RMGC; Minvest owns 19.31% of the company and the remaining .23% is owned by a Romanian company called Foricon¹⁵⁹. Newmont Mining (15%), Electrum Strategic Holdings (18%), Paulson & Company (18%) and the Beny Steinmetz Group (BSG) (9%) are major shareholders of Gabriel Resources.¹⁶⁰ In addition to the license at Roşia Montană, Gabriel Resources owns rights for mining at Baisoara

and the Baia Mare EuroGold. After shutting down operations - supposedly due to a frozen tailings pipe - but coincidentally the same month that the Hungary litigation hearings were to begin - Transgold went into liquidation in March 2006. (EuroGold 30 June 2006 Financial Statements page 6) Romania refused to declare Hungary a creditor in Transgold's liquidation (EuroGold 21 March 2007 Press Release) so the company was not required to pay Hungary the \$179 million it sought in damages from the accident. (Mineral Policy Centre, 2001; 4)

Ultimately, the Romanian State was required to pay the Hungarians nearly \$100 million in compensation for damages. (Cyanide Free Romania, 2011; FAQ Page)

¹⁵³ RMGC, 2006a; Chapter 1 page 6

¹⁵⁴ RMGC, 2006a; Chapter 1 page 4

¹⁵⁵ RMGC, 2006a; Chapter 1 page 6

¹⁵⁶ Gabriel Resources split into two companies in June 2000, Gabriel Resources and European Goldfields. Gabriel Resources held onto the subsidiary RMGC and its exploration and exploitation licenses in Roşia Montană, Bucium and Baisoara. European Goldfields held onto the Deva Gold subsidiary and its exploration and exploitation licenses in Certej, Zlatna, Bolcana and Baita-Craciunesti. (Gabriel Resources 19 April 2000 Press Release)

¹⁵⁷ Gabriel Resources 2010 Annual Information Form page 5

¹⁵⁸ Gabriel Resources 2010 Annual Information Form page 5; The company was founded as PIC Prospectors International Corporation. PIC changed its name to Starx Resource Corp in 1994. The company took the name Gabriel Resources in 1997.

¹⁵⁹ Gabriel Resources 2010 Annual Information Form page 5; At the time of the public meetings, Gabriel Resources owned 80% of RMGC; Minvest owned 19.31% and 3 minority shareholders owned .69%. Gabriel Resources bought out one shareholder, Comat Trading, in 2009 (Gabriel Resources 2009 3rd Qtr Report page 20) and another one, Cartel Bau, in the 4th Qtr 2009. (Gabriel Resources 2009 4th Qtr Report page 26)

¹⁶⁰ Gabriel Resources Press Release 11 November 2009

and the nearby commune of Bucium.¹⁶¹ Gabriel Resources' Bucium exploratory license expired in the spring of 2007.¹⁶² The company had applied for an exploitation license at that time, but the government indicated that it would not make a decision on the Bucium license until a decision is made on the Roșia Montană project.¹⁶³ The license for the Baisoara property was expected to expire in July 2011.¹⁶⁴ Gabriel Resources has ceased its exploration activities at Baisoara due to the delay to the Roșia Montană project.¹⁶⁵ To date neither RMGC nor Gabriel Resources has actually managed the operation of any mine.



**Photo 3: Alan R. Hill
(TWST, 2005)**

In September 2007, the Ministry of the Environment¹⁶⁶ suspended the RMGC authorisation process and RMGC was forced to scale back its activities.¹⁶⁷ During the EIA process, RMGC employed between 300 and 500 casual, temporary and full-time employees.¹⁶⁸ After the authorisation process was suspended by the Ministry of the Environment, the company was forced to scale back operations so it released 170 employees in

¹⁶¹ Gabriel Resources 2010 Annual Information Form page 5

¹⁶² Gabriel Resources 2008 4th Qtr Report page 57

¹⁶³ Gabriel Resources 2009 1st Qtr Report page 17 At the instigation of Alburnus Maior, in June 2005, the Tirgu-Mures Court ordered the Alba environmental protection authorities to provide a copy of the RMGC Bucium mining license to the NGO under freedom of information laws. The Alba authority refused. In October 2006, a court executor ordered the authority to pay a 50 RON fine per day for not supplying a copy of the license. As of January 2007, the Alba authorities still had not provided the NGO with a copy of the license. (Alburnus Maior 16 January 2007 Open Letter to the Minister of the Environment)

¹⁶⁴ Gabriel Resources 2010 1st Qtr Report page 18

¹⁶⁵ Gabriel Resources 2010 1st Qtr Report page 18

¹⁶⁶ For simplicity, this thesis will refer to the Ministry of the Environment. At the time of the RMGC public meetings the Ministry was called the Ministry of the Environment and Waters Management (Ministerul Mediului și Gospodăririi Apelor). The Ministry's name was changed to Ministry of the Environment and Sustainable Development (Ministerul Mediului și Dezvoltare Durabile) in April 2007. At the time of writing, the ministry is called the Ministry of the Environment and Forests (Ministerul Mediului și Pădurilor).

¹⁶⁷ Gabriel Resources 2007 4th Qtr Report page 1

¹⁶⁸ RMGC, 2006b; 23 RMGC, In another place, RMGC says that it employees an average of 450 employees per year. (RMGC, 2006a; Chapter 9 page 53, Sustainable Development Plan page 43)

December 2007.¹⁶⁹ At the time of the EIA process, Alan R. Hill had been the CEO of Gabriel Resources and the Director of RMGC since April 2005.¹⁷⁰ As of June 2010, Jonathan Henry is currently the President and Chief Executive Officer of Gabriel Resources.¹⁷¹

According to the company, RMGC is committed to building a mine to the industry's highest standards and to promote regional sustainable development.¹⁷² RMGC has initiated partnerships with civil society organisations and social programs in the areas of business development, health, education and the environment.¹⁷³ The company has introduced corporate governance policies based on openness and transparency.¹⁷⁴

CIVIL SOCIETY ASSOCIATIONS

A number of civil society organisations are working to influence the authorisation decision for RMGC's proposed gold mining operation in Roşia Montană. Some of the associations support the project and others oppose it. Some of these associations are international, some Romanian and some were created solely to fight the RMGC project.

¹⁶⁹ Gabriel Resources 2008 1st Qtr Report page 15; I could not find in any of the documents a breakdown of the number of full time, seasonal and part time workers released by RMGC.

¹⁷⁰ Gabriel Resources 27 April 2005 Press Release

¹⁷¹ Gabriel Resources 25 May 2010 Press Release; Mr Hill retired in March 2009. (Gabriel Resources 23 March 2009 Press Release)

¹⁷² Gabriel Resources 2010 1st Qtr Report page 1

¹⁷³ Gabriel Resources 28 March 2007 Press Release

¹⁷⁴ Gabriel Resources 28 March 2007 Press Release



Photo 4: Eugene David (Zoltan, 2006)

Alburnus Maior is a Romanian Non-Governmental Organisation (NGO) established in 2000.¹⁷⁵ Alburnus Maior is the leading association opposing the project. According to the NGO, its objective is to use public participation methods – especially



Photo 5: Stephanie Roth (Goldman Prize, 2005)

strategic litigation - to ensure the rejection of the RMGC project and to support alternative development projects in the area.¹⁷⁶ The members of Alburnus Maior are Roşia Montană landowners who refuse to sell their property to the company.¹⁷⁷ The president of the NGO, Eugene David is a landowner in Roşia Montană who says he has no intention of selling his land and relocating.¹⁷⁸ According to the NGO, it represents over 300 families in Roşia Montană and Bucium.¹⁷⁹ Stephanie Roth is the driving force behind Alburnus Maior.¹⁸⁰ She is a French and Swiss citizen.¹⁸¹ She joined the campaign to stop the RMGC project in 2002, after being involved in the campaign to successfully oppose the proposed Dracula Theme Park near the medieval town of Sighişoara, Transylvania.¹⁸² Ms. Roth is a former editor at the Ecologist.¹⁸³ At the time of the EIA process, the NGO was funded by Staples (UK), the Open Society

¹⁷⁵ Alburnus Maior, 2011

¹⁷⁶ Alburnus Maior, 2011; Strategic Litigation

¹⁷⁷ Alburnus Maior, 2011; Grist Retrieved 13 August 2012 from <http://grist.org/climate-energy/nijhuis-roth/>; Paul Kingsnorth Retrieved 13 August 2012 from <http://grist.org/climate-energy/nijhuis-roth/>

¹⁷⁸ Der Tagesspiegel 31 October 2011 Retrieved 5 October 2011 from <http://www.tagesspiegel.de/zeitung/der-fluch-des-goldes/4751556.html>

¹⁷⁹ Alburnus Maior, 2011

¹⁸⁰ The Goldman Environmental Prize, 2011

¹⁸¹ The Goldman Environmental Prize, 2011; Grist Retrieved 13 August 2012 from <http://grist.org/climate-energy/nijhuis-roth/>

¹⁸² The Goldman Environmental Prize, 2011; Grist Retrieved 13 August 2012 from <http://grist.org/climate-energy/nijhuis-roth/>; Paul Kingsnorth Retrieved 13 August 2012 from <http://grist.org/climate-energy/nijhuis-roth/>

¹⁸³ The Goldman Environmental Prize, 2011; Paul Kingsnorth Retrieved 13 August 2012 from <http://grist.org/climate-energy/nijhuis-roth/>

Foundation (Romania), the Open Society Institute (Hungary), the Rațiu Foundation (Romania), The Bodyshop Foundation (UK), JMG (Switzerland), X-Y Solidarity Fund (the Netherlands), La Fondation Un Monde par Tous (France) and by individual donations.¹⁸⁴

Romanian churches (Orthodox¹⁸⁵, Catholic¹⁸⁶, Protestant and Unitarian¹⁸⁷) have united in their opposition to the project.¹⁸⁸ These churches own significant amounts of property in Roșia Montană and have declared their intention not to sell any of their properties to RMGC.¹⁸⁹ Many church leaders are vocal in their opposition against the mine.¹⁹⁰

Established in 1971, Greenpeace is an international NGO with offices in 40 countries.¹⁹¹ The organisation 'acts to change attitudes and behaviour, to protect and conserve the environment and to promote peace.'¹⁹² According to the NGO, Greenpeace works to make polluters responsible and to promote environmental protection around the world.¹⁹³



Photo 7 Bratislava UNPD Protest (Alburnus Maior, 2007)

¹⁸⁴ Alburnus Maior, 2011; Funders

¹⁸⁵ Mining Watch Canada Website Retrieved 5 December 2011 from <http://www.miningwatch.ca/romania-latest-gabriel-resource-rebel-orthodox-church>

¹⁸⁶ National Catholic Register 14 August 2007 Retrieved 5 December 2011 from http://www.ncregister.com/site/print_article/3450/

¹⁸⁷ McClatchy Washington Bureau 25 August 2011 Retrieved 5 December 2011 from <http://www.mcclatchydc.com/2011/08/23/v-print/121731/thirst-for-gold-threatens-historic.html>

¹⁸⁸ CIDRM, 2011b

¹⁸⁹ CIDRM, 2011b

¹⁹⁰ For example, Mr. Ioan Mera, Orthodox Priest in Roșia Montană. (PACE, 2004; 5) and the Hungarian Churches of Roșia Montană 21 July 2003 Declaration (Retrieved 5 December 2011 from

http://www.rosiamontana.ro/img_upload/472936e3bca2bc61045730fbb1869240/Declaration_Historic_Hungarian_Churches.pdf) and the Cluj-Napoca Declaration 18 September 2003 (Retrieved 5 December 2011 from http://www.ngo.ro/site_item_full.shtml?x=5995)

¹⁹¹ Greenpeace, 2011

¹⁹² Greenpeace, 2011

Greenpeace uses research, lobbying, non-violent conflict and diplomacy to meet its aims.¹⁹⁴ Greenpeace Romania is against surface mining activities in general and supports sustainable development alternatives for Roşia Montană.¹⁹⁵

The Independent Centre for the Development of Environmental Resources (CIDRM) is a Romanian NGO established in 2006 and is an independent NGO based in Cluj-Napoca.¹⁹⁶ It manages programs that encourage the development of an NGO sector in Romania, ensure the protection of Romanian's right to a healthy environment and improve public decision making in Romania.¹⁹⁷ CIDRM provides strategic support and legal advice for grassroots NGOs¹⁹⁸ and is Alburnus Maior's main partner in the strategic litigation campaign aimed at blocking the permitting and authorisation process for RMGC proposed project¹⁹⁹. The campaign to stop the proposed RMGC is an important project for the NGO, but it is also involved in other environmental protection efforts around Romania.²⁰⁰

The Open Society Foundation (aka Open Society Institute) is an international non-profit organisation founded in 1984 with offices in 40 locations around the world - including Romania. OSF is sponsored by George Soros.²⁰¹ The Open Society Foundation in Romania promotes tolerance, equality and democratic

¹⁹³ Greenpeace, 2011

¹⁹⁴ Greenpeace, 2011

¹⁹⁵ Greenpeace Romania Website Retrieved 5 December 2011 from <http://www.greenpeace.org/romania/ro/campaigns/Toxic/rosiamontana/>

¹⁹⁶ CIDRM, 2011a

¹⁹⁷ CIDRM, 2011a

¹⁹⁸ CIDRM, 2011a

¹⁹⁹ CIDRM, 2011b

²⁰⁰ CIDRM, 2011a; Campaigns

²⁰¹ OSF, 2011

accountability.²⁰² The foundation's focuses in Romania include immigration, natural resource management and citizen empowerment.²⁰³ This institute opposes the RMGC project²⁰⁴ and has sponsored the many court challenges brought by Alburnus Maior during the RMGC permitting process.²⁰⁵ According to the Foundation, it enables citizens to participate in public decision making by providing 'professional expertise, knowledge, and internationally recognized policy models.'²⁰⁶

Cyanide Free Romania (România fără Cianuri) was formed in the summer of 2007 and consists of 16 environmental NGOs from around Romania.²⁰⁷ This coalition supports the Romanian legislative proposal to ban the use of cyanide in mining operations.²⁰⁸ The bill was originally proposed in February 2007 in the Chamber of Deputies by members of the PRM and UDMR parties²⁰⁹. According to its website the Coalition is not anti-mining but intends to outlaw the use of

²⁰² OSF, 2011

²⁰³ OSF, 2011; Locations Romania Retrieved 5 December 2011 from <http://www.soros.org/about/locations/romania>

²⁰⁴ OSF 1 September 2006 Open Letter to RMGC Lobbying Firm Retrieved 5 December 2011 from http://www.rosiamontana.ro/img_upload/472936e3bca2bc61045730fbb1869240/15_raspuns_IN_lobby_eng_antet_1_.pdf

²⁰⁵ Alburnus Maior, 2011; Strategic Litigation

²⁰⁶ Soros Foundation 20 January 2009 Press Release Retrieved from http://www.soros.ro/en/comunicate_detaliu.php?comunicat=82#

²⁰⁷ Cyanide Free Romania 12 June 2008 Press Release Retrieved 5 December 2011 from <http://www.bancyanide.ro/index.shtml?x=2854&cmd%5B97%5D=c-1-0ddccbbb66ade42214624fc253ced3e3&cmd%5B123%5D=x-123-2640>; Cyanide Free Romania, 2011

²⁰⁸ Cyanide Free Romania, 2011

²⁰⁹ Cyanide Free Romania, 2011 This is a very interesting alliance given that the PRM is Romania's strongest nationalist party and the UDMR is the Romanian political party representing the interests of Romanian Hungarians. (European Election Database Retrieved 5 December 2011 from

http://www.nsd.uib.no/european_election_database/country/romania/parties.html) Gheorghe Funar, PRM leader from Cluj-Napoca and co-sponsor of the bill to ban cyanide in Romania, is known for his anti-Semitic and nationalist outbursts - against Hungarians. (Funar, Gheorghe (2011) "Holocaust and Modern Slavery" 3 March 2011 Napoca News Retrieved 5 December 2011 from <http://www.napocanews.ro/2011/03/holocaustul-si-sclavia-moderna.html>)

cyanide in mining.²¹⁰ According to this group, international codes, EU directives and Romanian legislation inadequately regulate the emission of cyanides.²¹¹ The Coalition notes that currently no Romanian mining companies use cyanides for their operations so the bill would not be detrimental for Romania's economy.²¹² Cyanide Free Romania is a Romanian Association, but other "Cyanide Free" campaigns have appeared in neighbouring countries.²¹³ In 2009, Cyanide Free Hungary was instrumental in getting the use of cyanides banned in their state.²¹⁴

The Romanian Academy was originally established in 1866²¹⁵ and its objectives of are to cultivate the Romanian language and literature, to study Romanian history, to conduct scientific research and to promote democracy.²¹⁶ While the Academy is funded by the state, independent donations and grants, it is an autonomous independent organisation.²¹⁷ The Academy's 181 members are elected for life and receive a modest compensation.²¹⁸ The Romanian Academy has publically opposed the RMGC project.²¹⁹

²¹⁰ Cyanide Free Romania, 2011; FAQ Page

²¹¹ Cyanide Free Romania, 2011

²¹² Cyanide Free Romania, 2011; FAQ Page

²¹³ For example, Bulgaria (South East Europe Development Watch 21 January 2010 Press Release Retrieved 6 December 2011 from <http://seedw.org/?apc=-new----2&x=2213345>) and Hungary. (See next footnote)

²¹⁴ Stephanie Roth for the Ecologist (2009) "Great Victory Against Cyanide for Gold Mining" 8 January 2010 Retrieved 6 December 2011 from http://www.theecologist.org/blogs_and_comments/commentators/other_comments/394395/great_victory_against_cyanide_for_gold_mining.html

²¹⁵ Romanian Academy (2011) Website: A Brief History Page Retrieved 5 December 2011 from http://www.acad.ro/academia2002/acadeng/pag_brief.htm

²¹⁶ Romanian Academy, 2011

²¹⁷ Romanian Academy, 2011

²¹⁸ Romanian Academy, 2011

²¹⁹ Romanian Academy, ICOMOS & Pro Patrimonio 30 December 2010 Joint Declaration Retrieved 5 December 2011 from http://ngo.ro/img_upload/17ef04f0530a65b2f4e73d9a4b5d99ea/Bruxelles_statement_RM_Dec2010_Engl_January_4.pdf

Several cultural associations have united to oppose the proposed RMGC project. Architecture, Restoration, Archaeology (Asociaia Arhitectură Restaurare Arheologie) (ARA) is a Romanian non-governmental organisation that works to protect and enhance Romania's cultural heritage.²²⁰ The NGO has three goals: to guard and conserve Romania's cultural heritage; to promote cultural heritage among the public and to educate the public on the importance of cultural heritage.²²¹ ARA's members have been working to research and protect the buildings of Roşia Montană since 2000.²²² ARA monitors the commune, recommends protection measures for its cultural heritage, hosts a summer school there and reports legal offences and the destruction of any part of the Roşia Montană village to the public authorities.²²³ International Council on Monuments and Sites (ICOMOS) was founded in 1965 one year after the signing of the International Charter on the Conservation and Restoration of Monuments and Sites, known as the Venice Charter.²²⁴ ICOMOS is a cross-disciplinary professional association of more than 11,088 cultural heritage experts from over 120 countries.²²⁵ The association consists of professionals from a diverse set of disciplines: architecture, art history, archaeology, engineering, geography, anthropology, planning and history.²²⁶ ICOMOS works to conserve and protect monuments and sites on a global basis.²²⁷ It has been monitoring the cultural sites in Roşia Montană and has complained of abuses to

²²⁰ ARA, 2011

²²¹ ARA, 2011

²²² ARA 9 October 2007 Press Release Retrieved 5 December 2011 from http://www.rosiamontana.ro/doc/cidrm/ARA_PR_091007_engl.pdf

²²³ ARA (2011) Website: Heritage at Risk Page Retrieved 5 December 2011 from <http://www.simpara.ro/GB/heritage-at-risk-109.htm>; ARA (2011) Website: Activities Page Retrieved 5 December 2011 from <http://www.simpara.ro/GB/activities-108.htm>

²²⁴ ICOMOS, 2011; History Page

²²⁵ ICOMOS, 2011; Introducing ICOMOS Page

²²⁶ ICOMOS, 2011; Introducing ICOMOS Page

²²⁷ ICOMOS, 2011; Introducing ICOMOS Page

culturally significant buildings.²²⁸ The association has called on Romania's Ministry of Culture to include Roșia Montană on UNESCO's tentative list for World Heritage.²²⁹



Photo 6: Pro Roșia Montană Girls (Esko, 2006)

A number of RMGC employee associations formed alliances to support the RMGC project - Pro Roșia Montană, Pro Dreptate²³⁰ and Sindicatur Viitorul Mineritur.²³¹ These organisations were established solely to support the RMGC project and were well represented at the 2006 RMGC EIA public meetings.²³² RMGC funded the establishment of Pro Roșia Montană in 2000 and continues to provide ongoing support for the association.²³³ According to its website, Pro Roșia Montană has 475 members – all who live in Roșia Montană – and 1,700 supporters from the region.²³⁴ The intention of the NGO is to fight for a better future for the community.²³⁵ Pro Roșia Montană asserts that the locals should decide for themselves regarding the future of mining in the commune.²³⁶ Many of the Pro Roșia Montană members are young people who the company had hired for the

²²⁸ ICOMOS (2008) Heritage at Risk 2006/2008 pages 128-130 Retrieved 6 December 2011 from

http://www.icomos.org/risk/world_report/2006-2007/pdf/H@R_2006-2007_36_National_Report_Romania.pdf

²²⁹ Romanian Academy, ICOMOS & Pro Patrimonio 30 December 2010 Joint Declaration Retrieved 5 December 2011 from

http://ngo.ro/img_upload/17ef04f0530a65b2f4e73d9a4b5d99ea/Bruxelles_statement_RM_Dec2010_Engl_January_4.pdf

²³⁰ Pro Justice in English

²³¹ Future of Mining Union in English

²³² Field Notes, 31 July 2006

²³³ Field Notes, 24 July 2006; Pro Roșia Montană, 2011

²³⁴ Pro Roșia Montană, 2011

²³⁵ Pro Roșia Montană, 2011

²³⁶ Pro Roșia Montană, 2011

summer to support the participatory portion of the EIA process.²³⁷ I was not able to find much information about either Pro Dreptate or Sindicatul Viitorul Mineritului; neither association appears to have its own website in either English or Romanian. According to a website that lists the NGOs who support the RMGC project, the Future of Mining Union was established in 2004; its 220 members are all RMGC employees.²³⁸ I was not able to find any information describing the history, objectives or membership of Pro Dreptatea. The members of Pro Dreptatea have a strong affiliation with Pro Roșia Montană; individuals would sometimes wear a Pro Roșia Montană t-shirt to one of the EIA public meetings and a Pro Dreptatea to another meeting.²³⁹ Both associations actively support the RMGC project by attending public events, writing open letters²⁴⁰ and demonstrating publically their support of the project.²⁴¹

The Meridian National Trade Union Confederation (Meridian CSN) is an amalgamation of multiple Romanian industrial unions and was established in 1994.²⁴² Industry workers and the unions representing them have been severely impacted by Romania's economic restructuring.²⁴³ According to the union, it promotes the rights of its members; represents its members in discussions with public authorities and private enterprises; works to improve the

²³⁷ RMGC, 2006a; Sustainable Development Plan page 38

²³⁸ Groups that Support the Roșia Montană Project Website Retrieved 5 December 2011 from <http://www.sustinemrosiamontana.ro/evenimente-si-noutati/sindicatul-viitorul-mineritului-rosia-montana-si-csn-meridian-saluta-demersul-guvernului-romaniei-care-prin-decizia-ministerul-culturii-duce-70-de-milioane-usd-pentru-conservarea-si-protejarea-patr>

²³⁹ Field Notes 7 August 2006; Pro Roșia Montană, 2011

²⁴⁰ For example: Future of Mining Union 12 May 2011 Open Letter to the Minister of Culture Retrieved 5 December 2011 from http://zda.ro/download/scrisori/scrisoare_sindicat.pdf and Pro Dreptatea 12 May 2011 Open Letter to the European Commission Retrieved 5 December 2011 from http://africanfoodguide.com/open_letter_from_rosia_montana.aspx

²⁴¹ Pro Roșia Montană, 2011

²⁴² Meridian CSN, 2001

²⁴³ Meridian CSN, 2004 Mining Industry Strategy Retrieved 5 December 2011 from <http://www.csnmeridian.ro/files/docs/strategia%20industrii%20miniere.pdf>

working conditions of its members; and implements training programs.²⁴⁴ The Confederation organises public demonstrations to inform the public about the interests of its members.²⁴⁵ The union supports the proposed RMGC project, lobbies on behalf of the project and organises events to promote the project.²⁴⁶ The president of Meridian was very active at the RMGC public meetings.²⁴⁷

Romania's ruling party, the Democratic Liberal Party (PDL)²⁴⁸, has not taken an official stand on the proposed RMGC project.²⁴⁹ As a matter of fact there appears to be some debate within the party about the proposed RMGC project. Romania's president, Traian Băsescu formally of the PDL²⁵⁰, is commonly known to support the project.²⁵¹ However Monica Macovei, also from the PDL, has expressed her opposition against the project.²⁵² The Social Democratic Party (PSD) has come out against the mine.²⁵³ The opposition party, the

²⁴⁴ Meridian CSN, 2001: Constitution

²⁴⁵ Meridian CSN, 2001: Constitution

²⁴⁶ Meridian CSN 8 June 2006 Press Release Retrieved 5 December 2011 from <http://www.csnmeridian.ro/files/docs/Sustinere%20pentru%20minerii%20de%20la%20RM.pdf>

²⁴⁷ Field Notes, 24 July 2006

²⁴⁸ Romania News Watch 'Romanian Prime Minister Wins Internal Ruling Party Elections' 16 May 2011 Retrieved 6 December 2011 from <http://www.romanianewswatch.com/2011/05/romanian-prime-minister-wins-internal.html>

²⁴⁹ I could not find anything official on their website: <http://www.pdl.org.ro/>

²⁵⁰ Both President Traian Băsescu and Prime Minister Emil Boc are from the PDL. (PDL Webpage: Team Retrieved 6 December 2011 from <http://www.pdl.ro/> and Romania On-line Retrieved 6 December 2011 from <http://romania-on-line.net/whoswho/BasescuTraian.htm>) Currently, as president, Mr. Băsescu is not permitted to belong to a political party. At the time of the RMGC EIA public meetings Călin Popescu-Tăriceanu (PNL) was Romania's Prime Minister. (Romania On-line Retrieved 6 December 2011 from <http://romania-on-line.net/whoswho/PopescuTariceanu.htm>)

²⁵¹ Ziarul Financiar 3 December 2009 Retrieved 6 December 2011 from <http://www.zf.ro/zf-24/proiectul-rosia-montana-traian-basescu-vs-mircea-geoana-5152395/> and Gabriel Resources 2009 4th Qtr Report page 2 and Romania Business Insider 23 August 2011 from <http://www.romania-insider.com/romanian-president-says-rosia-montana-gold-to-fuel-bnr-coffers-announces-two-new-gold-mines/31803/#> and CBS Money Watch 'Gold Mine Plans Divide one Transylvanian Town' 21 August 2011 Retrieved 6 December 2011 from <http://www.cbsnews.com/stories/2011/08/21/ap/business/main20095093.shtml>

²⁵² Ziare 'The RMGC Project will Only Bring Losses' 14 September 2011 Retrieved 6 December from <http://www.ziare.com/articole/monica+macovei+pdl+rosia+montana>

²⁵³ PSD 2 December 2010 Press Release Retrieved 6 December 2011 from http://www.psd.ro/newsroom.php?newi_id=4220 and Ziaristi Online 28 October 2011 Retrieved 6 December from <http://www.ziaristonline.ro/2011/10/28/coalitia-anti-rosia-montana-psd->

National Liberal Party (PNL), has come out strongly against the mine.²⁵⁴ At one point the Greater Romania Party (PRM) and the Democratic Union of Hungarians in Romania (UDMR) sponsored legislation that would ban the use of cyanide in Romanian mining.²⁵⁵ More recently, it appears that the UDMR may be switching its position to support the RMGC project.²⁵⁶ The RPM continues to strongly oppose the proposed project.²⁵⁷

THE POSITIONS

Both those who support the mine and those who oppose the mine agree that the present uncertainty is very damaging for the community of Roșia Montană.²⁵⁸ Given the current mono-industrial zoning policy of Roșia Montană, the approval decision delays exclude the development of alternative economic activity in the commune.²⁵⁹ Locals cannot develop or expand businesses or even extend their own homes.²⁶⁰ The company worries that project investors will abandon the project.²⁶¹ Permitting delays mean delays for those residents

socialistii-europeni-extremistii-maghiari-ai-lui-lazslo-tokes-si-fidesz-ul-lui-viktor-orban-no-comment-info/; Cyanide Free Romania Press Release 15 April 2008

²⁵⁴ <http://www.pnl.ro/Public/declaratii/447/Rosia-Montana.html>; Cyanide Free Romania Press Release 15 April 2008

²⁵⁵ Cyanide Free Romania, 2011

²⁵⁶ Alba 24 'UDMR Alba for Mining Project in Roșia Montană' 10 November 2011 Retrieved 6 December 2011 from <http://alba24.ro/udmr-alba-in-favoarea-proiectului-minier-de-la-rosia-montana-ca-solutie-pentru-crearea-de-locuri-de-munca-52607.html>

²⁵⁷ PRM 6 October 2011 Open Letter to President Băsescu Retrieved 6 December 2011 from <http://www.prmcluj.ro/adresa-catre-cna-in-privinta-problemei-de-la-rosia-montana/>

²⁵⁸ Alba County Council President Interview; MAC: Mines and Communities 'Gabriel's Roșia Montană Project Effectively Dead' 17 February 2004 Retrieved 6 December 2011 from <http://www.minesandcommunities.org/article.php?a=1037> and The Globe and Mail 'How Far to Go for Gold' 28 October 2010 Retrieved 6 December 2011 from <http://www.theglobeandmail.com/report-on-business/rob-magazine/the-new-romans/article1775540/singlepage/> and Cleveland Indy Media Center, 2004

²⁵⁹ Roșia Montană's PUG Local Decision 45/2002; Alba County Council President Interview

²⁶⁰ Alburnus Maior, 2008b; Alba County Council President Interview

²⁶¹ Resource Investor 'Gabriel's Rosia Montana Delayed Further by NGO Lawsuit' 13 September 2007 Retrieved 6 December 2011 from <http://www.resourceinvestor.com/News/2007/9/Pages/Gabriel-s-Rosia-Montana-Delayed-Further-by-NGO.aspx>

who have sold their homes and are anticipating resettlement or relocation.²⁶² The mutual respect between miners and farmers broke down when the conflict began to develop over the future of mining in the area.²⁶³ Regardless of the damage caused by the lack of decisiveness, neither the opposition nor the company appear willing to back down from the fight.

The company asserts that the project will benefit the local community and the state of Romania. It claims that it has already invested a significant amount of money in Roşia Montană and its project will continue to bring in funds for the commune and the country.²⁶⁴ According to the company, the project will 'provide an economic basis for sustainable development of the whole area with positive benefits on environmental and social as well as cultural grounds.'²⁶⁵

In its 2007 EIA Annex, the company describes the financial benefits of their project for the Romanian state – including royalties, taxes and in-country purchases. According to the company, between 1998 and January 2007 it had spent \$200 million in Romania²⁶⁶ and it plans to spend almost \$1 billion by the

²⁶² Alba County Council President Interview; Press Europ 'The Curse of the Gold of Roşia Montană' 7 July 2009 Retrieved 6 December 2011 from <http://www.presseurop.eu/en/content/article/48821-curse-gold-rosia-montana> and Alburnus Maior, 2006a; 19 and International Accountability Project 'Locals Lose as Billion Dollar Gold Mine Stays in Limbo' March 2010 Retrieved 6 December 2011 from <http://www.accountabilityproject.org/article.php?id=525>

²⁶³ Roşia Montană Public Meeting and CBS Money Watch 'Gold Mine Plans Divide one Transylvanian Town' 21 August 2011 Retrieved 6 December 2011 from <http://www.cbsnews.com/stories/2011/08/21/ap/business/main20095093.shtml> and The Globe and Mail 'A Town Divided' 10 November 2010 Retrieved 6 December 2011 from <http://www.theglobeandmail.com/report-on-business/rob-magazine/a-town-divided/article1793745/> and The Star 'Transylvania Tug-of-War Over Gold' 27 April 2008 Retrieved 6 December 2011 from <http://www.thestar.com/article/418856> and PACE, 2004; 5

²⁶⁴ RMGC, 2007; Volume 3 page 20

²⁶⁵ PACE, 2004; 2

²⁶⁶ RMGC, 2007; Volume 3 page 20 By July 2006, the company says that it had spent more than \$1.5 million in taxes. (Alba Iulia Public Meeting)

time production begins.²⁶⁷ Overall it says that it 'will infuse \$2.5 billion into the Romanian economy over the life of the mine'.²⁶⁸ Of that amount, \$1 billion²⁶⁹ will go directly to the Romanian State from their 19.31% share of the profit and in fees and profit and payroll taxes.²⁷⁰ The remaining \$1.5 billion will include the purchase of in-country supplies.²⁷¹ As a shareholder in the project, Romania will benefit from its share of the profits while not being obligated to contribute to the capital or operating costs.²⁷²

The company claims that its project offers employment and income opportunities for the local community, which RMGC says is a disadvantaged

²⁶⁷ RMGC, 2007; Volume 3 page 20

²⁶⁸ RMGC, 2007; Volume 3 page 96 Compare this with the figures in the EIA Report - \$638 million to build the mine, \$284 million in capital costs over the life of the mine and more than \$2 billion in operating costs for a grand total of nearly \$3 billion over the life of the mine. (RMGC, 2006a; Chapter 9 page 7) I am not sure if this \$3 billion includes payments to the state in royalties on the mine and taxes and fees.

²⁶⁹ I am not able to get the figures to add up. RMGC used a price of gold at \$600/ounce and price of silver \$10.50/ounce. (RMGC, 2007; Volume 4 page 60) If we assume RMGC production of about 500,000 troy ounces of gold/year and 1.8 million troy ounces of silver/year (RMGC, 2006a; Chapter 9 page 5), we get about \$5.27 billion for the gold and \$332 million for the silver in revenue over the life of the mine. If we assume \$3 billion in costs over the life of the mine (RMGC, 2006a; Chapter 9 page 7), that is a profit of \$2.6 billion. Romania's 19.31% would give them \$502 million over the life of the mine in royalties. Given RMGC's estimate of \$1 billion in direct benefits to the state over the life of the mine (RMGC, 2007; Volume 3 page 159), the company estimates that it will pay \$498 million in taxes and fees to the Romanian state over the life of the mine. However, in the Annex to the EIA, the company claims that it will pay \$284 million in taxes to the Romanian state over the life of the mine. (RMGC, 2007; 126) This means that the total direct benefit to Romania would be \$786 million.

²⁷⁰ RMGC, 2007; Volume 3 page 159; The company estimates that the Romanian State will receive 45% of the project's profits in royalties, taxes and fees. (RMGC, 2007; Volume 3 page 20) Later in 2010 at an economic conference for the project, the company updates these figures. Here the company assumes \$900/ounce for gold and \$12.50/ounce for silver. (RMGC, 2010; 1) As of 7 December 2011, the price of gold is at about \$1,700. (Retrieved 7 December 2011 from <http://goldprice.org/>) RMGC claims that the project will bring \$4 billion in economic benefits to Romania - \$1.72 billion in direct benefits for the state (royalties and taxes) and \$2.25 billion for the purchase of in-country supplies. (RMGC, 2010; 1) The total figure was \$2.5 billion at the public meetings. (Alba Iulia Public Meeting) Considering 'multiplier effects' that result from the revenue generated by complementary non-mining businesses, the company estimates that it will bring in \$12.76 billion to the Romanian State. (RMGC, 2010; 2) According to the company, if the Romanian government approves the RMGC project, other foreign investors will consider investing in Romania. (RMGC, 2007; Volume 2 page 99; Alba Iulia Public Meeting)

²⁷¹ RMGC, 2007; Volume 3 page 159

²⁷² RMGC, 2007; Volume 3 page 108

zone.²⁷³ The company asserts that the people of Roșia Montană, and nearby Abrud, derive their employment mainly from mining.²⁷⁴ In its EIA Report, RMGC states that the two main mining companies (Roșiamin and Cuprumin) provide the dominate source of jobs for the area.²⁷⁵ In 2004, these companies provided 1,002 and 1,286 jobs respectively.²⁷⁶ Roșiamin ceased operations in 2006 (before accession with the EU) and Cuprumin was planning layoffs that same year.²⁷⁷ According to the company, the closure of the Roșiamin project increased Roșia Montană unemployment to 70%.²⁷⁸ If the RMGC project is stopped and the company is forced to let go its average of 450 employees per year, the company says that unemployment would go up to 90%.²⁷⁹ The company estimates that it will bring in 800 to 1,200 jobs during the mine's 2 year construction phase²⁸⁰ and then 563 jobs during the 16 year operations and the 5 year closure phase²⁸¹. Additionally, the company asserts that for every

²⁷³ RMGC, 2006a; Chapter 4.8: Social and Economic page 26; Câmpeni Public Meeting

²⁷⁴ RMGC, 2006a; Chapter 4.8: Social and Economic page 22 In 2002, the population of the Roșia Montană commune was about 3,865 people and the population of Abrud was 6,213. (RMGC, 2006a; Chapter 9 page 50) Of those people, 61% and 58% are considered economically inactive. (RMGC, 2006a; Chapter 4.8: Social and Economic page 21; Câmpeni Public Meeting) Inactive people include those that are neither employed nor unemployed – usually students, retired, substance farmers or people engaged in family activities. (RMGC, 2006a; Chapter 4.8: Social and Economic page 21) Inactive people are not included in the unemployment numbers described subsequently.

²⁷⁵ RMGC, 2006a; Chapter 9 page 53

²⁷⁶ RMGC, 2006a; Chapter 9 page 53

²⁷⁷ RMGC, 2006a; Chapter 9 page 53

²⁷⁸ RMGC, 2007; Volume 2 page 76 RMGC never gives an unemployment figure in the EIA Report.

²⁷⁹ RMGC, 2006a; Chapter 9 page 53

²⁸⁰ RMGC, 2006a; Chapter 2 page 49 During the public meetings and in the Annex to the EIA, the number of jobs created during the construction phase becomes simply the top number of that range – 1,200 people. (RMGC, 2007; Volume 4 page 6) and (Alba Iulia Public Meeting; Câmpeni Public Meeting)

²⁸¹ RMGC, 2006a; Chapter 9 page 7 During the public meetings this figure was raised to 600 jobs. (Alba Iulia Public Meeting; Câmpeni Public Meeting) In the Annex to the EIA, the figure was raised again to 634 jobs. (RMGC, 2007; Volume 4 page 68)

direct job created by the company, the economy will create 10 new jobs to support the project – more than 5,500 jobs.²⁸²

The area's current high level of unemployment leads to very low standards of living for most people in the community. According to the company, less than 20% of the households in Roșia Montană and Abrud have indoor toilets.²⁸³ Less than 40% of the households have indoor plumbing and less than 10% have hot water.²⁸⁴ The roads are impassable; the water is polluted; there is no public transportation.²⁸⁵ The company promises that its operation will improve the standard of living for nearby residents.²⁸⁶

The company has expressed its goodwill by spending more than \$9 million on archaeological research and it plans to invest \$25.7 million more over the life of the project.²⁸⁷ The company promises to establish a mining museum, to open to the public the Cătălina Monulești mining gallery and the monument from Tău Găuri, and to conserve and restore Roșia Montană's 41 historic monuments, including the town centre.²⁸⁸ Most of the cultural sites will be safe in the protected zone and most of the sites that sit outside of the protected zone will not be affected by the project.²⁸⁹ Without the funds from the RMGC project,

²⁸² RMGC, 2006a; Chapter 9 page 7; This figure was raised to 6,000 indirect jobs in the public meetings and in the Annex to the EIA. (RMGC, 2007; Volume 4 page 68; Alba Iulia Public Meeting; Câmpeni Public Meeting)

²⁸³ RMGC, 2006a; Sustainable Development Plan page 52

²⁸⁴ RMGC, 2006a; Sustainable Development Plan page 52

²⁸⁵ Câmpeni Public Meeting

²⁸⁶ Câmpeni Public Meeting

²⁸⁷ RMGC, 2006a; Management Plan for Archaeological Heritage page 50; The figure was \$25 million at the public meetings. (Alba Iulia Public Meeting) This figure seems to represent the budget for entire cultural heritage investment – archaeological research and historical monuments and buildings.

²⁸⁸ RMGC, 2007; Volume 4 page 22

²⁸⁹ RMGC, 2006a; Cultural Heritage Management Plan page 24

Roşia Montană's cultural heritage cannot be developed or exploited.²⁹⁰ The company is the only available source of funding for archaeological research of the area.²⁹¹ 'The funds currently made available by RMGC for research (archaeological, ethnological, and architectural) are many times what could be expected from the Government.'²⁹² The improvements made by the company will lead to more economic activities and serve as a basis for tourism in the area.²⁹³

According to the company, the risks to Roşia Montană's cultural heritage do not outweigh the benefits of their mining project. Yes, it is true that 2 churches, 2 prayer houses, 6 cemeteries²⁹⁴, part of the 7 kilometres of Roman galleries that have been discovered and the unmoveable cultural objects will be impacted by the project.²⁹⁵ Those sites that will be impacted will be researched, recovered and preserved when possible, replicated if necessary and their findings will be documented.²⁹⁶ However, according to the company representatives a church is not the building but the congregation of people who attend the church²⁹⁷, not all of the sites are unique²⁹⁸ and not all archaeological artefacts are worth saving²⁹⁹. There are other important sites in the area that are currently being ignored.³⁰⁰ According to a European Council report, many of the Roşia Montană Roman galleries are too unsafe for tourist access and the EU

²⁹⁰ PACE, 2004; 2

²⁹¹ PACE, 2004; 2

²⁹² PACE, 2004; 2

²⁹³ RMGC, 2007; Volume 4 page 47

²⁹⁴ RMGC, 2006a; Cultural Heritage Management Plan pages 23-24

²⁹⁵ RMGC, 2007; Volume 4 page 95; Câmpeni Public Meeting; Bucharest Public Meeting; According to the company 70 kilometres of mining galleries are located in the area of exploitation, but only 7 kilometres are Roman. (Câmpeni Public Meeting)

²⁹⁶ RMGC, 2007; Volume 5 pages 21-24

²⁹⁷ Alba Iulia Public Meeting

²⁹⁸ RMGC, 2007; 70

²⁹⁹ PACE, 2004; 2

³⁰⁰ Deva Public Meeting

regulations on disabled and emergency access would exclude most of the galleries for tourism.³⁰¹

The company promises to work with local authorities to develop non-mining activities which can support the community after mine closure.³⁰² The simple presence of the company will draw new non-mining businesses (for example hotels, restaurants and automobile mechanics) to the area.³⁰³ The company manages the *Local Partnership for Education* project that introduces innovative teaching methods and improves access to education.³⁰⁴ The company offers skills and leadership training with its *Roşia Montană Youth Partnership* and provided the funds to renovate and operate (for 6 months) a youth community centre.³⁰⁵ The company helped establish the NGO - the *Roşia Montană Environmental Partnership*.³⁰⁶ Through this NGO, the company offers workshops, to children and young people, on environmental protection, biodiversity and pollution prevent.³⁰⁷ The company provides professional skills training courses to local community adults and launched the *Roşia Montană Micro-Credit* project.³⁰⁸ Finally, the company operates the *Good Neighbour Programme*, which provides assistance (like food, wood for heat and emergency services) to Roşia Montană's disadvantaged.³⁰⁹ According to the

³⁰¹ PACE, 2004; 2, 6

³⁰² RMGC, 2006a; Chapter 9 page 2

³⁰³ RMGC, 2007; Volume 3 page 97

³⁰⁴ Gabriel Resources, 2009b; page 2

³⁰⁵ RMGC, 2007; Volume 5 page 144

³⁰⁶ Gabriel Resources, 2009b; 2

³⁰⁷ Gabriel Resources, 2009b; 2

³⁰⁸ RMGC, 2007; Volume 3 page 160

³⁰⁹ RMGC, 2007, Volume 3 page 160

company it has contributed more than Cdn\$380k and 10,600 hours of volunteer time to support the local community.³¹⁰

The company has promised to clean up the environmental damage³¹¹ caused by previous mining operations.³¹² The company says that Roşia Montană is not the pristine landscape portrayed by the opposition.³¹³ Roşia Montană is already damaged by previous mining operations – including open-pit landscapes and polluted red water that trickles from the local streams into the Arieş River.³¹⁴ RMGC promises to clean up the environmental damage and repair the landscape with its wastewater treatment plan³¹⁵ and site rehabilitation plan³¹⁶. Improvements to the environment will support tourism in Roşia Montană after the mining project is completed.³¹⁷

The company promises to improve the infrastructure of the commune. Currently the roads, accommodations, parking, water and waste water systems, telecommunications systems, electrical and gas supplies waste management systems are inadequate for economic development of the area.³¹⁸ The company promises to work with the local authorities to co-develop infrastructure improvements related to the operation of their project.³¹⁹ Additionally, the

³¹⁰ Gabriel Resources, 2009b; 3

³¹¹ Environmental damage caused by previous mining operations includes soil and stream pollution, landscape scarring and damage to biodiversity. (RMGC, 2006a; Chapter 9 pages 19-23)

³¹² RMGC, 2006a; Chapter 9 page 2

³¹³ Gabriel Resources 8 September 2005 Press Release Retrieved 8 December 2011 from <http://67.192.21.189/Theme/Gabriel/files/Info%20rel%20sept%208%202005.pdf>

³¹⁴ Alba Iulia Public Meeting; RMGC Website Retrieved 8 December 2011 from <http://en.rmgc.ro/rosia-montana-project/environment/water.html>

³¹⁵ RMGC, 2006a; Water Management and Erosion Plan

³¹⁶ RMGC, 2006a; Mine Rehabilitation Plan

³¹⁷ RMGC, 2007; Volume 5 page 57

³¹⁸ RMGC, 2006a; Sustainable Development Plan pages 52-53; RMGC, 2006a; Chapter 9 page 58; Alba Iulia Public Meeting; Câmpeni Public Meeting

³¹⁹ RMGC, 2006a; Sustainable Development Plan page 87

company promises to build a new modern administrative centre (town hall, police station, post office, schools, healthcare centre, etc.) for the commune at the resettlement site of Piatra Alba.³²⁰ According to the company, these improvements will be the foundations for future sustainable development – namely tourism.³²¹

According to RMGC, their compensation for land purchases is fair.³²² The life in Roşia Montană is very difficult³²³, the conditions are harsh³²⁴ and the infrastructure is inadequate³²⁵. The company promises Roşia Montană residents a new modern village³²⁶, with modern facilities³²⁷, modern infrastructure³²⁸, better public services³²⁹ and modern homes³³⁰.

The project is designed to comply with EU and Romanian legislation, Best Available Techniques (BAT) and World Bank guidelines³³¹; therefore, the risks of the Roşia Montană project have been accepted by governing bodies.³³² The

³²⁰ RMGC, 2006a; Sustainable Development Plan page 86; Câmpeni Public Meeting; RMGC, 2006a; Chapter 9 page 58; Alba Iulia Public Meeting; RMGC, 2006a; Chapter 4.8 page 52; RMGC, 2006b; 64; Turda Public Meeting; Lupşa Public Meeting; Bucharest Public Meeting

³²¹ RMGC, 2007; Volume 3 page 97; RMGC, 2007; Volume 5 page 109

³²² RMGC, 2006a; Chapter 9 page 17

³²³ RMGC, 2006a; Chapter 4.8 Social and Economic page 27

³²⁴ RMGC, 2006a; Chapter 9 pages 19-23

³²⁵ RMGC, 2006a; Sustainable Development Plan pages 52-53

³²⁶ RMGC, 2007; Volume 4 page 159; Câmpeni Public Meeting

³²⁷ RMGC, 2006a; Chapter 9 page 8; Câmpeni Public Meeting

³²⁸ RMGC, 2006a; Sustainable Development Plan page 89; Câmpeni Public Meeting

³²⁹ RMGC, 2007; Volume 3 page 101; Câmpeni Public Meeting

³³⁰ Câmpeni Public Meeting

³³¹ RMGC, 2006a; Chapter 9 page 13

³³² For example, according to the EU Mine Waste Directive new mines permitted after May 2008 may not produce tailings with more than 10ppm of cyanide concentration. (2006/21/EC Article 13) According to the EIA, when the tailings are released into the TMF, cyanide concentrations will be below 10ppm. (RMGC, 2006a Tailings Facility Plan page 70) In the EIA Annex and during the public meetings, the figure is reduced to between 5 to 7ppm. (RMGC, 2007; Volume 4 page 13 and Alba Iulia Public Meeting) In a Gabriel Resources 14 February 2008 press release, Roşia Montană's project tailings will not exceed 6ppm of cyanide. (Gabriel Resources 14 February 2008 Press Release Retrieved 8 December 2011 from <http://gabrielresources.com/s/PressReleases.asp?ReportID=286402>) Finally, in a 2008 interview, Richard Young – Vice President and Chief Financial Officer – estimated the cyanide concentration of the RMGC tailings facility will be 2 to 3ppm. (The Star 'Transylvania Tug-of-

implication is that the project will be modern and hi-tech³³³ and therefore safe. The cyanide concentration in the tailings pond will be lower than EU standards.³³⁴ The tailing pond dam has been designed to withstand extreme weather conditions.³³⁵ After the mining operations, the company will restore the beauty of the valley.³³⁶ One of the open pit mines will become a lake³³⁷; the other pits and the rock waste piles will be landscaped³³⁸ and the land reforested³³⁹.

Project supporters say that Roşia Montană's remote location and dependency on mining means that no alternative industries would provide a sustainable income for the commune.³⁴⁰ According to those who support the project, Roşia Montană has been a mining region of more than 2000 years.³⁴¹ People are used to mining.³⁴² Supporters of the project complain that the opposition has not offered any viable economic alternatives for the community.³⁴³ Those who support the project complain that without the mining operation, young people will leave and only a few pensioners will remain.³⁴⁴ According to them, they

War Over Gold' 27 April 2008 Retrieved 6 December 2011 from <http://www.thestar.com/article/418856>)

³³³ RMGC, 2006a; Chapter 1 page 4 During the introduction for the Alba Iulia Public Meeting, the speaker used the word 'modern' ten times. (Alba Iulia Public Meeting)

³³⁴ RMGC, 2007; Volume 4 page 13

³³⁵ RMGC, 2006a; Chapter 7 page 83 and 85

³³⁶ RMGC, 2006a; Mine Rehabilitation Plan

³³⁷ RMGC, 2006a; Chapter 9 page 37

³³⁸ RMGC, 2006a; Chapter 9 page 37

³³⁹ RMGC, 2007; Volume 5 page 157 The EIA Report does not mention reforestation.

³⁴⁰ RMGC, 2006a; Sustainable Development Plan page 64

³⁴¹ RMGC, 2006a; Sustainable Development Plan page 1

³⁴² RMGC, 2006a; Sustainable Development Plan page 1

³⁴³ Câmpeni Public Meeting

³⁴⁴ Zlatna Public Meeting

want to keep the beauty of the village and to live in Roșia Montană ‘united and happy as a community’³⁴⁵.

The company accuses the opposition of hiding its foreign funding sources.³⁴⁶

The company insinuates that the opposition is a cover for members of the Hungarian Government and the Romanian Hungarian party (UDMR) who oppose the Roșia Montană project.³⁴⁷ According to the company, the Soros Foundation in Romania actively opposes the project because George Soros has ethnic Hungarian roots.³⁴⁸ Those who support the mine suggest that those who oppose the mine are doing so to profit on property values and that the opposition is fuelled by ‘outside bodies.’³⁴⁹ Project supporters say that Alburnus Maior is made up of only 190 of the 1,500 votes in Roșia Montană.³⁵⁰ One public meeting participant asserted that:

*[Alburnus Maior] is supported by a group of a few retired people and 3-4 rich families, supported with money from abroad, from different foundations and organizations that are hostile to the Romanian people and especially to the Moții country.*³⁵¹

For the opposition, the costs of the mining project as designed do not justify the benefits of the project. According to the opposition, costs of the project include the destruction of some of Roșia Montană’s archaeological sites (known and

³⁴⁵ Pro Roșia Montană Website Retrieved 8 December 2011 from <http://prorosiamontana.ro/>

³⁴⁶ Gabriel Resources 5 September 2007 Press Release, Retrieved 6 May 2010 from <http://gabrielresources.com/s/PressReleases.asp?ReportID=206593>

³⁴⁷ Gabriel Resources 5 September 2007 Press Release, Retrieved 6 May 2010 from <http://gabrielresources.com/s/PressReleases.asp?ReportID=206593>

³⁴⁸ Câmpeni Public Meeting

³⁴⁹ PACE, 2004; 2

³⁵⁰ PACE, 2004; 3

³⁵¹ Alburnus Maior Public Meeting; Moții is the name for the people who live in the Apuseni Mountains.

unknown) and risks to many of its cultural heritage sites.³⁵² The project poses risks to the environment – including protected species³⁵³ - and human health³⁵⁴. The opposition condemns RMGC's resettlement practices and proposals.³⁵⁵ According to the opposition, the economic benefits of the project are insignificant.³⁵⁶

The opposition condemns the destruction of some of the ancient galleries that will be lost during the ore extraction process.³⁵⁷ They worry that the explosions and shovelling may put many yet undiscovered Roman galleries and historic objects at risk.³⁵⁸ Critics complain that it is the responsibility of the state actors to protect archaeological and cultural heritage sites and monuments.³⁵⁹ The opposition complains that the RMGC funded archaeological research was not thorough.³⁶⁰ They say that the company's excavations focus on unimportant sites and that the company then asked to have large areas de-protected on the basis of that research.³⁶¹ The opposition claims that RMGC's archaeological research ignored above ground sites and underground mines.³⁶² The opposition argues that while Roman mining artefacts and burial sites have been found, the expected urban centres and Roman military structures have not yet been found.³⁶³ They further accuse the company of conducting its research in a

³⁵² Alburnus Maior, 2006b; 7

³⁵³ Alburnus Maior, 2006b, 3

³⁵⁴ Alburnus Maior, 2006b; 4 and Roşia Montană Public Meeting

³⁵⁵ Alburnus Maior, 2006

³⁵⁶ Bucharest Public Meeting

³⁵⁷ Alburnus Maior, 2006, 3

³⁵⁸ Alba Iulia Public Meeting

³⁵⁹ RMGC, 2007; Volume 4 page 51

³⁶⁰ Alburnus Maior, 2006; 7; Deva Public Meeting

³⁶¹ Ciugudean, 2006 and RMGC, 2007; Volume 2 page 100; Paul Kingsnorth Retrieved 13 August 2012 from <http://grist.org/climate-energy/nijhuis-roth/>

³⁶² PACE, 2004; 1

³⁶³ Ciugudean, 2006; 2

procedurally incorrect manner.³⁶⁴ One archaeologist who worked for RMGC in 2002 and 2003 accused the company of obstructing their work.³⁶⁵ The opposition accuses the Romanian Ministry of Culture of allowing the destruction of cultural resources because the economic interests are so powerful.³⁶⁶

The opposition worries about the listed and unlisted cultural sites.³⁶⁷ They condemn the destruction of 4 churches and 6 graveyards in order to accommodate the land resource needs of the project.³⁶⁸ The opposition worries that the noise vibrations from traffic and mining explosions will destroy the already fragile listed buildings in both the protected and unprotected zones.³⁶⁹ Residents oppose the exhumation of relatives who have been buried in Roşia Montană cemeteries.³⁷⁰



Photo 8: This Property is Not for Sale (Dragomir, 2007)

The opposition condemns the possible expropriation of land from those unwilling to sell their property to a private company.³⁷¹ According to Alburnus Maior, although the company owns 30% of the buildings in Roşia Montană, it only owns 17.85% of the land; this does not include the land needed

³⁶⁴ PACE, 2004; 1

³⁶⁵ Deva Public Meeting

³⁶⁶ Professor Dr. Ioan Piso's 11 March 2011 Open Letter to the Minister of Culture Retrieved 9 December 2011 from [http://rosiamontana.org/en/categorii.shtml?cmd\[321\]=c-1-32839&cmd\[316\]=x-322-32866&x=32866&set\[319\]=selected-32839&set\[321\]=selected-32866](http://rosiamontana.org/en/categorii.shtml?cmd[321]=c-1-32839&cmd[316]=x-322-32866&x=32866&set[319]=selected-32839&set[321]=selected-32866)

³⁶⁷ Alburnus Maior, 2006; 6

³⁶⁸ RMGC, 2007; Volume 11 page 69 and Roşia Montană Public Meeting

³⁶⁹ Alburnus Maior; 2006; 6

³⁷⁰ Bucharest Public Meeting

³⁷¹ Câmpeni Public Meeting

for the TMF in the Corna Valley.³⁷² A number of land owners claim that they will not sell their properties and leave their homes.³⁷³ The Orthodox Church - which owns cemeteries, forests, arable land and historic monuments in Roşia Montană - refuses to sell its land.³⁷⁴ The opposition claims that because the RMGC project is not a public one and because there is no public utility, the privately owned land cannot be forcibly expropriated by the company.³⁷⁵

The 24 hour a day/7 days a week noise, dust and vibrations will make Roşia Montană – even those homes in the protected area - uninhabitable during the mining operation.³⁷⁶ According to the opposition, the locals - who say they will have to leave Roşia Montană if the employment from the proposed project does not materialise - are not making any sense. Most of these people have elected to relocate or resettle at the Recea Alba site in Alba Iulia – too far to commute for jobs at Roşia Montană.³⁷⁷ The opposition also complains that the Piatra Alba site (50 hectares) in the Roşia Montană commune is too small to accommodate the current community (1,258 hectares) anyway.³⁷⁸ The opposition demands an independent study of the RMGC resettlement cases that have already occurred.³⁷⁹

³⁷² Alburnus Maior, 2006b; 3 It is not clear how much land is owned by the company in Corna. It is expected that they own a much smaller percentage of the land in that valley. (Alburnus Maior, 2006b; 3)

³⁷³ Roşia Montană Public Meeting

³⁷⁴ Alburnus Maior (2006) 'Case Study, Local Communities' Retrieved 9 December 2011 from http://www.ngo.ro/img_upload/17ef04f0530a65b2f4e73d9a4b5d99ea/rosia_montana_fact_sheet_engl_1.pdf and Deva Public Meeting

³⁷⁵ Alburnus Maior, 2006b; 6

³⁷⁶ Câmpeni Public Meeting

³⁷⁷ Toma, 2007; 2

³⁷⁸ Toma, 2006; 3

³⁷⁹ Toma, 2006; 3

According to the opposition, the company's promise to clean up the environmental damage caused by past mining operations is misleading. In the EIA Report and in other documents, the company states that the previous license titleowner – state owned Minvest – is responsible for its environmental obligations.³⁸⁰ Yet in another place in the EIA Report and during the public meetings, the company promises to clean up the environmental damage left by previous mining activities.³⁸¹ It is not clear where Minvest responsibility ends and RMGC's promise begins. According to the opposition, state actors are responsible for the environmental rehabilitation of the site from the Roșiamin operations.³⁸² They say that €1.7 million has been set aside by the Ministry of the Environment for the work.³⁸³ Once state actors finish this work, there may be more investors may be interested in developing tourism projects in the area.³⁸⁴

Many are afraid that Romania's experience with the Baia Mare gold mine³⁸⁵ will be repeated in Roșia Montană.³⁸⁶ Recent extreme weather conditions – including freezing temperature, high precipitation and flooding – can cause tailings pond dams to leak or burst.³⁸⁷ Dams holding back cyanide and heavy metal wastes have broken or leaked contaminated water into the soil and

³⁸⁰ RMGC, 2006a; Chapter 1 page 4 and Annual Information Report (2010) page 20

³⁸¹ RMGC, 2006a; Chapter 9 page 2

³⁸² Romanian Academy for Legal Research, 2006; page 3

³⁸³ Romanian Academy for Legal Research, 2006; page 3 and Alburnus Maior, 2006b; 5

³⁸⁴ Alburnus Maior, 2006b; 5; At the Zlatna Public meeting, the company argues that the Romanian should not “invest money for closing a mine that might actually prove to be profitable”. (Zlatna Public Meeting)

³⁸⁵ In 2000, a dam breach at Baia Mare mine spilled cyanide into the Tisza and Danube Rivers, killing 1,200 tons of fish and contaminating the drinking water supplies of 2.5 million people in Romania and Hungary. (No Dirty Gold Website (2011) ‘Roșia Montană’ Retrieved 10 December 2011 from http://www.nodirtygold.org/rosia_montana_romania.cfm

³⁸⁶ Roșia Montană Public Meeting

³⁸⁷ Rain Forest Info (2011) ‘Cyanide Incidents’ Retrieved 10 December 2011 from <http://www.rainforestinfo.org.au/gold/spills.htm>

nearby Romanian and transboundary river systems.³⁸⁸ These accidents put soils, fish populations, water sources for drinking water and irrigation and human populations at risk.³⁸⁹

The opposition is concerned that the proposed project represents significant threats to the local environment and population. The opposition fears possible traffic accidents - along narrow, winding and substandard roads - during the daily transportation of cyanides to the processing site.³⁹⁰ They are worried that the company does not plan to line the tailings pond.³⁹¹ The opposition argues that cyanide mining might be applicable in remote desert locations³⁹², but that the proposed location of the Roșia Montană project is too near human settlements – the tailings pond is 2km upstream from Abrud.³⁹³ They are concerned that the company does not have environmental liability insurance in the event of an accident.³⁹⁴ A required Safety Report³⁹⁵ was not part of the EIA Report and has not been subject to public consultation.³⁹⁶ Those who oppose the project are afraid that the Romanian government will be powerless in the event of an emergency to protect the population and to repair potential environmental damage.³⁹⁷

³⁸⁸ State Environmental Resource Center 'Banning Cyanide Use in Mining' Retrieved 10 December 2011 from <http://www.serconline.org/mining/talking.html>

³⁸⁹ State Environmental Resource Center 'Banning Cyanide Use in Mining' Retrieved 10 December 2011 from <http://www.serconline.org/mining/talking.html>

³⁹⁰ RMGC, 2007; page 27

³⁹¹ Alburnus Maior, 2006b; 2

³⁹² Bucharest Public Meeting

³⁹³ Center for Science in Public Participation, 2003; 5

³⁹⁴ Alburnus Maior, 2006b; 5

³⁹⁵ European Seveso II Directive 96/82/EC Article 9

³⁹⁶ Alburnus Maior, 2006b; 5

³⁹⁷ Alburnus Maior, 2006b; 8

The opposition admits that previous mining operations have already left 95 hectares of the commune's landscape damaged.³⁹⁸ However, they argue that the existing damage does not justify the additional damage to the landscape (1,471 hectares)³⁹⁹ that will be caused by the RMGC project.⁴⁰⁰ The opposition argues that the Roşia Montană village and much of the Roşia Montană commune and are still beautiful and unspoilt⁴⁰¹ - inhabited by farmers and communities living a traditional life⁴⁰². In their opinion, RMGC's four open pit mines and tailings pond will ruin the valley.⁴⁰³ The opposition claims that the project is in violation of the European Landscape Convention, drafted in Florence in October 2000 to promote the protection, management and planning of European landscapes.⁴⁰⁴ According to the opposition, the damage done to the landscape will eliminate the potential for tourism and sustainable development once the project is finished.⁴⁰⁵

The final amount for the environmental guarantee has not yet been published and the opposition does not trust the company to honour its commitment to environmental restoration.⁴⁰⁶ The opposition argues that the financial guarantee must be in place before the company can receive environmental

³⁹⁸ Olaru-Zăinescu, 2006; 14

³⁹⁹ The company says that it needs 1,258 hectares of land for its project – 1,054 in Roşia Montană. (RMGC, 2006a; Chapter 9 page 6)

⁴⁰⁰ Olaru-Zăinescu, 2006; 14

⁴⁰¹ Szabo, 2006; 1

⁴⁰² Pulitzer Center (2011) Retrieved 11 December 2011 from

<http://pulitzercenter.org/reporting/romania-gold-mining-industry-history-profits>

⁴⁰³ Budapest Times (2008) 'Canada's Reputation at Risk' 6 December 2008 Retrieved 10 December 2011 from <http://rosiamontana.org/en/index.shtml?cmd%5b314%5d=x-314-33952&cmd%5b316%5d=x-322-33952&cmd%5b300%5d=x-299-33952>

⁴⁰⁴ Alburnus Maior (2006) 'Chronology of the "Save Roşia Montană" Campaign from 2002 until Present' page 3 Retrieved 10 December 2011 from http://www.rosiamontana.ro/img_upload/472936e3bca2bc61045730fbb1869240/cronologie_companie_scurt.doc_aq_EN.pdf

⁴⁰⁵ Pulitzer Center (2011) Retrieved 11 December 2011 from <http://pulitzercenter.org/reporting/romania-gold-mining-industry-history-profits>

⁴⁰⁶ RMGC, 2007; Volume 11 page 1; Alba Iulia Public Meeting

authorisation.⁴⁰⁷ According to those who oppose the project, the company's estimates of the projects rehabilitation costs – that would be used to determine the amount of the Environmental Financial Guarantee – are unrealistically low.⁴⁰⁸

According to the opposition, the small number of jobs (563 in the operation phase) created by the project are an insufficient justification for the costs and risks of the project.⁴⁰⁹ The opposition fears that the company will hire foreign workers – at higher salaries - because the locals will not have the qualifications necessary for employment with the project.⁴¹⁰ The jobs are temporary in nature – during the 16 years that the site will be mined and the 5 years after operations for mine closure and rehabilitation.⁴¹¹ At the end of those 21years, the RMGC employees will need to find new employment.⁴¹² This means that the project will not actually help to relieve the unemployment rate in the area for the long term.⁴¹³ The opposition says that the use of cyanide, the deforestation of 255 hectares of forests, the demolition of churches and cemeteries, the destruction of archaeological vestiges and the construction for 4 open pits for a 16 year operation cannot be called “sustainable development”.⁴¹⁴

⁴⁰⁷ Alburnus Maior, 2006; 5

⁴⁰⁸ RMGC, 2007; Volume 11 page 1

⁴⁰⁹ Bucharest Public Meeting

⁴¹⁰ Roşia Montană Public Meeting

⁴¹¹ Bucharest Public Meeting

⁴¹² Bucharest Public Meeting

⁴¹³ Roşia Montană Public Meeting

⁴¹⁴ Roşia Montană Public Meeting; According to the epidemiologist Professor Julian Tudor Hart, 'open-cast mining is indeed a degradation of the environment generating minimal employment at maximal environmental cost'. (Eyres, H (2007) 'Romanian Minefield' 3 March 2007 Financial Times Retrieved 11 December 2011 from <http://www.ft.com/intl/cms/s/0/6c5f9902-c82a-11db-b0dc-000b5df10621.html#axzz1gAqzQvMp>)

The opposition suggests that there is some mystery around the Company's acquisition of the mining license. The terms of the license and other agreements between Romanian state actors and the company have never been made public – even after many requests by many different requestors.⁴¹⁵ The opposition argues that the license was originally obtained by Gabriel Resources' founder, Frank Timiș.⁴¹⁶ Mr. Timiș had been convicted three times for heroin possession in the 1980s⁴¹⁷ and had more than one failed business behind him.⁴¹⁸ The National Agency for Mineral Resources will not release the original license, or any of the contracts and agreements between RMGC and state actors, citing the protection of State interests.⁴¹⁹

The opposition accuses the company of working with the local government to develop unfair zoning policies.⁴²⁰ With the current zoning policies, the locals are not permitted to launch new economic endeavours nor are they permitted to construct new buildings or add to existing buildings.⁴²¹ They say that the company intentionally worked to create a mono-industrial urban plan in order to

⁴¹⁵ Alburnus Maior, 2006b; 6

⁴¹⁶ Gabriel Resources 2003 3rd Qtr Report; Frank Timiș is no longer the chairman of the board or executive director at Gabriel Resources. Mr. Timiș stepped down as director in May 2003 amid an independent investigation of his conduct as director. (Gabriel Resources 2003 3rd Qtr Report) According to Gabriel Resources, Mr. Timiș's conduct had no adverse material effect on the company or on the validity of the company's interest in the RMGC project. (Gabriel Resources 2003 3rd Qtr Report) Frank Timiș was chairman of European Goldfields (the company that spun off Gabriel Resources in 2000) after leaving Gabriel Resources until 2007. (Frank Timiș Website Retrieved 11 December 2011 from <http://www.franktimis.com/enterprise/historic-enterprises/european-goldfields/>)

⁴¹⁷ Frank Timiș Website Retrieved 6 July 2010 from

http://www.franktimis.com/Background/Early_Years/Default.aspx?id=7; Paul Kingsnorth Retrieved 13 August 2012 from <http://grist.org/climate-energy/nijhuis-roth/>

⁴¹⁸ The Star 'Transylvania Tug-of-War Over Gold' 27 April 2008 Retrieved 6 December 2011 from <http://www.thestar.com/article/418856> and PACE, 2004; 5

⁴¹⁹ (RMGC, 2007; Volume 65 page 222 and NAMR Roșia Montană Correspondence 12 September 2007 Retrieved 3 December 2011 from http://www.namr.ro/Comunicate_ANRM/RosiaMontana.pdf)

⁴²⁰ Alburnus Maior, 2006b; 7

⁴²¹ Alburnus Maior, 2008b

eliminate possible economic alternatives to their mining project.⁴²² Local residents were not consulted when the company organised and funded the change to the local zoning plans in 2002.⁴²³ According to the opposition, this policy has led to the economic degradation of the commune and has resulted in the poverty currently experienced by the population.⁴²⁴

The opposition argues that the public benefits of the project are insufficient to justify the costs and the risks of the project. According to the opposition, the company is exempt from a number of taxes and duties because it is investing in a disadvantaged zone.⁴²⁵ According to the Romanian Academy, this means that the state will receive 2% of the project's revenues in taxes and fees.⁴²⁶ Some argue that the Roşia Montană gold is a national – a public - resource that should not be exploited by a foreign company who will then remove the gold from the country.⁴²⁷ The opposition feels that the concession ratio in the Private/Public Partnership between RMGC and the state should be 80/19.31 in

⁴²² Olaru-Zăinescu, 2006; 6

⁴²³ Alburnus Maior, 2006b; 7

⁴²⁴ Olaru-Zăinescu, 2006; 6

⁴²⁵ Olaru-Zăinescu, 2006; 13; In the Annex to the EIA, the company argues that it is not eligible for these tax exemptions and has already been paying taxes and fees to the state. (RMGC, 2007; 126) However, in a 2001 Feasibility Study, the company claims that it is exempt from taxes and duties because of Roşia Montană's disadvantaged status. (Gabriel Resources, 2001) 'Feasibility Study' Retrieved 11 December 2011 from <http://gabrielresources.com/s/PressReleases.asp?ReportID=131083>)

Also in the Gabriel Resources 2007 3rd Qtr Report, the company states that it did not pay income taxes in 2006 and 2007. (Gabriel Resources 2007 3rd Qtr Report; 37) In its 2010 1st Qtr report the company claims that it won a Supreme Court appeal which cancelled the company's tax assessment for 2003 and 2004. As a result, the Romanian State is obligated to return \$9.8 million in taxes to the company. The company also plans to file for reimbursement for taxes paid in other years. (Gabriel Resources 2010 1st Qtr Report; 18)

⁴²⁶ Romanian Academy (2006) 'Statement Regarding the Roşia Montană Mine Proposal' Retrieved 11 December 2011 from <http://respectrosiamontana.wordpress.com/2011/09/06/the-romanian-academy-expresses-its-arguments-against-the-mine-proposal/>

⁴²⁷ Alba Iulia Public Meeting

favour of the state, rather than the current proposal of 80/19.31 in favour of the company.⁴²⁸ A woman at the Alba Iulia public meeting argued:

*This is not what I call partnership or business; this is what I call theft, plain theft.*⁴²⁹

The authorisation decision for the RMGC project, in some ways, began in October 2000 with the transfer of the exploitation license from state owned Minvest to RMGC. Until 2002, the company was almost assured a positive response from a resource and employment starved Romanian State. However, that year the opposition's coalition launched a surge of participatory activity – that ultimately led to the suspension of the project.

⁴²⁸ Alba Iulia Public Meeting

⁴²⁹ Alba Iulia Public Meeting

CHAPTER 3: ROMANIAN ZONING & PROJECT AUTHORISATION

In order for the Roşia Montană Gold Corporation's (RMGC) project to be authorised, both the company and two communes are subject to a number of approval processes. Before a final building permit for the project can be issued, the communes of Roşia Montană and Abrud must have in place approved General Urban Plans (PUG) for their entire communes and Roşia Montană must have an Urban Zoning Plan (PUZ) for its historical area. The company must obtain approval for a PUZ for its industrial area. In order to gain approval for these plans, the commune and the company are subject to Strategic Environmental Assessment (SEA) processes, each of which includes public participation requirements. Additionally, RMGC must obtain two environmental agreements - one for the construction of the mining project and one for the deforestation of the area. For each of these environmental agreements, the company is subject to Environmental Impact Assessment (EIA) processes. Finally, the company must obtain about 80⁴³⁰ permits from various local and county agencies.⁴³¹

⁴³⁰ Gabriel Resources 2006 4th Quarter Report; 5

⁴³¹ Because the proposed RMGC project has transboundary impacts, the company is also required, under the Espoo Convention (1991), to solicit public participation in Hungary. The Espoo Convention is a United Nations Economic Commission for Europe's (UNECE) convention for assessing installations, projects, plans and programmes with significant transboundary impacts on the environment. Romania ratified the Espoo Convention with Law 22/2001 and elaborated on the provisions of the law in Ordinance 864/2002. Due to time and resource

In this chapter, I review the zoning and project authorisation processes that must be complete before construction can begin on a development project like RMGC's. First, I provide a very brief overview of Romania's experience with EIA processes. I then examine the Romanian⁴³², European⁴³³ and international legislation and conventions that regulate the project and zoning authorisation processes and provide a description of the specific authorisation processes required for Roşia Montană's zoning plans and the RMGC project.

In Romania, decentralized agencies, local elected bodies (county and local level councils) and sometimes the courts manage the processes and grant approvals that zone for and grant permission for the design, construction and operation of development projects. The Ministry of Economy and Commerce permits industrial activities and regulates mining, energy and utilities.⁴³⁴ The National Agency for Mineral Resources – part of the Ministry of the Economy and Commerce – issues mining licenses.⁴³⁵ The Ministry of Regional Development⁴³⁶ authorises construction, approves local area planning strategies and reviews local zoning plans.⁴³⁷ The company must get permits from the water supply and sewerage authority, the fire department, the power

constraints, this aspect of the authorisation process and related public participation will not be addressed in this thesis.

⁴³² Complete texts of Romanian legislation can be found on a private website (DSC Lex) with a search engine but in Romanian only. http://www.dscllex.ro/meniu_r.htm.

⁴³³ Romania joined the EU on 1 January 2007. All European treaties, legislation, court judgements, orders, and opinions, preparation documents and parliamentary questions can be found on a European Union website that includes a search engine.

http://europa.eu/index_en.htm.

⁴³⁴ Romanian Organisation and Function of Ministry of the Economy, Trade and Business Environment Government Decision 1634/2009 Ch I § 1 Articles 2 and 5

⁴³⁵ Romanian Mining Law 85/2003 Ch I Article 3

⁴³⁶ The Ministry of Transport, Construction and Tourism split into the Ministry of Transportation and Infrastructure and the Ministry of Regional Development and Tourism. For the sake of simplicity, these Ministries will be called the Ministry of Transportation and the Ministry of Regional Development.

⁴³⁷ Romanian Spatial and Urban Planning Law 350/2001 Ch III § 1 Article 18

supply authority, telecommunications, the health department and the solid waste authority before it can be issued a building permit.⁴³⁸

The Romanian Ministry of Regional Development manages the country's local planning laws – including the General Urban Regulation Decision 525/1996 and the Land Use and Planning Law 350/2001.⁴³⁹ The ministry is responsible for the development of a National Spatial Plan, the creation of regional spatial and development plans, the regulation of urban development and the approval of county level and local plans.⁴⁴⁰ County Councils coordinate planning and economic strategy at the county level and coordinate the local level plans in their jurisdictions.⁴⁴¹

The Ministry of Culture and Religion plays an important role in authorising the RMGC project.⁴⁴² This Ministry issues archaeological discharge certificates⁴⁴³, manages the listing of sites and buildings of historic and cultural interest⁴⁴⁴ and ensures the protection of churches and graveyards⁴⁴⁵. The Ministry of Culture ensures that private and public owners of historic monuments maintain,

⁴³⁸ Gabriel Resources, 2003; 14 and Doing Business:

<http://doingbusiness.org/data/exploreeconomies/romania/dealing-with-construction-permits>

⁴³⁹ Government Decision 525/1996 was amended by Government Decisions 789/1996, 59/1999, 960/1999, 855/2001 and 273/2010; Law 350/2001 was amended by Government Ordinance 69/2004, Law 289/2006, Government Ordinances 18/2007 and 27/2008, Emergency Ordinance 10/2009 and Law 345/2009

⁴⁴⁰ The objectives of spatial planning are to promote economic development, to improve the quality of life, to protect the environment and to ensure the rational use of the land. (Romanian Law 350/2001 Ch II § 1 Articles 9 and 18) According to Romanian law, the development of these plans should be based on transparency, decentralisation, public participation and sustainable development.

⁴⁴¹ Romanian Law 350/2001 Ch III § 2 Article 21

⁴⁴² Romanian Protection of Historical Monuments Law 422/2001: This law was amended by Law 468/2003, 259/2006

⁴⁴³ Romanian Law 422/2001 Ch II Article 14

⁴⁴⁴ Romanian Law 422/2001 Ch II Article 21

⁴⁴⁵ Romanian Law on Religious Freedom and the General Status of Religions 489/2006 Chapter II § 4

preserve and restore their culturally significant sites.⁴⁴⁶ The Ministry of Culture has authority over historic and cultural protected zones.⁴⁴⁷

The Ministry of the Environment and its county level decentralized agencies play the dominant role in the authorisation of development projects like the RMGC project. The Ministry and its regional and local authorities manage the EIA⁴⁴⁸ and SEA⁴⁴⁹ processes. It issues land use change and dam safety permits⁴⁵⁰. The Ministry of the Environment coordinates the permitting and compliance procedures set out in the Integrated Pollution Prevention and Control Directive (IPPC).⁴⁵¹ This directive works to prevent, reduce and when possible eliminate pollution⁴⁵² from certain industrial activities^{453, 454}. The Ministry of the Environment manages compliance of the European Seveso II Directive.⁴⁵⁵ This Directive requires operators of projects that use dangerous substances⁴⁵⁶ in significant quantities to provide to the public a Safety Report⁴⁵⁷, a Major Accident Prevention Policy⁴⁵⁸ and Internal Emergency Plans^{459, 460}. From this information, the competent authority must publish

⁴⁴⁶ Romanian Law 422/2001 Ch I Article 6

⁴⁴⁷ Romanian Law 422/2001 Ch I Article 8

⁴⁴⁸ Romanian EIA Procedures Ordinance 860/2002 Article 2

⁴⁴⁹ Romanian Environmental Assessment for Plans and Programmes Decision 1076/2004 Ch I Article 2

⁴⁵⁰ Gabriel Resources, 2009; 1

⁴⁵¹ European Directive 96/61/EC and Romania's Emergency Ordinance 34/2002: The Romanian Ordinance was approved by Law 645/2002.

⁴⁵² The Directive describes pollution as the introduction of substances, vibrations, heat or noise by humans that damages property or the environment. European Directive 96/61/EC Article 2

⁴⁵³ The specific industrial activities regulated are listed in Annex 1 of Directive 96/61/EC and the Annex of Emergency Ordinance 34/2002.

⁴⁵⁴ European Directive 96/61/EC Article 1

⁴⁵⁵ European Directive 96/82/EC and Romanian Control Major Accidents Involving Dangerous Substances Government Decision 95/2003: The Seveso II Directive repealed Directive 82/501/EEC.

⁴⁵⁶ The dangerous substances are listed in Annex I of Directive 96/82/EC.

⁴⁵⁷ European Directive 96/82/EC Article 9: The specific data required in the Safety Report are listed in Annex II of Directive 96/82/EC.

⁴⁵⁸ European Directive 96/82/EC Article 7

⁴⁵⁹ European Directive 96/82/EC Article 11

External Emergency Plans.⁴⁶¹ Based on the polluter pays principle⁴⁶², the Ministry of the Environment also manages the compliance of the Environmental Liability and Rehabilitation Directive.⁴⁶³ This Directive holds operators financially liable for those activities that have caused environmental damage⁴⁶⁴ or a threat of environmental damage.⁴⁶⁵

Romania is divided into 41 counties called *județe* and the city of Bucharest.⁴⁶⁶ County level government includes two separate bodies, the Prefect and County Council. The state government appoints a county Prefect who represents the Government and reviews the legality and constitutionality of local and county councils decisions.⁴⁶⁷ The Prefect also manages the decentralized offices of the Government.⁴⁶⁸ The County Council President and two Vice-Presidents are elected directly by the public.⁴⁶⁹ The County Council is responsible for

⁴⁶⁰ This Directive does not apply to the transport of dangerous substances or the exploitation of minerals in mines or quarries. (European Directive 96/82/EC Article 4) This means that the explosives used by RMGC to mine the ore and the transport of the cyanide for the Tailings Management Facility (TMF) would not be regulated by this Directive. However, the cyanide used in the refining process and deposited in the TMF would be included.

⁴⁶¹ European Directive 96/82/EC Article 11; These reports must include descriptions of the dangerous substances involved, the risks of accident and the measures taken to prevent accidents and to limit the consequences of accidents to man and the environment. The information that must be provided to the public is listed in Annex V of Directive 96/82/EC.

⁴⁶² The objective of this principle is to prevent and remedy environmental damage by providing a financial incentive to operators to adopt measures and practices to minimise the risks of environmental damage. (European Directive 2004/35/EC Preamble 2) This Directive does not affect rights to compensation for damage granted under civil liability and does not apply to cases of personal injury. (European Directive 2004/35/EC Article 3) Member States should encourage operators to establish appropriate insurance or other forms of security to cover for the potential financial obligations of the Directive. (European Directive 2004/35/EC Article 14)

⁴⁶³ EU Directive 2004/35/EC and Romanian Emergency Government Ordinance 68/2007: The EU Mine Waste Directive 2006/21/EC amends Directive 2004/35/EC to specifically address environmental damage caused by waste from the mining industry and establishes specific measures for public participation for proposed projects in the mining industry.

⁴⁶⁴ EU Directive 2004/35/EC Article 2 Environmental damage includes damage to human health, protected species, natural habitats, water or land.

⁴⁶⁵ EU Directive 2004/35/EC Article 1

⁴⁶⁶ CIA World Factbook: <https://www.cia.gov/library/publications/the-world-factbook/geos/ro.html>

⁴⁶⁷ Alba County Sub-Prefect Interview

⁴⁶⁸ Alba County Sub-Prefect Interview

⁴⁶⁹ Romanian citizens began directly electing their county council presidents in 2008. The County Councillors are elected based on the proportion of the vote received by their party. (UNDP, 2005; 40)

coordinating the activities of the local councils, developing an overall economic development strategy, as well as, maintaining county level buildings, land and roads.⁴⁷⁰ The County Commission brings together the County Council, Prefect, Mayors, heads of decentralized offices of the ministries, officers of military institutions and managers of national companies.⁴⁷¹ This body debates the county's Economic and Social Guideline Program, as well as, the measures required to implement the State's programme.

At the local level mayors and local councils administer communes and the villages, towns, cities, municipalities within the communes.⁴⁷² Municipal elections are held every four years.⁴⁷³ Mayors are directly elected and councillors are elected based on party proportional vote.⁴⁷⁴ The deputy mayor is elected by the local council.⁴⁷⁵ General council meetings are held once a month.⁴⁷⁶ All council decisions are posted at the town hall.⁴⁷⁷ Commune councils hire a small staff to provide public services like road, public building repair and maintenance and land use issues.⁴⁷⁸

ROMANIAN EXPERIENCE WITH THE EIA PROCESS

While the RMGC EIA Process was not Romania's first attempt at environmental impact assessment and public consultation, Romania's

⁴⁷⁰ UNDESA, 2003; 7; UNDP, 2005; 40

⁴⁷¹ UNDESA, 2003; 8

⁴⁷² Romanian Local Administration Law 286/2006 which amended and supplemented Law 215/2001

⁴⁷³ Romanian Law 215/2001 Chapter I § 2 Article 24

⁴⁷⁴ Coman, Crai, et al, 2001; 362

⁴⁷⁵ Coman, Crai, et al, 2001; 369; The mayor and deputy mayor positions are full-time paid positions and councillors receive a monthly stipend. (RMGC, 2006b; 30)

⁴⁷⁶ Romanian Law 215/2001 Chapter 2 § 3 Article 40; Council committees also meet monthly to debate specific communal issues. (RMGC, 2006b; 30)

⁴⁷⁷ RMGC, 2006b; 30

⁴⁷⁸ RMGC, 2006b; 30

government and citizens have relatively little experience in this democratic activity – particularly for a project the size of the RMGC project. Romania’s Environmental Protection Law was established in 1995, but this law barely mentions public meetings as part of the EIA process.⁴⁷⁹ It wasn’t until Environmental Impact Assessment and Environmental Agreement Procedures Order was approved in 2002 that public authorities had real guidance for managing EIA processes.⁴⁸⁰

I was not able to find published empirical studies describing public participation as part of Romanian EIA processes; however, I did find several EIA case studies – published by the European Bank for Reconstruction and Development and the United Nations Economic Commission for Europe. These cases focused on each project’s substantive issues and only briefly mentioned some of the procedural aspects of the EIA.⁴⁸¹

⁴⁷⁹ Romanian Environmental Protection Law 137/1995

⁴⁸⁰ Romanian Order 260/2002

⁴⁸¹ In 2001 an EIA Report was published for the construction of a highway traffic bridge over the Danube between Bulgaria and Romania; a public meeting was held in Romania in January 2002. (UNECE, 2004; 2) A total of ten comments and no objections were recorded from the Romanian public meeting and written comments. (UNECE, 2004; 3) In 2004 an EIA Report was released to authorise the construction and operation of overhead transmission lines between Romania and Hungary. (EBRD, 2004) Public comment was accepted from July through October 2004. (EBRD, 2004; 11) In 2005, the Romanian National Company of Motorways and National Roads (NCMNR) submitted its EIA Report to build a by-pass around the city of Constanța. (EBRD, 2005) Public consultation meetings were held in Constanța in March 2005. (EBRD, 2005; 9) In 2007, Petrom (Romania’s oil and gas company) begin its authorisation process to build and operate a gas-fired power plant in Brazi, Romania. (EBRD, 2009) A public meeting was held in October 2007; no comments or objections were recorded. (Petrom, 2009; 7) In February 2010, Nabucco initiated an EIA process for the Romanian portion of a gas pipeline connecting gas production in the Caspian region, Middle East and Egypt to the European consumer markets. (Environmental and Social Impact in Romania Retrieved 7 March 2012 from <http://www.nabucco-pipeline.com/portal/page/portal/de/safety/Country%20Activities/Environmental%20%20Social%20Impact%20Assessment%20in%20Romania>) The Scoping Stage of this project determined that an EIA Study and public consultation were required, but the EIA Report is not yet complete. (Environmental and Social Impact in Romania Retrieved 7 March 2012 from <http://www.nabucco-pipeline.com/portal/page/portal/de/safety/Country%20Activities/Environmental%20%20Social%20Impact%20Assessment%20in%20Romania>)

The Romanian public officials that I interviewed also provided some examples of EIA processes in Romania. Alba County EPA issues about 400 authorisations a year – about 30 of them are integrated authorisations that require public meetings.⁴⁸² Alba County EPA has never refused an authorisation, but authorisations have been temporarily suspended when existing projects exceed legal emission limits.⁴⁸³ Cluj County managed about 45 public meetings in 2006.⁴⁸⁴ Examples of projects that require environmental agreements in these counties include the construction of malls or superstores, factories, animal farms and waste management plants.⁴⁸⁵ The National Environmental Protection Agency organised public meetings for 7 projects in 2006 – mostly for roads that cross over more than one region but also for waste management projects and crematoriums.⁴⁸⁶

The National EPA oversaw the public participation for the Bucharest to Broșov Autobahn.⁴⁸⁷ This process required seven public meetings in seven different locations including Bucharest, Prahova, Sinaia and Ilfov.⁴⁸⁸ About 40 people participated in the Bucharest public meeting, but no one opposed the project.⁴⁸⁹ However, the project did face significant opposition during the Sinaia and Prahova meetings.⁴⁹⁰ For the most part, local residents participated as individuals.⁴⁹¹ NGOs were present at only two of the public meetings.⁴⁹²

⁴⁸² Alba County EPA Interview

⁴⁸³ Alba County EPA Interview

⁴⁸⁴ Confidential 2 Interview

⁴⁸⁵ Interviews: Confidential 2; Arad County EPA; Hunedoara Prefect

⁴⁸⁶ National EPA Interview

⁴⁸⁷ National EPA Interview

⁴⁸⁸ National EPA Interview

⁴⁸⁹ National EPA Interview

⁴⁹⁰ National EPA Interview

⁴⁹¹ National EPA Interview

In Hunedoara, a developer proposed to build a gas station between two blocks of flats.⁴⁹³ More than 60 local residents participated at that public meeting.⁴⁹⁴ Announcement posters had been affixed to the entry doors of the apartment buildings.⁴⁹⁵ The project faced unanimous opposition from the residents – even after the developer promised jobs and payments to them.⁴⁹⁶ In this case, the project's authorisation was ultimately denied.⁴⁹⁷

In the middle of the last decade, public meetings were held in Sebeş as part of an EIA process for a formaldehyde production plant operated by a company called Kronospan.⁴⁹⁸ About 30 or 40 residents participated in the three public meetings held at the city hall.⁴⁹⁹ According to a public official from the Alba County Environmental Guard, this series of meetings were well organised and 'civilised'; participants stood up, expressed their opinions and asked questions.⁵⁰⁰ Most of their questions were answered during the meeting.⁵⁰¹

⁴⁹² National EPA Interview

⁴⁹³ Hunedoara County Environmental Guard Interview

⁴⁹⁴ Hunedoara County Environmental Guard Interview

⁴⁹⁵ Hunedoara County Environmental Guard Interview

⁴⁹⁶ Hunedoara County Environmental Guard Interview

⁴⁹⁷ Hunedoara County Environmental Guard Interview

⁴⁹⁸ Alba County Environmental Guard Interview; The participant was not sure if the meetings were in 2004 or 2004.

⁴⁹⁹ Alba County Environmental Guard Interview

⁵⁰⁰ Alba County Environmental Guard Interview

⁵⁰¹ Alba County Environmental Guard Interview; Incidentally, in 2007, Kronospan extended its plant. (Formaldehyde Takes Romania Closer to the European Court of Justice Retrieved 7 March 2012 from <http://pollutionfreesebes.wordpress.com/>) According to a European Commission warning in March 2010, the plant extension was constructed and has been in operation since 2007 without a valid construction permit or an environmental agreement. Criminal proceedings were initiated against company employees who wilfully released emissions into the atmosphere – risking the health of local residents. (Letter by the 'Pollution Free Sebes' Initiative Group and ICDER to WWF Retrieved 8 March 2012 from <http://www.centruledemiediu.ro/index.shtml?apc=es1n-&x=73&s=t>) In May 2008, the Director of the Alba County EPA (the same director interviewed for this research) was dismissed from the agency for conflict of interest charges. (Alba EPA Executive Director's Dismissal Confirmed by Court Verdict Retrieved 8 March 2012 from <http://www.centruledemiediu.ro/index.shtml?apc=es1n31&x=90&s=t>) The director – who was also the sole owner of SC Luxor, Ltd (a construction and maintenance company) – who held service contracts with Kronospan. (Alba EPA Executive Director's Dismissal Confirmed by Court

ROȘIA MONTANĂ COMMUNE AND RMGC ZONING AUTHORISATIONS

Building permits must comply with the local plans and regulations regarding the placement, design, implementation and operation of buildings.⁵⁰² Romanian local councils develop local plans - including PUGs⁵⁰³, PUZs⁵⁰⁴ and Detailed Urban Plans⁵⁰⁵ - and ensure compliance with the provisions of the plans.⁵⁰⁶ The Roșia Montană and Abrud's PUGs⁵⁰⁷ were last amended by their respective Local Communal Councils in July 2002 (Local Decisions 45/2002 and 43/2002 respectively).⁵⁰⁸ The Roșia Montană zoning plan established the commune as a mono-industrial zone, banning all forms of economic activity in the area except mining and initiating the relocation and resettlement of the local population.⁵⁰⁹ The PUG banned economic activities, such as tourism and agriculture and prohibited new construction on private property.

Verdict Retrieved 8 March 2012 from

<http://www.centruledemiediu.ro/index.shtml?apc=es1n31&x=90&s=t>

⁵⁰² Romanian Law 350/2001 Ch IV § 6 Article 57

⁵⁰³ The PUG describes the plan for the entire area or commune and determines land use, road and infrastructure networks, protected areas and identifies protected monuments. The PUG establishes various land zoning areas – commercial, rural, farming, industrial and residential. PUGs must be updated every 5 to 10 years and under certain circumstances, for example for those villages that have been affected by natural disasters; newly established villages; localities of interest or with tourist potential and localities experiencing major changes as a result of construction permit applications. (Romanian Law 350/2001 Ch IV § 3 Article 46)

⁵⁰⁴ The more detailed PUZ regulates zones within the area or commune and is required for the central areas of towns, for recreation complexes, industrial parks and other protected areas. The PUZ regulates the distance, function, size and height of construction around protected zones. (Romanian Law 350/2001 Ch IV § 3 Article 47)

⁵⁰⁵ The Detailed Urban Plan regulates at the plot level and includes regulations that ensure the accessibility of the utility networks, restrictions on the height, the size and number of buildings, plot to building ratios, the functional and aesthetic dimension of the area, as well as, the compatibility of the land with the buildings constructed. (Romanian Law 350/2001 Ch IV § 3 Article 48)

⁵⁰⁶ Romanian Law 350/2001 Ch III § 3 Article 25

⁵⁰⁷ As of 28 November 2011, I cannot find Roșia Montană's 2002 PUG on the Roșia Montană Commune website nor on the Alburnus Maior, RMGC, Ministry of the Environment, National Agency for Environmental Protect, Sibiu Regional Agency for Environmental Protection or the Alba Agency for Environmental Protection websites.

⁵⁰⁸ RMGC, 2004; 12

⁵⁰⁹ Alburnus Maior, 2008a; 4 and Alburnus Maior, 2008b; RMGC argues that Roșia Montană had been a mono-industrial zone for decades. (Gabriel Resources Open Letter to the Romanian

RMGC's Industrial Area PUZ⁵¹⁰ was initially approved in July 2002 (Local Decision 46/2002).⁵¹¹ This plan details the specific land use of the proposed mining area including the location and size of project components such as mining pits, process facilities, waste dumps and the TMF.⁵¹² However, RMGC's 2002 PUZ did not include the Jig and Orlea quarries.⁵¹³ According to the company, this was because the PUZ was developed for a period of 5 years and the company does not plan to mine these areas until later stages of the project.⁵¹⁴ In 2006, the company updated the proposed PUZ document to include these and other project features.⁵¹⁵

In January 2008 the Alba Iulia Court of Appeal irrevocably declared both the Roşia Montană PUG and the RMGC Industrial Area PUZ illegal.⁵¹⁶ At that point the commune had not completed its Historic Area PUZ, which was not drafted until 2010. This means that the Roşia Montană commune does not have the necessary plans to permit new construction.⁵¹⁷ Before the RMGC project could be authorised the commune had to develop a new PUG and a Historic Area PUZ and the company was required to create a new Industrial Area PUZ.

Academy Retrieved 15 November 2011 from
<http://67.192.21.189/Theme/Gabriel/files/Mar%202%2006.pdf>)

⁵¹⁰ As of 28 November 2011, I cannot find the RMGC 2002 PUZ on the Roşia Montană Commune website or on the Alburnus Maior, RMGC, Ministry of the Environment, National Agency for Environmental Protect, Sibiu Regional Agency for Environmental Protection or the Alba Agency for Environmental Protection websites.

⁵¹¹ Alburnus Maior and CIDRM Joint Press Release 23 June 2010 Retrieved 23 November 2011 from http://www.observatorulurban.ro/assets/files/stiri/2010_08/AM_ICDER_restartEIA.pdf and RMGC, 2007; Volume 52 page 2

⁵¹² RMGC, 2006; 6

⁵¹³ RMGC, 2007; Volume 52 page 2

⁵¹⁴ RMGC, 2007; Volume 52 page 2

⁵¹⁵ RMGC, 2006

⁵¹⁶ Monitorulcl.ro, 2008; 1

⁵¹⁷ Romanian Law 350/2001 Ch VI Article 65

The Aarhus Convention⁵¹⁸, European Directives⁵¹⁹ and Romanian legislation⁵²⁰ all call for SEA processes for the authorisation of public policies, plans and programmes – including zoning plans.⁵²¹ In Romania, public authorities that propose new or modified zoning plans that may have a significant impact on the environment must obtain environmental approval from the environmental protection authority - which confirms the integration of measures to protect the environment into the plan or programme.⁵²² The Romanian SEA process to issue environmental approval for plans and programmes includes 3 stages – a Screening Stage⁵²³, a Study Stage⁵²⁴ and a Review Stage^{525 526}. The

⁵¹⁸ The EU and Romania signed the Aarhus convention at inception on 25 June 1998. Romania ratified the convention in July 2000 with Law 86/2000 and the EU approved it for European Community institutions in 2005 with European Council Decision 2005/370/EC.

⁵¹⁹ EU Directives 2001/42/EC and 2003/35/EC

⁵²⁰ Romanian Decision 1076/2004

⁵²¹ Environmental impact assessments are required for public plans and programmes that deal with for example, forestry, energy, transport and town, country and land use planning. Plans and programmes that require the SEA process are listed in Annexes 1 and II of Directive 85/337/EEC and Annex 1 and 2 of Romanian Government Decision 918/2002.

⁵²² Romanian Decision 1076/2004 Ch I Article 1

⁵²³ During the Screening Stage the environmental protection authority convenes a special committee to help determine, on a case-by-case basis, if a proposed plan or programme will produce significant impacts on the environment and is therefore subject to the SEA process. (Romanian Decision 1076/2004 Ch III § 1 Article 10) Romanian law requires public authorities to inform the public about the substance of the plan or programme being considered and to accept public comment on the draft plan or programme and its possible impacts on the environment. (Romanian Decision 1076/2004 Ch III § 1 Article 9) In making the Screening decision, the environmental protection authority considers the list of projects, which are presupposed to have significant impacts on the environment, the received public comments and the guidance of its special screening committee. (Romanian Decision 1076/2004 Ch III § 1 Article 11) The criteria for determining the necessity of the SEA process for plans and programmes are listed in Annex 1 of Government Decision 1076/2004. Those public plans and programmes that the environmental protection authority determines are not subject to the SEA process can move onto the adoption procedures without approval from the authority. (Romanian Decision 1076/2004 Ch III § 1 Article 13)

⁵²⁴ Those public plans and programmes that are subject to the SEA process move onto the SEA Study Stage. During this stage, the authority applying for the environmental agreement, experts and certified individuals (the ad hoc working group) document the main objectives of the plan or programme; the baseline conditions; the likely environmental impacts of the plan or programme; measures envisaged to prevent, reduce and offset negative effects and measures to monitor impacts after implementation. (Romanian Decision 1076/2004 Ch III § 2 Articles 14-5, 18) This study is published in the SEA Report. During the Study Stage the SEA Report and related studies must be published and made available to the public. (Romanian Decision 1076/2004 Ch III § 2 Article 21) The SEA Report is subject to public debates and comment. (Romanian Decision 1076/2004 Ch III § 2 Article 23) The draft plan or programme or the SEA report may be modified based on the justified comments received from the public. (Romanian Decision 1076/2004 Ch III § 2 Article 21)

environmental protection authority oversees public involvement during the environmental approval process, including the provision of public information, access to information, public comment, the convention of experts and the public debates.⁵²⁷

At first, in September 2006, the local agency for the protection of the environment argued that the development of the RMGC Industrial Area PUZ and the Roşia Montană Historic Area PUZ would not have a significant impact on the environment and would therefore only require an environmental permit – rather than full environmental approval.⁵²⁸ Immediately, 17 NGOs submitted a contestation challenging that ruling.⁵²⁹ The NGOs asserted that the plans did have a significant impact on the environment (including transboundary impacts) and were therefore subject to a full SEA Process.⁵³⁰ The next month, the agency agreed with the NGOs and ruled that the development of both PUZ would require the full environmental accord.⁵³¹

In August 2007, RMGC announced that it had completed the SEA Report for its Industrial Area PUZ approval.⁵³² The next month, Alburnus Maior and CIDRM submitted an appeal to the environmental protection authorities.⁵³³ They

⁵²⁵ During the SEA Review stage, the environmental protection authority seeks guidance from the ad hoc working group and makes a decision whether or not to issue the environmental approval. (Romanian Decision 1076/2004 Ch III § 3 Article 24) The authority proposing the plan or programme may only submit those modified plans or programmes with environmental approval for the adoption procedure. (Romanian Decision 1076/2004 Ch III § 3 Article 26)

⁵²⁶ Romanian Decision 1076/2004 Ch I Article 3

⁵²⁷ Romanian Decision 1076/2004 Ch I Article 2; Romanian Decision 1076/2004 Ch III § 4 Article 28

⁵²⁸ Alburnus Maior, 2006a; 1

⁵²⁹ Alburnus Maior, 2006a

⁵³⁰ Alburnus Maior, 2007b; 4

⁵³¹ Alburnus Maior, 2007b; 4

⁵³² Alburnus Maior, 2007b; 5

⁵³³ Alburnus Maior Appeal (2007) Retrieved on 26 November 2011 from

argued that according to Romanian legislation, the public must be allowed to participate in the preparation of the SEA Report.⁵³⁴ The public authority sided with the opposition and required RMGC to restart the SEA Study and to pay a fine.⁵³⁵

The Roşia Montană's Mayor's Office is now managing the process to develop the commune's new PUG and its Historic Area's PUZ.⁵³⁶ The Alba office of the Environmental Protection Agency is managing the new RMGC Industrial Area PUZ processes. The proposed PUG was posted on the Mayor's Office's website (in Romanian and English) in March 2009.⁵³⁷ The final version of the Historic Area PUZ was submitted – after public consultation - and endorsed by the local council in March 2010.⁵³⁸ The Historic Area PUZ now needs to be approved by various ministerial level authorities.⁵³⁹ The SEA Report for the Industrial Area PUZ was submitted again in January 2009, this time after public consultation.⁵⁴⁰ The SEA Annex – the document where the company responds to the questions and comments raised during the SEA public comment period and the public meetings – has been filed with the Regional Environmental Protection Agency in Sibiu, where the decision on the PUZ will be taken.⁵⁴¹

http://www.rosiamontana.ro/doc/cidrm/raspuns_comentarii%20asociatii_proceduraSEA_RMGC.jpg

⁵³⁴ Alburnus Maior, 2007b; 5

⁵³⁵ Alburnus Maior, 2007b; 5

⁵³⁶ Roşia Montană Commune (2009)

⁵³⁷ www.primariarosiamontana.ro. As of 28 November 2011, the actual proposed PUG document can no longer be found on the Roşia Montană website, nor on the Alburnus Maior, RMGC, Ministry of the Environment, National Agency for Environmental Protection, Sibiu Regional Agency for Environmental Protection or the Alba Agency for Environmental Protection websites.

⁵³⁸ Gabriel Resources 2009 4th Qtr Report; 3

⁵³⁹ Gabriel Resources 2009 4th Qtr Report; 3

⁵⁴⁰ RMGC website Retrieved 28 November 2011 from <http://en.rmgc.ro/rosia-montana-project/environment/environment-evaluation-for-puz.html>

⁵⁴¹ RMGC, 2009a; 1; The RMGC Industrial Area PUZ was updated again in 2010. (RMGC, 2010)

RMGC PROJECT AUTHORISATION

The EU created member state EIA Process requirements for development projects in June 1985 with its Directive 85/337/EEC⁵⁴². Romania created its EIA requirements in 1995 with Environmental Protection Law 137/1995.⁵⁴³ These directives and laws subject developers of projects - that are likely to have significant effects on the environment due to their nature, size or location - to an EIA Process.⁵⁴⁴ These projects require an environmental agreement, which establishes the conditions under which project authorisation may be granted.⁵⁴⁵ Signatories to the Aarhus Convention, European Member States and Romanian public authorities agree to invite the public to participate in public decisions regarding environmental agreements for projects with significant impact on the

⁵⁴² Directive 85/337/EEC was amended with Directives 97/11/EC, 2003/35/EC and 2009/31/EC.

⁵⁴³ Romanian Environmental Protection Law 137/1995 was amended by Government Ordinance 91/2002, Government Decision 918/2002, Law 294/2003 and Government Decision 1705/2004. Additionally, the Romanian law that details the authorisation requirements for construction projects, Law 50/1991, was amended in 2008 to require EIA Processes. Law 50/1991 was amended by Laws 453/2001, 401/2003, 199/2004, 376/2006, 52/2006, 117/2007 and 101/2008 Government Ordinance 5/2002 and Emergency Ordinances 122/2004 and 214/2008.

⁵⁴⁴ Romanian Ordinance 860/2002 Ch I § 3 Article 7: Environmental approvals and building permits are required for construction, extension and demolition of buildings; any works on monuments, archaeological areas and historic buildings; agricultural construction projects; roads and utility networks; parks and squares; cemeteries; and drilling and excavation projects. (Annex II of Directive 97/11/EC). Romanian EIA Procedures Ordinance 860/2002 establishes 3 levels of environmental approvals: environmental notices, environmental permits and environmental agreements. (Romanian Ordinance 860/2002 Ch I § 3 Article 7) Those projects with insignificant impact are required to notify the environmental protection authority, but do not need to seek its approval. An example of an insignificant impact project would be the construction of individual houses in sites compliant with current planning decisions. Those projects with low environmental impact require only an environmental permit. Examples of project with low environmental impact are smaller agriculture, chemical production, food processing and infrastructure projects. Those projects with insignificant and low environmental impact do not require an EIA Study or EIA Report. (Romanian Ordinance 860/2002 Annex I.2; Romanian Ordinance 860/2002 Ch I § 3 Article 7) Those projects with a significant environmental impact require an EIA process and are managed at the local, regional or state levels. For example, projects involving the extraction of oil, natural gas, coal and peat are typically managed by environmental protection authorities at the local level. While large thermal power stations, oil and gas refineries and farms established to rear more than 750 sows are managed at regional or national levels. The project types and the project impact thresholds for projects with significant environmental impacts are list in Annexes I.1 and I.2 of Romanian Ordinance 860/2002 and Annexes 1 and 2 of Government Decision 918/2002.

⁵⁴⁵ Romanian Ordinance 860/2002 Ch II § 3 Article 24; Amer and Koontz, 2004: 474; The authority must establish the emission limits and describe the required pollution control measures.

environment.⁵⁴⁶ These laws require that environmental authorization procedures are conducted publicly; they establish a structure for public participation in environmental decision making and they require that decision makers consider the results of public consultations when taking decisions on the environmental agreements.⁵⁴⁷ Romania's EIA process includes five stages – the Application Stage, the Screening Stage, the Scoping Stage, the Study Stage and the Review Stage.

⁵⁴⁶ Annex I of the Aarhus Convention lists the types of projects that are subject to environmental agreements including for example, the energy sector, the mineral industry, waste management, transportation and ports and intensive farming activities.; Directive 85/337/EEC applies to construction works and installations in natural surroundings and landscapes. Projects types that are always subject to the EIA Process are listed in Annex I of Directive 97/11/EC.; Romania's Environmental Protection Law 137/1995 and Law 50/1991. The Romanian Ministry of the Environment's Ordinances 860/2002 and 863/2002 regulate the application and decision process for proposals to develop new projects - or to change existing projects.

⁵⁴⁷ Romanian Environmental Protection Law 137/1995 Ch IV § 1

A timeline of the significant events during the authorisation of the RMGC project has been outlined below.

2000	October	Mininvest transfers its Mining License to RMGC
2004	December	RMGC submits Project Presentation Report
2005	May	Environmental Protection Agency publishes Screening Stage Documents Combined Screening and Scoping Stage CAT Meeting Ministry of the Environment provides Scoping Stage Guidelines to RMGC
2006	May June – August July – August	RMGC submits EIA Report Comment Period for the RMGC EIA Report 14 Public Meetings held around Romania to discuss the RMGC EIA Report
2007	January May June – August September	Ministry of the Environment provides EIA Annex Questions to RMGC RMGC submits its EIA Annex to the Ministry of the Environment Review Stage CAT begins to Review the RMGC Project. Ministry of the Environment Suspends RMGC EIA Process for Lack of an Urbanistic Certificate
2008	January	Roşia Montană's PUG and RMGC's Industrial Area PUZ are declared illegal
2009	January January – April March March – April	RMGC submits its Amended Industrial Area PUZ and its SEA Report Comment Period for the RMGC Industrial Area PUZ and its SEA Report Roşia Montană's Mayor's Office submits its Amended PUG Documents Public Meetings for the RMGC Amended Industrial Area PUZ and its SEA Report
2010	March	Roşia Montană's Mayor's Office submits its Historic Area PUZ documents

Table 1: RMGC Project EIA Process Timeline

In December 2004, RMGC submitted its application for a full environmental agreement subject to the EIA process.⁵⁴⁸ As part of its application, the company was required to file a *Project Presentation Report* (also known as the

⁵⁴⁸ The application package includes an application form, payment and technical project information. (Romanian Ordinance 860/2002 Ch I § 3 Article 8); RMGC first applied for an environmental permit in 2002. At that time the company applied without submitting the necessary technical papers. In 2003 RMGC withdrew its initial application and began work on a new application that would include EIA Process activities. (PACE, 2004) RMGC began its current EIA Process when it submitted its Project Presentation Report in December 2004 and furthered its application with the submission of its EIA Report in May 2006.

Technical Memorandum).⁵⁴⁹ RMGC's 196 page Project Presentation Report includes information about the company; its proposed project activities; the project's appearance and location; the site's baseline conditions; information about the materials, dangerous substances and energy required and possible emissions produced⁵⁵⁰; the project's possible effects⁵⁵¹ on the environment and the developer's proposed measures for preventing and monitoring environmental impacts. According to Romanian law, applications must also be accompanied by an urbanistic certificate issued by the local or county level council.⁵⁵² An urbanistic certificate describes the characteristics⁵⁵³, legal status⁵⁵⁴ and economic status⁵⁵⁵ of a property.⁵⁵⁶ It includes the conditions under which the property can be developed.⁵⁵⁷ The urbanistic certificate must comply with the local plans and notifies the developer of the building permits and authorisations required for the project.⁵⁵⁸ The application package was

⁵⁴⁹ Romanian Ordinance 860/2002 Ch I § 3 Article 12: Requirements for the Project Presentation Report are listed in Annex II.2 in Romanian Ordinance 860/2002 and Annex III of the Directive 85/337/EEC. RMGC; 2004; RMGC updated their Project Presentation Report in March 2009. (RMGC; 2009b)

⁵⁵⁰ Emission limit values are listed in Annex III of Directive 96/61/EC.

⁵⁵¹ European Directive 85/337/EEC Article 3: The effects mentioned in the Directive are effects on humans, flora and fauna, soil, water, air, climate, landscape and material assets and cultural heritage.

⁵⁵² Romanian Ordinance 860/2002 Ch I § 4 Article 9; An urbanistic certificate is a planning certificate.

⁵⁵³ Romanian Law 350/2001 Ch III § 4 Article 31: Characteristics might include the existence of risks, the likelihood of environmental damage, etc.

⁵⁵⁴ Romanian Law 350/2001 Ch III § 4 Article 31: Legal status includes property ownership, public easements, protected status, liens, building restrictions, historical listed status, etc.

⁵⁵⁵ Romanian Law 350/2001 Ch III § 4 Article 31: Economic status includes purpose, employment, car parking, pedestrian access, etc.

⁵⁵⁶ Romanian Law 350/2001 Ch III § 4 Article 31

⁵⁵⁷ Romanian Law 350/2001 Ch III § 4 Article 29

⁵⁵⁸ Evenimentul Zilei 31 July 2007; Urbanistic certificates are issued to any applicant – not necessarily the property owner or potential buyer- who wants to know the status of a property and the rules that regulate it. Urbanistic certificates do not confer permission to construct on or modify the property. (Romanian Law 350/2001 Ch III § 4 Article 29)

submitted to the environmental protection authority.⁵⁵⁹ The authorisation process then moves onto the screening stage.

The purpose of the screening stage is to decide whether a proposed project is subject to the full EIA Process.⁵⁶⁰ However, because the RMGC project is a mining activity with a production capacity of more than 5 million tonnes per year and an exploitation area exceeding 1,000 hectare⁵⁶¹, the project is automatically subject to an EIA Process⁵⁶². For this reason the screening stages and the scoping stages of the EIA Process were combined.⁵⁶³ After receiving the RMGC Project Presentation Report, in April 2005, the public authority visited the project site and published the two required screening stage documents: the Site Checking Report⁵⁶⁴ and the Screening Stage Checklist⁵⁶⁵ documents.⁵⁶⁶ Usually after the environmental authority takes the screening stage decision,

⁵⁵⁹ Romanian Ordinance 860/2002 Ch I § 3 Article 7

⁵⁶⁰ Romanian Ordinance 860/2002 Ch II § 1 Article 14; Based on the comments and analysis from the CAT and based on the size and type of the proposed project, the environmental authority determines whether the project will have a low or significant impact on the environment. (Annex of Romanian Ordinance 860/2002 and Annex 3 of Government Decision 918/2002) Those projects with low impact on the environment are not subject to an EIA Process and are either approved or rejected by the environmental protection authority at this stage; *environmental permits* are issued for those projects that are approved during the Screening Stage. Those projects determined to have a significant impact on the environment are forwarded to the Scoping Stage. (Romanian Ordinance 860/2002 Ch II § 1 Articles 14, 18, 21)

⁵⁶¹ RMGC; 2006a

⁵⁶² Romanian Ordinance 860/2002 Annex I.1; Romanian Ministry of the Environment, 2011; 1

⁵⁶³ Romanian Ministry of the Environment, 2011; 1; Romanian Ordinance 860/2002 Ch II § 3 Article 23

⁵⁶⁴ The Site Checking Report identifies the developer and the site of the proposed project; it includes a list of members of the public who must be specifically notified of the proposed project; it describes the project's potential impacts on the environment and the project's monitoring and assessment requirements. (Requirements for the Site Checking Report are included in Annex II.3 of Romanian Ordinance 860/2002)

⁵⁶⁵ The Screening Stage Checklist considers each of the project's characteristics and questions the potential environmental impacts of the proposed project and the possibility that those impacts would be significant. The required format of the Screening Stage Checklist is documented in Table 3 of Annex 1 in Ordinance 863/2002.

⁵⁶⁶ Romanian Ministry of the Environment, 2011; 1; As of 28 November 2011, neither the Site Checking Report nor the Screening Stage Checklist can be found on the websites of Roşia Montană, Alburnus Maior, RMGC, Ministry of the Environment, National Agency for Environmental Protect, Sibiu Regional Agency for Environmental Protection or the Alba Agency for Environmental Protection websites.

the developer must make an announcement of the decision to the public; the authority must provide to the public the developer's Project Presentation Report and its Screening Stage documents; and the public must be given an opportunity to comment on the screen stage decision.⁵⁶⁷ This step did not happen because the screening and scoping stages were combined.⁵⁶⁸ Immediately after the environmental authority produced the screening stage documents it convened the RMGC combined screening and scoping stage Technical Analysis Committee (CAT).

The CAT for a Romanian EIA Process is usually made up of representatives from relevant decentralised county or regional level agencies – for example the Ministries of Culture, Regional Development, Public Health, Interior, Agriculture, Emergency and Fire or Transportation - and is usually led by the director of the county level Agency for the Protection of the Environment.⁵⁶⁹ However, because of the nature and size of the RMGC project, the Ministry of the Environment – with consultation from a ministerial level CAT, experts, and the Romanian Academy - takes decisions on the RMGC authorisation process.⁵⁷⁰ The developer is also invited to participate in the CAT meetings.

⁵⁶⁷ Romanian Ordinance 860/2002 Ch III Article 35 and 37; During the Alba County EPA interview, the director said that the EPA actually writes the Screening Stage decision announcement. (Alba County EPA Interview); Usually the public can - within 10 days of the Screening Stage decision - submit, in writing, their opinions and proposals about the project and its EIA process requirements. (Romanian Ordinance 860/2002 Ch III Article 37; Alba County EPA Interview) Based on these public comments the environmental authority may reconsider its Screening Stage decision. (Romanian Ordinance 860/2002 Ch III Article 38)

⁵⁶⁸ Romanian Ministry of the Environment, 2011; 1; Romanian Ordinance 860/2002 Ch II § 3 Article 23

⁵⁶⁹ Romanian Ordinance 860/2002 Ch I § 1 Article 2; Romanian Ordinance 860/2002 Annex I.1; State-level presidential, parliamentary and ministerial bodies are usually not involved in the planning, licensing, permitting and approval processes.

⁵⁷⁰ Romanian Ordinance 860/2002 Ch I § 1 Article 2; The project types and the project impact thresholds for projects with significant environmental impacts are listed in Annexes I.1 and I.2 of Romanian Ordinance 860/2002 and Annexes 1 and 2 of Government Decision 918/2002

The RMGC combined Screening/Scoping Stage CAT was convened in May 2005 and the environmental authority published its Scoping Stage Guidelines⁵⁷¹ that same month.⁵⁷² The Scoping Stage Guidelines guide the developer during the Study Stage of the EIA process; they guide the design of the EIA Study and the production of the EIA Report.⁵⁷³ The Scoping Stage Guidelines list the required baseline studies, methods for impact prediction, criteria for assessing impact significance, the effects the project might have on the environment, those effects that should receive focus during the EIA Study and the alternatives⁵⁷⁴ that ought to be considered during the design of the project.⁵⁷⁵ For the 39 page report, the Scoping Stage CAT participants - from various ministries, agencies and the Romanian Academy - submitted a total of 102 questions to be addressed in the EIA Report.⁵⁷⁶ In this report, the Ministry of the Environment declared that the RMGC project is subject to the EIA Process.⁵⁷⁷

According to the Aarhus Convention and European Directives, the public ought to have an opportunity to provide input into the Scoping Stage Guidelines

Annexes; Alba's county level Environmental Protection Agency still manages the day to day activities of the EIA Process. (Alba County Environmental Protection Agency Interview)

⁵⁷¹ Romanian Ministry of the Environment, 2004

⁵⁷² Romanian Ordinance 860/2002 Ch I § 1 Article 2; Romanian Ministry of the Environment, 2011; 1

⁵⁷³ Romanian Ordinance 860/2002 Ch II § 3 Articles 23, 26; The Scoping Stage Guidelines are sometimes referred to as the Terms of Reference (TOR) document.; Ordinance 863/2002 recommends that the authority work in co-operation with the project developer, the designers of the EIA Study and Report, specialists in the field and representatives of institutions when completing the Scoping Stage Guidelines. (Romanian Ordinance 860/2002 § 3.1)

⁵⁷⁴ The types of alternatives the authority might present to the developer include alternative construction and operation strategies, sites, technologies, raw materials, layouts and mitigation measures. Romanian Ordinance 863/2002 § 2.1

⁵⁷⁵ A copy of the Scoping Stage Guidelines is documented in Table 2 of Annex 2 in Romanian Ordinance 863/2002.

⁵⁷⁶ Romanian Ministry of the Environment, 2004

⁵⁷⁷ Romanian Ministry of the Environment, 2004; 1

document.⁵⁷⁸ However the Romanian government refused to allow the public to participate in the RMGC Scoping Stage and to provide input for the Scoping Stage Guidelines.⁵⁷⁹ Alburnus Maior and several other NGOs contested the government's decision and commented on the Report anyway.⁵⁸⁰ However, their comments did not impact the Guidelines, which had already been published.⁵⁸¹ Alburnus Maior filed a formal complaint to the Aarhus Compliance Committee.⁵⁸² The Committee decided to suspend its judgement until after the conclusion of the RMGC EIA Process.⁵⁸³

After receiving the Scoping Stage Guidelines, the developer engages independent and neutral individuals or companies – certified by the Ministry of the Environment and paid for by the developer - to study and publish a report on the social, economic, cultural and environmental impacts of the proposed project.⁵⁸⁴ The EIA Report must include a non-technical summary and various

⁵⁷⁸ EU EIA Directive 97/11/EC; EU Directive 2003/35/EC; Alburnus Maior, 2007d; 6

⁵⁷⁹ Romanian Ordinance 860/2002 Ch II § 3; Alburnus Maior Aarhus Compliance Committee Contestation 20 June 2005 Retrieved 11 September 2012 from <http://www.unece.org/fileadmin/DAM/env/pp/compliance/C2005-15/communication/Communication%20and%20main%20references/Alburnus%20Maior%20communication%20to%20ACC.pdf>; Alburnus Maior 20 June 2005 Open Letter Retrieved 11 September 2012 from <http://www.unece.org/fileadmin/DAM/env/pp/compliance/C2005-15/communication/Communication%20and%20main%20references/RM%20NGO%20EIA%20Contestation%20June.pdf>; Romanian Decision 1213/2006 changed the Romanian EIA Process to make public participation during the Scoping Stage a requirement. (Alburnus Maior, 2007d; 6)

⁵⁸⁰ Alburnus Maior, 2008a; 1; Alburnus Maior, 2007d; 4

⁵⁸¹ Alburnus Maior, 2007d; 4

⁵⁸² Alburnus Maior Aarhus Compliance Committee Contestation 20 June 2005 Retrieved 28 November 2011 from <http://www.unece.org/fileadmin/DAM/env/pp/compliance/C2005-15/communication/Communication%20and%20main%20references/Alburnus%20Maior%20communication%20to%20ACC.pdf>

⁵⁸³ Economic Commission for Europe; Economic and Social Council, 2008; 11 Retrieved 29 November 2011 from http://www.unece.org/env/documents/2008/pp/mop3/ece_mp_pp_2008_5_e.pdf

⁵⁸⁴ Romanian Ordinance 860/2002 Ch II § 3 Article 26; Alba County EPA Interview; Romanian Environmental Law 137/1995 Ch II § 1 Article 11

plans and reports.⁵⁸⁵ The developer must describe the main objectives of the project; the baseline conditions of the area; the likely environmental impacts of the project; measures envisaged to prevent, reduce and offset negative impacts to the environment; measures to monitor impacts after implementation and project design alternatives considered and a justification for the selected design.⁵⁸⁶ The names and addresses of the independent individuals or companies who designed the EIA Study and published the EIA Report must be recorded in the EIA Report document.⁵⁸⁷ In May 2006, RMGC submitted its 33 volume EIA Report for its Roşia Montană gold mine project. The document contains more than 3,000 pages in 3 sections: 10 Chapters⁵⁸⁸, 9 Baseline Reports⁵⁸⁹ and 14 Plans⁵⁹⁰. Because its project involves the use of dangerous substances, RMGC is required to publish a Security Report.⁵⁹¹ RMGC submitted its 211 page Security Report in July 2006 and updated it in 2010.⁵⁹²

⁵⁸⁵ Romanian Ordinance 863/2002 Part 2 of Annex 2; Waste Management Plans, Environmental Monitoring Plans, Site Restoration Plans, Safety Reports and Internal and External Emergency Plans.

⁵⁸⁶ Requirements for the EIA report are included in Annex 4 of Government Decision 918/2002 and in Part 2 of Annex 2 in Ordinance 863/2002. These Directives do not obligate the developer to exceed the limits of industrial confidentiality. Romanian Government Decision 918/2002 Article 15; Amer and Koontz, 2004; 474

⁵⁸⁷ Romanian Ordinance 863/2002 Part 2

⁵⁸⁸ RMGC; 2006a: The Chapters are: General Information, Technological Processes, Waste, Potential Impacts, Assessment of Alternatives, Monitoring, Risk Cases, Description of Difficulties, Non-Technical Summary and Transboundary Impacts.

⁵⁸⁹ RMGC, 2006a: The Baseline Reports are: Air Quality, Aquatic, Biodiversity, Cultural, Health, Hydrogeology, Meteorological, Noise and Vibration and Soil.

⁵⁹⁰ RMGC, 2006a: The Plans are: Air Quality, Biodiversity, Cultural Heritage, Cyanide Management, Emergency Preparation, Environmental and Social Monitoring, Environmental and Social, Mine Rehabilitation, Noise and Vibration, Public Consultation, Sustainable Development, Tailings Facility, Waste Management and Water Management and Erosion.

⁵⁹¹ European Seveso II; Romanian Government Decision 95/2003.

⁵⁹² Romanian Ministry of the Environment, 2011; 1; RMGC's Security Report can be found on the Ministry of the Environment's website, in Romanian only. The date of the document is just the year 2006; according to Microsoft Word properties the document was created in July 2006. I couldn't find the Security Report on either the RMGC or the Gabriel Resources websites.

According to the RMGC EIA Report, the report was 'prepared by an independent team of Romanian and International consulting companies'.⁵⁹³

The developer must announce the submission of the EIA Report and organise the distribution of public information, the public debates and the schedule for public comment.⁵⁹⁴ The official comment period for the EIA Report began in late May 2006, when the company submitted the report, and ended August 25, the date of the last public meeting.⁵⁹⁵ While not a requirement of the Aarhus Convention or European Directives, Romanian law requires that the project owners of projects with a significant impact on the environment must convene public meetings.⁵⁹⁶ The company held 14 public debates on the EIA Study and Report in 5 Romanian counties between 24 July 2006 and 25 August 2006.⁵⁹⁷

The questions and comments from the public debates and the written comments collected during comment period were registered and compiled by the Ministry of the Environment and published in the EIA Annex Questions document.⁵⁹⁸ The questions were submitted in four sets of documents. Annex A included the questions and comments that were submitted in writing to the secretary during the public meetings, as well as, the questions and comments

⁵⁹³ RMGC, 2006a; 9

⁵⁹⁴ Romanian Ordinance 860/2002 Ch III Article 39; Alba County EPA Interview

⁵⁹⁵ Romanian Ministry of the Environment, 2011; 1

⁵⁹⁶ Romanian Ordinance 860/2002 Ch III Article 39; Alba County EPA Interview; Arad County EPA Interview

⁵⁹⁷ Romanian Ministry of the Environment, 2011; 1; RMGC hosted 2 two additional meetings in Hungary as part of their Transboundary authorisation process – 28 August 2006 in Szeged and 29 August 2006 in Budapest. (Alburnus Maior's Public Announcement of the Hungarian Meetings (2006) Retrieved 28 November 2011 from www.rosiamontana.ro/Aarhus2/HU_publicannouncement.doc)

This process is defined in the Espoo Convention on Environmental Impact Assessment in a Transboundary Context and in Romanian Order 864/2002. I did not attend the Hungarian meetings and these meetings are not included in this research.

⁵⁹⁸ Romanian Ordinance 860/2002 Ch III Article 44; Romanian Ministry of the Environment, 2011; 1

that were raised verbally during the meetings.⁵⁹⁹ Annex B includes the written questions and comments submitted to the Ministry of the Environment during the EIA Report written comment period.⁶⁰⁰ Annex C contains the Hungarian written and verbal questions and comments from the Hungarian public meetings.⁶⁰¹ Annex D includes the written questions that were received after the comment period ended on 25 August 2006 and before the submission of the questions to the company at the end of January.⁶⁰² The EIA Annex Questions document was forwarded to the company on 31 January 2007.⁶⁰³

In May 2007, RMGC submitted its response to the questions and comments documented in the EIA Annex Questions document; this set of documents is referred to as the EIA Annex.⁶⁰⁴ The RMGC EIA Annex is 78 volumes and more than 13,600 pages.⁶⁰⁵ Although there was no formal comment period for the EIA Annex, in June 2007 Alburnus Maior submitted - to the Ministry of the Environment - a list of its comments and opinions on the RMGC EIA Annex.⁶⁰⁶ The comments were published in 10 documents for a total of 107 pages.

⁵⁹⁹ Romanian Ministry of the Environment, 2011; 1; Annex A is comprised of 2 documents for a total of 116 pages including 489 comments. According to the question list compiled by the Ministry of the Environment, 489 speakers spoke at the 14 RMGC public meetings. This list includes a couple of counting errors and at least one missed speaker. According to my count 491 people spoke at the meetings.

⁶⁰⁰ Romanian Ministry of the Environment, 2011; 1; This set of files has been published in 250 documents and includes 5,610 questions and contestations.

⁶⁰¹ Romanian Ministry of the Environment, 2011; 1; This annex is a set of 24 files that the questions and comments from Budapest (38 speaker)s and Szeged (31 speakers).

⁶⁰² Romanian Ministry of the Environment, 2011; 1; This annex includes 186 written comments. The last comment included in the document was received on 22 January 2007.

⁶⁰³ Romanian Ministry of the Environment, 2011; 1

⁶⁰⁴ Romanian Ordinance 860/2002 Ch III Article 44; RMGC, 2007

⁶⁰⁵ RMGC, 2007; For each comment, the report includes the date of the written question or the meeting where the question was posed, the question or comment and the RMGC response.

⁶⁰⁶ Alburnus Maior 'An Expert Assessment of the Roşia Montană EIA Procedure' Retrieved 28 November 2011 from <http://rosiamontana.org/en/categorii.shtml?cmd%5b321%5d=c-1-32836&cmd%5b316%5d=x-322-33150&x=33150&set%5b319%5d=selected-32836&set%5b321%5d=selected-33150>

The purpose of the Review Stage is to take the decision regarding the issuance of an environmental agreement.⁶⁰⁷ As part of the RMGC Review Stage, the RMGC EIA Annex document and the EIA Report were forwarded to the environmental protection agency and the CAT.⁶⁰⁸ After reviewing the study stage documents, the CAT convenes again.⁶⁰⁹ The environmental protection authority and the project developer present to the committee the project and the comments collected from the public.⁶¹⁰ As part of the Review Stage, the CAT publishes a document called the Review Stage Checklist. In this document, the CAT scores the EIA Report and the EIA Annex for relevancy and completeness in the way the documents address the issues that had been raised in the Scoping Stage Guidelines.⁶¹¹ The Review Stage Checklist cannot be used to verify the technical or scientific quality of the EIA Report's conclusions.⁶¹² The Checklist is used to ensure that the EIA Report is clear, relevant, logical, comprehensive, objective and adequate.⁶¹³ During the Review Stage CAT meeting, members of the CAT may ask the developer questions, request additional information and offer comments and observations.⁶¹⁴ They then decide whether to approve or reject the application of an environmental agreement.⁶¹⁵

⁶⁰⁷ Romanian Ordinance 863/2002 Annex 3 Part 1

⁶⁰⁸ Romanian Ordinance 860/2002 Ch III Article 44-5; Romanian Ordinance 860/2002 Ch 2 § 4 Article 28; The CAT also advises the environmental protection authority on the Screening Stage decision and during the development of the Scoping Phase Guidelines.

⁶⁰⁹ Romanian Ordinance 863/2002 Annex 3 Part 1; Alba County EPA Interview

⁶¹⁰ Alba County EPA Interview

⁶¹¹ Romanian Ordinance 863/2002 Annex 3 Part 2

⁶¹² Romanian Ordinance 863/2002 Annex 3 Part 2

⁶¹³ A copy of the Review Stage Checklist is documented in Table 1 of Annex 3 in Ordinance 863/2002.

⁶¹⁴ Romanian Ordinance 863/2002 Annex 3 Part 2

⁶¹⁵ Romanian Ordinance 860/2002 Ch III Article 45; Alba County EPA Interview

Four Review Stage CAT meetings were held during the summer of 2007 - 26 June, 10 July, 19 July and 9 August – to discuss the proposed RMGC project.⁶¹⁶ During those meetings representatives from RMGC and the Review Stage CAT discussed a general overview of the project, technologies used in extraction and processing, waste management plans and potential environmental impacts.⁶¹⁷ RMGC representatives responded to committee questions or concerns.⁶¹⁸

Parties to the Aarhus Convention, European Member States and Romanian public authorities must inform the public of the outcome of their decisions.⁶¹⁹ Three days after the initial Review Stage decision, decision makers must not only publish their decision, but they must also publish the analysis that went into that decision. European Directives and Romanian law require public authorities to provide information about the impacts considered; the approval conditions; the results of the public consultation; a statement of the influence made by the opinions of the public; the alternatives considered and the measures required to prevent, reduce and monitor negative impacts.⁶²⁰ Romania law requires public authorities to post their decisions in the newspaper, on their internet pages and display them at their offices.⁶²¹ The public has 10 days to comment on the

⁶¹⁶ Gabriel Resources, 2007 4th Qtr Report; 3; Freedom of Information Request 126912/40560/14.11.2007

⁶¹⁷ Gabriel Resources, 2007 4th Qtr Report; 3

⁶¹⁸ Romanian Ordinance 860/2002 Ch II § 4 Article 29

⁶¹⁹ European Directives 85/337/EEC, 96/61/EC, 2001/42/EC, 2003/35/EC and 2004/35/EC; Romanian Law 50/1991, 350/2001, 52/2003; Romanian Environmental Protection Law 137/1995 Ch IV § 1; Ordinance 860/2002 and Government Decision 1076/2004

⁶²⁰ European Directives 85/337/EEC, 96/61/EC, 2001/42/EC, 2003/35/EC and 2004/35/EC; Romanian Law 50/1991, 350/2001, 52/2003; Romanian Environmental Protection Law 137/1995 Ch IV § 1; Ordinance 860/2002 and Government Decision 1076/2004

⁶²¹ Romanian Law 50/1991, 350/2001, 52/2003; Romanian Environmental Protection Law 137/1995 Ch IV § 1; Ordinance 860/2002 Ch 3 Article 46 and Government Decision 1076/2004

initial decision and the developer must publish the final Review Stage decision 2 days later.⁶²²

However in September 2007, the Ministry of the Environment suspended the RMGC EIA process following a court ruling in July 2007 that had suspended the company's urbanistic certificate (78/2006).⁶²³ The entire RMGC EIA process and report had been based on that certificate.⁶²⁴ The Environment Ministry announced that the Review Stage of the licensing procedure would not continue until the NGO's court action contesting the validity of the urbanistic certificates is concluded.⁶²⁵ The opposition contends that no urbanistic certificates could be valid at this point.⁶²⁶ These certificates must be based on a valid Roșia Montană PUG and a valid RMGC Industrial Area PUZ. Both plans were irrevocably declared illegal by the Alba Court of Appeal in January 2008.⁶²⁷ According to the opposition, RMGC cannot obtain its required permits, certificates and approvals until urban and zoning plans have been approved for the commune and project zones. Because the EIA process has been suspended, the Review Stage is not complete and comment period for the Review Stage Decision has not occurred.

⁶²² Romanian Ordinance 860/2002 Ch 2 § 4 Article 31; Romanian Ordinance 860/2002 Ch 3 Article 36, 46, 47

⁶²³ Alburnus Maior Press Release 20 September 2007 http://www.ngo.ro/site_item_full.shtml?x=33012; Typically, Urbanistic Certificates and building permits are issued by the local council, but because of the size and nature of the RMGC project, these permits will be issued by the Alba County Council. (Romanian Law 350/2001 Ch VI Article 65; World Wide Legal Directories: http://www.hg.org/articles/article_1911.html)

⁶²⁴ Alburnus Maior, 2010; 1

⁶²⁵ Alburnus Maior Press Release 21 October 2008. <http://rosiamontana.org/en/index.shtml?cmd%5B314%5D=x-314-33864&cmd%5B316%5D=x-322-33864&cmd%5B300%5D=x-299-33864>

⁶²⁶ Alburnus Maior, 2010; 1; Alba Iulia Public Meeting

⁶²⁷ Alburnus Maior, 2008c; Monitorulcl.ro, 2008; 1

In September 2006, RMGC submitted its application for an environmental permit to deforest 255 hectares of forests.⁶²⁸ The next month, as a result of the Screening Stage of the permitting process, the National Agency for the Protection of the Environment informed the company that the deforestation would require its own environmental agreement – rather than a simple permit.⁶²⁹ This meant that a separate and complete EIA Process would be required for the deforestation portion of the RMGC project. Because the proposed deforestation will cover an area of more than 50 hectares, the approval decision must be made at the State level.⁶³⁰ In December 2006, the company withdrew its permit request, citing anticipated changes to the legislation. The company hopes that these legislative changes will mean that the company will not require a separate EIA for the deforestation.⁶³¹ To date, these legislation changes have not occurred.⁶³²

Gabriel Resources partnered with the Romanian Minister of Culture and Religion and the National Museum of History to coordinate archaeological investigations of the Roșia Montană project site and began applying for Archaeological Discharge Certificates (ADC) in early 2001.⁶³³ The Ministry of Culture approved RMGC's ADC 4 in January 2004 and ADC 5 in February

⁶²⁸ Alburnus Maior, 2007b; 5

⁶²⁹ Alburnus Maior, 2007b; 5

⁶³⁰ The project types and the project impact thresholds for projects with significant environmental impacts are list in Annexes I.1 and I.2 of Romanian Ordinance 860/2002 and Annexes 1 and 2 of Government Decision 918/2002.

⁶³¹ Alburnus Maior, 2007b; 5

⁶³² Alburnus Maior, 2007b; 5

⁶³³ Gabriel Resources Press Release 17 October 2002; 1 Retrieved 29 November 2011 from <http://www.infomine.com/index/pr/Pa106607.PDF> and the Independent Group for Monitoring the Roșia Montană Cultural Patrimony, 2011; 1 Retrieved 29 November 2011 from gallery.mailchimp.com/Patrimony_monitoring_group_release_March_2011.doc; Câmpeni Public Meeting

2004⁶³⁴. ADC 4/2004 approval was required before RMGC would begin construction of the Cârnic Mountain open pit.⁶³⁵ The mountain is protected by Romanian Law 5/2000 as a site of cultural heritage.⁶³⁶ According to French mining archaeologists excavating Cârnic Mountain, the mining shafts from Dacian and Roman times are in a 'remarkable state of conservation'⁶³⁷ and are still accessible.⁶³⁸ The ADC approved by the Ministry of Culture removed Cârnic's protected status.⁶³⁹ Certificate 5/2004 covers the surface excavations conducted in the village of Roşia Montană between 2001 and 2003.⁶⁴⁰ This certificate unprotected much of the surface area needed for the projects processing plant, the tailings pond, water and electric pipelines and access roads.⁶⁴¹ In September 2007, the Alba Iulia Court of Appeal suspended ADC 5/2004 and in December 2008 the Romanian Supreme Court irrevocably annulled RMGC Archaeological Discharge Certificate 4/2004.⁶⁴²

A Resettlement Plan is not specifically required by the zoning authorisation process, nor is it required by the project authorisation process. Population resettlement is not specifically addressed by Romanian legislation.⁶⁴³ The company published their most recent Relocation and Resettlement Action Plan (RRAP) and Annex sometime in early 2006.⁶⁴⁴ The 79-page RRAP provides: a

⁶³⁴ Alburnus Maior, 2007b; 3

⁶³⁵ Alburnus Maior, 2007b; 3

⁶³⁶ Alburnus Maior, 2007b; 3

⁶³⁷ Alburnus Maior, 2007a; 1

⁶³⁸ RMGC, 2009b; 176

⁶³⁹ Alburnus Maior, 2007b; 3

⁶⁴⁰ Alburnus Maior, 2007b; 3

⁶⁴¹ Alburnus Maior, 2007b; 3

⁶⁴² Alburnus Maior, 2007b; 3; First in June 2005 the Alba Iulia Court of Appeal annulled RMGC's ADC 4/2004. Then in November 2007 the Broşov Court of Appeal annulled the certificate. (Gabriel Resources 2008 4th Qtr Report; 9)

⁶⁴³ RMGC, 2006b; 26

⁶⁴⁴ The RRAP is not dated but it includes data from as late as February 2006. Both documents still anticipate project construction to begin in 2007 so they must have been written in early

summary description of the proposed project, socio-economic baseline studies, a description of Romania's resettlement and compensation legal framework, a description of the impacts on the community, the company's compensation strategy, its livelihood restoration strategy and the provision of assistance for vulnerable people.⁶⁴⁵ The 76-page RRAP Annex includes details about the demographics of Roşia Montană and Abrud; detailed descriptions of the livelihoods and businesses in the community; details about the health of the community; descriptions and results of the RRAP focus groups; details of the community's land use, housing and infrastructure; descriptions of relevant World Bank and Romanian legislation and policies; and property compensation rates.⁶⁴⁶ According to the company the RRAP complies with all relevant Romanian laws and with the World Bank Group's Directive on Involuntary Resettlement.

In this chapter, I have outlined the authorisation processes that must be successfully completed before the company can obtain the approvals it needs to begin construction on its mining project. These processes frame the public participation and deliberation that has occurred to influence the authorisation decision for the proposed RMGC project. While, in many ways, the legislation clearly describes the authorisation process for development projects, the activity of applying for the necessary permits, agreements, certificates and zoning

2006. The RRAP refers to an earlier preliminary Resettlement and Relocation Action Plan that it says was released to the public in early 2003. I was not able to find a copy of that document. Action for the earlier plan was stopped in June 2004, because, according to the RRAP, the preliminary plan 'caused discontent within the community as it was perceived as unfair.' The original plan based compensation for homes on the Romanian minimum dwelling standards (based on number of people living in the home) rather than the actual size of the building. The new 2006 plan was improved to bring the company's strategy 'into more detailed compliance with all World Bank Group/IFC guidelines and policies.' Gabriel Resources 2003 2nd Quarter Report.

⁶⁴⁵ RMGC, 2006b

⁶⁴⁶ RMGC, 2006f

approvals is still a dizzying mix of overlapping and confusing procedures. This makes it difficult for investors to obtain the approvals needed to build and operate their proposed projects. It makes it difficult for civil society activists to track and influence the approval process, yet overlapping processes also give them many opportunities to challenge and perhaps prevent the development of a project.

CHAPTER 4: THE METHODOLOGY

Grounded in the philosophy of Critical Theory, drawing on the theories of Historical Institutionalism, Communicative Action and Deliberative Democracy, and employing a case study methodology, this thesis seeks to expand on the already existing concepts of deliberative systems and deliberative legitimacy and to develop a critical theory of public participation and deliberation in post-communist Romania. For this thesis I examine Romania's public participation and deliberation institution through the analysis of two intermediate-level institutions - a deliberative system and a series of hybrid forums – within a single case study, the authorisation process for the proposed Roşia Montană Gold Corporation (RMGC) gold mining project. This research project is centred on a critique of the legitimacy claims of a series of hybrid forums that were employed as part of the RMGC Environmental Impact Assessment (EIA) Process. The legitimacy critique is based on a hybrid forum legitimacy standard developed for this thesis and drawn from deliberative democracy theory and practice. In service to this critique, I draw on historical institutionalism to explain the ways the historical development of Romanian public participation and deliberation and its contemporary socio-economic context worked to shape Romanian public participation in general and public participation during the RMGC EIA hybrid forums. To broaden the political context of the RMGC EIA

hybrid forums, I systematically describe the deliberative system that has addressed the RMGC zoning and project authorisation processes.

The aim of this project, as with all Critical Theory research, is enlightenment and emancipation. This research works to present its findings in a way that Romanian conveners, facilitators and participants of hybrid forums can accept. If accepted, the intention is for those involved in Romanian hybrid forums to experience an improved sense of freedom, self-expression, self-determination, contribution and satisfaction in future Romanian public decision making processes. This study aims to contribute to three fields of study: Romanian politics, environmental impact assessment and public participation and deliberation.

In this chapter, I describe and justify the research methodology. I articulate the research questions and briefly describe the epistemological and theoretical foundation for my research design. I consider each of the three main research methodologies and justify my selection of the case study strategy. I describe the data collection and data analysis methods employed for this investigation. I discuss the general and specific ethical considerations for this research project of a sensitive topic. Finally, I discuss the methodological considerations of my research design.

RESEARCH QUESTIONS

For this research study I investigate the following research questions:

What deliberative venues were employed as part of the deliberative system for the zoning and project authorisation of the proposed RMGC gold mining project?

In what ways were the hybrid forums employed as part of the RMGC EIA process legitimate in terms of the normative claims made by deliberative theory and in what ways were they not legitimate?

How does the historical development of Romanian public participation and deliberation and its contemporary socio-economic context shape public participation and deliberation in Romania today?

PHILOSOPHY – CRITICAL THEORY

Geuss defines *Critical Theory* as ‘a reflective theory which gives agents a kind of knowledge inherently productive of enlightenment and emancipation.’⁶⁴⁷ Drawing from the structure and approach of Marxist theory, *Critical Theory* revises the traditional views of knowledge.⁶⁴⁸ With roots in Weber, Hegel, Marx and Freud, the members of the Frankfurt School – typically thought to include Horkheimer, Adorno, Marcuse and Habermas – developed the foundations of Critical Theory.⁶⁴⁹ Through a cognitive process of reflection and communication, a critical theory discovers and highlights the true interests of social actors, as well as, the ideologies and repressive social institutions that are frustrating their ability to pursue those interests. A critical theory presents these findings to the target group of actors for reflected acceptance. If freely accepted and applied, the coercive power of the ideologies dissipates and the social institutions lose their legitimacy. Enlightened, actors experience a new freedom to pursue their real interests and to actuate their notion of the good life - their emancipation.

⁶⁴⁷ Geuss, 1991; 2

⁶⁴⁸ Geuss, 1991; 1; Bernstein, 1990; 174; Kincheloe and McLaren, 2000; 279; Fay, 1987; 4; Outhwaite, 2009; 101

⁶⁴⁹ Bernstein, 1990; xvii; Kincheloe and McLaren, 2000; 279; Outhwaite, 2009; 5

As a theory of epistemology, Critical Theory is a rejection of *positivism*, which sees itself as the exclusive path to knowledge and ‘an unproblematic reflection of reality’.⁶⁵⁰ Positivist theory attempts to apply the same quantitative approaches used in the study of the natural sciences to the study of society.⁶⁵¹ Critical theory asserts that the natural and social worlds are different and require different investigative approaches. For positivists both the natural and social worlds are a set of fixed, complex and observable facts that are governed by laws; social actors are passive entities, whose actions are predetermined by natural social laws.⁶⁵² For a critical theorist, despite living under sometimes repressive social structures, humans and societies have an ability to self-form and transform.⁶⁵³ While scientific theory is objectifying - it is a theory about objects external to itself - Critical Theory is self-referential; it is a theory about social theories and how they develop and are applied.⁶⁵⁴ For critical theorists, it is not sufficient to study society through its social institutions and practices - through its ‘social reality’ in the most limited sense.⁶⁵⁵ Critical theorists argue that a complete theory of society must also investigate ‘social knowledge’ - an important part of social reality.⁶⁵⁶ While the positivist can only approach natural or social knowledge through what can be observed, measured and tested, critical theorists also seek knowledge through interpretation and reflection.⁶⁵⁷ Critical theories accuse positivists of ignoring an entire form of knowledge because, while the behaviours and statements of actors can be observed, the

⁶⁵⁰ Outhwaite, 2009; 19; Held, 1980; 14; Bernstein, 1990; 179;

⁶⁵¹ Geuss, 1991; 2; Ritzer, 2008; 15; Outhwaite, 2009; 22; Dryzek, 1990; 6; Steinmo, Thelen and Longstreth, 1992; 26

⁶⁵² Held, 1980; 161; Ritzer, 2008; 18 and 282; Steinmo, Thelen and Longstreth, 1992; 26

⁶⁵³ Held, 1980; 172; Kincheloe and McLaren, 2000; 282

⁶⁵⁴ Geuss, 1991; 79

⁶⁵⁵ Geuss, 1991; 56

⁶⁵⁶ Geuss, 1991; 56; Held, 1980; 173; Bernstein, 1990; 229-30

⁶⁵⁷ Geuss, 1991; 2; Held, 1980; 160; Bernstein, 1990; 179; Peters, 2005; 13

process to acquire or change attitudes and the actual values and beliefs themselves cannot be observed.⁶⁵⁸ For positivists, objects are objects, but for critical theorists the observation or experience of an object is mediated through consciousness and interpretations.⁶⁵⁹ Positivism sees truth as neutral and value free; it excludes normative judgments, eliminating opportunities for reasoned social criticism.⁶⁶⁰ Critical Theory benefits from both normative reflection and the rigorous procedures of the empirical.⁶⁶¹ Critical Theorists argue that positivism's alleged neutral stance actually hides a form of ideology that supports the status quo.⁶⁶² For a critical theorist, the validity of a critical theory is determined – not by experimentation – but by the acceptability of the theory as demonstrated by its subjects.⁶⁶³ The ultimate goal for the scientist is to predict outcomes in order to manipulate the external world within the laws that regulate it; scientific theories have instrumental use.⁶⁶⁴ Because, for them, both the social world and the natural world are directed by natural laws and therefore fixed, positivists are accused of accepting the social status quo – 'incapable of challenging the existing system'.⁶⁶⁵ The goal of the critical theorist is enlightenment and ultimately emancipation.⁶⁶⁶

⁶⁵⁸ Geuss, 1991; 2 Bernstein, 1990; 190 Outhwaite, 2009; 19 Geuss argues that the observation of behaviour and what people say are their interests are not convincing grounds for real knowledge about their beliefs and attitudes. (Geuss, 1991; 92)

⁶⁵⁹ Held, 1980; 164; Kincheloe and McLaren, 2000; 291; Dryzek, 1990; 6

⁶⁶⁰ Held, 1980; 162; Ritzer, 2008; 282; Bernstein, 1990; xi; Kincheloe and McLaren, 2000; 282; Fay, 1987; 24; Outhwaite, 2009; 21; Peters, 2005; 11

⁶⁶¹ Held, 1980; 162; Bernstein, 1990; 174; Fay, 1987; 24

⁶⁶² Bernstein, 1990; xi; Held, 1980; 169; Outhwaite, 2009; 20

⁶⁶³ Dryzek, 1990; 30

⁶⁶⁴ Geuss, 1991; 55; Held, 1980; 167; Bernstein, 1990; 176; Fay, 1987; 17; Outhwaite, 2009; 20; Peters, 2005; 12

⁶⁶⁵ Ritzer, 2008; 282; Held, 1980; 161; Kincheloe and McLaren, 2000; 291; Dryzek, 1990; 7

⁶⁶⁶ Geuss, 1991; 55; Bernstein, 1990; 180; Kincheloe and McLaren, 2000; 291; Fay, 1987; 4; Dryzek, 2000; 20

In addition to observation and interpretation, critical theorists access knowledge through reflection and communication.⁶⁶⁷ In *Knowledge and Human Interests* (1971) Habermas identifies the three types of knowledge that shape and are shaped by the three types of interrelated human interests and three social dimensions. Technical interests and the social dimension of work are embodied in and shape the empirical-analytical sciences.⁶⁶⁸ Practical/normative interests and the social dimension of interaction are grounded the historic-hermeneutic sciences.⁶⁶⁹ Emancipatory interest and the social dimension of power are accessed through and shaped by communication and critical reflection, which is a 'system of cognitive faculties' that include 'practical reason and reflective judgement' and is the basis for understanding and critiquing forms of knowledge.⁶⁷⁰ It is this emancipatory cognitive interest that forms the basis of a critical theory.⁶⁷¹

A critical theory begins in those areas of society where people live under domination, repression, exploitation and coercion – those areas where people are frustrated in their attempts to meet their needs, interests, preferences, desires and wants.⁶⁷² Marx looked to the economic realm as the area of society where people were dominated.⁶⁷³ Critical theorists expand their critique to include other areas of social power and domination as well, such as mass culture, class, gender, race, the state, rationality, science, education, religion,

⁶⁶⁷ Bernstein, 1990; 174; Geuss, 1991; 2; Fay, 1987; 23; Outhwaite, 2009; 26 Bernstein complains that Habermas does not specify epistemological the status of these interests and that Habermas does not adequately explain his claim that these interests are "quasi-transcendental". (Bernstein, 1990; 220)

⁶⁶⁸ Habermas, 1971; 309; Bernstein, 1990; 194; Outhwaite, 2009; 26

⁶⁶⁹ Habermas, 1971; 310; Bernstein, 1990; 195; Outhwaite, 2009; 26

⁶⁷⁰ Habermas, 1971; 3, 310; Bernstein, 1990; 190, 199; Outhwaite, 2009; 26

⁶⁷¹ Bernstein, 1990; 199

⁶⁷² Dryzek, 1990; 29; Ritzer, 2008; 283; Geuss, 1991; 15; Bernstein, 1990; 181; Fay, 1987; 4

⁶⁷³ Ritzer, 2008; 285; Geuss, 1991; 5; Held, 1980; 40; Chambers, 2002; 91; Bernstein, 1990; 182

modernity and ideology.⁶⁷⁴ Critical Theory investigates the ways that power and domination integrates itself into society. Critical Theory's orientation could be thought of as the "critique of domination".⁶⁷⁵ Critical Theory has found that in modern liberal-capitalist societies domination no longer even appears as domination; actors have come to consent to the power and domination that others impose on them.⁶⁷⁶ Critical Theorists hope that a re-examination of the social sciences could lead to the development of more just, egalitarian, democratic and non-bureaucratic societies.⁶⁷⁷

A critical theory induces self-reflection among a particular set of people within an area of repressive or exploitive social relations and its aim is to stimulate their enlightenment and ultimately their emancipation.⁶⁷⁸ Rather than fixed and pre-determined, Critical Theorists see that people and societies 'shape and determine themselves' through interaction, communication and self-reflection.⁶⁷⁹ Actors acquire and change their beliefs, attitudes, values, preferences and aspirations through a complex process of socialisation, through conversations with other actors and through the internalisation of these conversations.⁶⁸⁰

Through free uncoerced interaction, communication and self-reflection people work out the conflicts and contradictions in their situation and their beliefs.⁶⁸¹

⁶⁷⁴ Ritzer, 2008; 283; Geuss, 1991; 5; Held, 1980; 38; Bernstein, 1990; 183; Kincheloe and McLaren, 2000; 280; Outhwaite, 2009; 101

⁶⁷⁵ Ritzer, 2008; 286

⁶⁷⁶ Ritzer, 2008; 286; Held, 1980; 168; Kincheloe and McLaren, 2000; 283; Outhwaite, 2009; 62

⁶⁷⁷ Kincheloe and McLaren, 2000; 280; Chambers, 2002; 92

⁶⁷⁸ Ritzer, 2008; 287; Chambers, 2002; 104; Geuss, 1991; 58; Dryzek, 1990; 29; Bernstein, 1990; 199; Fay, 1987; 4

⁶⁷⁹ Bernstein, 1990; 195; Kincheloe and McLaren, 2000; 280; Chambers, 2002; 93; Outhwaite, 2009; 50; Peters, 2005; 10; Steinmo, Thelen and Longstreth, 1992; 27; Pierson and Skocpol, 2002; 706; Held, 1980; 172

⁶⁸⁰ Geuss, 1991; 92-3; Kincheloe and McLaren, 2000; 282; Outhwaite, 2009; 29

⁶⁸¹ Bernstein, 1990; 199. 204; Geuss, 1991; 62; Kincheloe and McLaren, 2000; 290

Actors become aware of their ideologies, their self-imposed coercion and of their behaviours that legitimise repressive social institutions.⁶⁸² This is not a moralising process; a consciousness is considered an ideology because it is inconsistent with the actors' true interests and ideas of the good life, not because it is morally right or wrong.⁶⁸³ Through the process of *ideologiekritick* the actors see the conditions under which they acquired the beliefs, attitudes and values that make up their world picture⁶⁸⁴; they see it was subjectively rational for them to have acquired that worldview at that time, under those conditions and within the framework of their normative beliefs.⁶⁸⁵ Actors begin to understand how this worldview is now frustrating their ability to pursue their real interests and desires; the ideologies are exposed.⁶⁸⁶ A critical theory extracts the group's 'utopian kernel' from the mess of its ideological worldview; this kernel expresses the group's real aspirations and desires.⁶⁸⁷ In circumstances of perfect knowledge, optimal conditions and opportunities to experiment, create and imagine actors can find self-knowledge – an awareness of their real interests and desires and the kind of life they would find acceptable and satisfying.⁶⁸⁸

As actors become fully conscious of their ideologies, the coercion that stabilises ideologies loses its power and objectivity; the attitudes and beliefs of the actor are transformed; and the legitimacy of repressive social practices or institutions

⁶⁸² Geuss, 1991; 61; Held, 1980; 169; Bernstein, 1990; 201, 204; Kincheloe and McLaren, 2000; 282; Fay, 1987; 23; Outhwaite, 2009; 31

⁶⁸³ Geuss, 1991; 26

⁶⁸⁴ Geuss, 1991; 70; Bernstein, 1990; 201

⁶⁸⁵ Geuss, 1991; 88; Outhwaite, 2009; 31

⁶⁸⁶ Geuss, 1991; 68; Kincheloe and McLaren, 2000; 285; Fay, 1987; 39

⁶⁸⁷ Geuss, 1991; 88; Fay, 1987; 29; The theory's views of coercion and freedom will be derived from the actors themselves. (Geuss, 1991; 78)

⁶⁸⁸ Geuss, 1991; 51, 53, 87; Bernstein, 1990; 199

fades.⁶⁸⁹ It is through this enlightenment that actors can be emancipated.⁶⁹⁰ With emancipation, actors advance from an initial state of frustration, domination and delusion to a final state of greater self-knowledge and freedom enabling them to pursue their true interests and motivated and empowered to abolish those social institutions that are frustrating their legitimate desires and wants and limiting free communication.⁶⁹¹ To achieve ultimate emancipation, actors themselves must move from the critical theoretical discourse of emancipatory interests to a practical discourse of interaction and strategic political action.⁶⁹² Fay calls the three phases of a critical theory, enlightenment, empowerment and emancipation.⁶⁹³

Kincheloe and McLaren criticise Critical Theory's aim of emancipation for two reasons. First, they argue that no one can be completely free from the social forces that shape who we are.⁶⁹⁴ Second, they reject the arrogance of researchers who think that they can emancipate others.⁶⁹⁵ However, it should not be thought that the emancipation caused by enlightenment from a critical theory is a *full* emancipation.⁶⁹⁶ This enlightenment offers liberation from the past that results in changes in attitude.⁶⁹⁷ While a discourse of critical reflection in the interest of emancipation is *stimulated* by a critical theory, a discourse of critical reflection cannot lead to or even justify the effective political action

⁶⁸⁹ Geuss, 1991; 61, 68, 70, 93; Bernstein, 1990; 199, 215; Outhwaite, 2009; 31; Enlightenment 'results in a cognitive, affective, and practical transformation in the subjects addressed.' (Bernstein, 1990; 218)

⁶⁹⁰ Geuss, 1991; 61; Bernstein, 1990; 204

⁶⁹¹ Geuss, 1991; 55, 61, 86; Fay, 1987; 23, 29; Bernstein, 1990; 216; Ritzer, 2008; 287

⁶⁹² Bernstein, 1990; 219; Fay, 1987; 23; Geuss, 1991; 75; Outhwaite, 2009; 32

⁶⁹³ Fay, 1987; 29

⁶⁹⁴ Kincheloe and McLaren, 2000; 282; Outhwaite, 2009; 33

⁶⁹⁵ Kincheloe and McLaren, 2000; 282

⁶⁹⁶ Geuss, 1991; 73

⁶⁹⁷ Bernstein, 1990; 216

required for full emancipation.⁶⁹⁸ The results of a discourse of critical reflection are enlightenment and liberation from ‘historical compulsions of the past’.⁶⁹⁹ After that, only the actors themselves can chart a course of practical action for the future.⁷⁰⁰ Only the actors themselves can understand their expectations and the risks they are willing to take.⁷⁰¹

HISTORICAL INSTITUTIONALISM

New Institutionalists analyse institutional structures, and like the Critical Theorists, they share a desire to investigate the ways institutional structures might mould policy outcomes and the behaviour, preferences, interests and identities of presumably autonomous and rational individuals.⁷⁰² New Institutionalism examines the ways that political conflict and power is ‘mediated by the institutional setting’ in which it takes place – oftentimes privileging some actors over others.⁷⁰³ Institutionalism recognises the complexity of political phenomena and seeks to understand the contemporary and historical socio-economic context, conditions and interactions that encompass political action and outcomes.⁷⁰⁴ New Institutionalists reject the application of the individualistic and value-free assumptions of micro-economic theory to an understanding of politics, which is both intrinsically normative and collective.⁷⁰⁵ Institutionalists can agree that political actors sometimes work strategically to achieve their goals, but institutionalists seek more; institutionalist use a

⁶⁹⁸ Bernstein, 1990; 216

⁶⁹⁹ Bernstein, 1990; 216

⁷⁰⁰ Bernstein, 1990; 217

⁷⁰¹ Bernstein, 1990; 217

⁷⁰² Peters, 2005; 21; Steinmo, Thelen and Longstreth, 1992; 1, 6; Chambers, 2002; 103; Pierson and Skocpol, 2002; 693, 706

⁷⁰³ Steinmo, Thelen and Longstreth, 1992; 2, 6

⁷⁰⁴ Pierson and Skocpol, 2002; 711; Peters, 2005; 9; Steinmo, Thelen and Longstreth, 1992; 13

⁷⁰⁵ Peters, 2005; 17, 21

historically based analysis to understand the actors' preferences and the reasons they emphasise these goals over others.⁷⁰⁶ Institutionalists analyse collective behaviour through the study of institutions, while seeking to avoid the reification of collectivities – to avoid the attribution of human characteristics of volition and decision to collectives.⁷⁰⁷ Institutional analyses investigate the relationships among a variety of variables in a way that 'reflects the complexity of real political situations' without losing theoretical clarity.⁷⁰⁸

The study of politics has its roots in the systematic analysis and design of institutions.⁷⁰⁹ What is now called *old institutionalism* was interested in the idea of formal government institutions and their impact on society.⁷¹⁰ However in the 1950s, given its ethos of participation, the study of politics took a turn in the United States towards political science; American political science largely abandoned the study of the state and shifted its focus to micro-level individual political behaviour.⁷¹¹ As American scholars embraced a positivistic approach to political science, they rejected the comparativist methodology, the historical

⁷⁰⁶ Steinmo, Thelen and Longstreth, 1992; 9

⁷⁰⁷ Peters, 2005; 17, 21

⁷⁰⁸ Steinmo, Thelen and Longstreth, 1992; 13

⁷⁰⁹ Peters, 2005; 4, 21; Steinmo, Thelen and Longstreth, 1992; 3; Originally, the study of politics was subsumed in other fields - history, moral philosophy and law – and it was concerned with the formal aspects of government. (Peters, 2005; 5) Phrased in normative terms, the aim of political study then was to understand and design the institutions, policies and laws that would steer individual behaviour, of both those who govern and those who are governed, towards 'good government' and collective goals. (Peters, 2005; 3; Steinmo, Thelen and Longstreth, 1992; 3) The old institutionalists often compared and contrasted the structures of formal institutions (for example, parliaments and executives) in one country with their counterparts in other countries. (Peters, 2005; 9; Steinmo, Thelen and Longstreth, 1992; 3) Old institutionalist analysis was often founded on history; institutions were seen as embedded in their socio-economic present and shaped by their historical development. (Peters, 2005; 10) The research methodology was often that of an intelligent observer describing institutional structures in non-abstract terms; this made it difficult for scholars to develop general theories. (Peters, 2005; 3, 9; Steinmo, Thelen and Longstreth, 1992; 3) This focus of political study dominated the field through to the first half of the twentieth century. (Peters, 2005; 6) In much of Continental Europe, the main concern for political study continued to be formal institutions and the state. (Peters, 2005; 6)

⁷¹⁰ Peters, 2005; 3, 11; Steinmo, Thelen and Longstreth, 1992; 4

⁷¹¹ Peters, 2005; 5; Pierson and Skocpol, 2002; 712; Steinmo, Thelen and Longstreth, 1992; 4

analysis and the normative elements of old institutionalism.⁷¹² The political theories that even now continue to underpin much of American political research, *behaviouralism* and *rational choice*, see political actors as fully autonomous, fully rational and isolated from the constraints of institutions.⁷¹³ In these individualistic frames, actors make choices based on personal utility or psychological reactions not based on institutional constraints or shared values or on a notion of common history.⁷¹⁴ In this view, politics is instrumental; its value is based on the results produced not on its processes of interaction or on a notion of community.⁷¹⁵ What matters for this understanding of politics is voting, individual political activity, attitudes, beliefs and socio-economic indicators, not the structures of institutions or the processes that go into collective policy making.⁷¹⁶ For collective decision-making, institutional processes simply aggregate the already determined and exogenous preferences of individuals.⁷¹⁷ Moreover, the direction of influence is one way.⁷¹⁸ Economy and society affect politics and political institutions; institutions themselves do not shape individual preferences or behaviour or collective outcomes.⁷¹⁹ Methodologically, rather than identifying the institutional variables that explain the differences between societies, behaviouralists and rational choice practitioners seek general variables concepts and patterns that cross nations and extend over time for individual rather than collective behaviour.⁷²⁰

⁷¹² Peters, 2005; 11

⁷¹³ Peters, 2005; 2, 43; Steinmo, Thelen and Longstreth, 1992; 12

⁷¹⁴ Peters, 2005; 10; Steinmo, Thelen and Longstreth, 1992; 4

⁷¹⁵ Peters, 2005; 17

⁷¹⁶ Peters, 2005; 15; Steinmo, Thelen and Longstreth, 1992; 5

⁷¹⁷ Peters, 2005; 15; Pierson and Skocpol, 2002; 716; Steinmo, Thelen and Longstreth, 1992; 8

⁷¹⁸ Peters, 2005; 15

⁷¹⁹ Peters, 2005; 15; Steinmo, Thelen and Longstreth, 1992; 4

⁷²⁰ Steinmo, Thelen and Longstreth, 1992; 4; To draw its conclusions, behaviouralists rely on statistical analyses of the results of attitudinal and behaviour surveys administered to random samples of individuals. (Pierson and Skocpol, 2002; 717; Steinmo, Thelen and Longstreth,

According to Pierson and Skocpol, 'politics ends up sliced and frozen into artificial moments on the slide of a powerful but tightly focused microscope.'⁷²¹ Political scientists risk ignoring the complexities of political action while seeking 'elegant but unrealistic laws'.⁷²² Some political scholars reacted to political science's approach to political study and by the end of the 1970s institutionalism saw a comeback as *new institutionalism*.⁷²³

New Institutionalism operates in the theoretical midrange.⁷²⁴ New institutionalism avoids macro theories - such as the Marxist focus on broad systems-level socioeconomic structures - that tend to homogenize classes of individuals, downplay political agency and see political behaviour as the dependent variable.⁷²⁵ At the same time, new institutionalists reject the individualistic micro-theories of rational choice and behaviouralism.⁷²⁶ Instead, new institutionalists attempt to link the macro-behaviour and constraints of institutions with the micro-behaviour of the individuals within those institutions.⁷²⁷ They accomplish this by focusing their analysis on the intermediate-level social and economic institutions (e.g. labour unions) that mediate between the behaviour of individual political actors and the impacts of macro-level systems (e.g. class).⁷²⁸ In this midrange, new institutionalists avoid the structural determinism that often distinguishes broad abstract theories while

1992; 4) Rational choice practitioners focus on well-bounded political contexts and assume coherent strategic actors choosing among clear choices and outcomes. (Pierson and Skocpol, 2002; 716)

⁷²¹ Pierson and Skocpol, 2002; 717

⁷²² Steinmo, Thelen and Longstreth, 1992; 26

⁷²³ Peters, 2005; 25; Steinmo, Thelen and Longstreth, 1992; 1; Pierson and Skocpol, 2002; 706

⁷²⁴ Steinmo, Thelen and Longstreth, 1992; 5

⁷²⁵ Steinmo, Thelen and Longstreth, 1992; 10

⁷²⁶ Peters, 2005; 21

⁷²⁷ Peters, 2005; 31; Steinmo, Thelen and Longstreth, 1992; 10

⁷²⁸ Steinmo, Thelen and Longstreth, 1992; 11

also developing an understanding of the general patterns of political conditions, constraints, conflict and choice.⁷²⁹

Institutions are 'in some way a structural feature of the society and/or polity'.⁷³⁰

For most new institutionalists, institutions sit at the intermediate level - somewhere between systems and states as entities and individual behaviour.⁷³¹

While old institutionalism focused exclusively on formal institutions, new institutionalism examines both formal institutions (a legislature, a bureaucratic agency or a legal framework) and informal ones (social class, social movements, or a network of voluntary associations).⁷³² Institutions involve groups of actors who interact in a relatively patterned, stable and predictable way, based on specified relationships.⁷³³ By definition, institutions constrain or motivate the behaviour of its members; they shape the way political actors understand their interests and their identities; and they structure relationships and power among members and with other groups.⁷³⁴

New institutionalism begins with the notion that institutions influence, constrain and motivate their members and that members design, shape and reform institutions.⁷³⁵ New institutionalism attempts to address the structure-agency question; here, as with Critical Theory, the relationships are dual – a reciprocal

⁷²⁹ Steinmo, Thelen and Longstreth, 1992; 11

⁷³⁰ Peters, 2005; 18

⁷³¹ Peters, 2005; 74; Steinmo, Thelen and Longstreth, 1992; 11

⁷³² Peters, 2005; 18, 29, 74; Steinmo, Thelen and Longstreth, 1992; 2; Ikenberry in Steinmo, Thelen and Longstreth, 1992; 2; Critics of old institutionalism worried that formal institutions concealed important informal political features from researchers. (Peters, 2005; 9)

⁷³³ Peters, 2005; 18; March and Olsen, 1999, 99 in Peters, 2005; 29; Steinmo, Thelen and Longstreth, 1992; 13

⁷³⁴ Peters, 2005; 19; Pierson and Skocpol, 2002; 706; March and Olsen, 1999, 99 in Peters, 2005; 29; Steinmo, Thelen and Longstreth, 1992; 2; Chambers, 2002; 103

⁷³⁵ Peters, 2005; 10; Steinmo, Thelen and Longstreth, 1992; 27; Pierson and Skocpol, 2002; 706

relationship between agent and structure.⁷³⁶ For new institutionalists, institutions are not structurally determinate.⁷³⁷ This idea is in contrast to old institutionalism which argued that structure determined behaviour and that with the exception of a few extraordinary leaders individuals could not influence state actors.⁷³⁸ For new institutionalism the institutional activities and processes are performed by people, but the roles, responsibilities and relationships among the members are influenced by the institution.⁷³⁹ Institutions themselves do not make decisions; it is the people within those collectivities who make decisions and act.⁷⁴⁰ However, according to the institutionalist those same people might make different choices based on the nature of the institution in which they are operating at the time.⁷⁴¹ While institutions structure politics, shape political strategies and influence political outcomes, they can never be thought of as the sole 'cause' of an outcome.⁷⁴² Institutions themselves are the outcomes of deliberate political strategies, conflict and choice.⁷⁴³ In contrast to rational

⁷³⁶ Peters, 2005; 36; Steinmo, Thelen and Longstreth, 1992; 12

⁷³⁷ While individual choices are constrained by institutions, individuals within institutions still make choices. (Peters, 2005; 43) Most of us, most of the time, comply with institutionally defined rules and norms, even when our self-interest is threatened. (Steinmo, Thelen and Longstreth, 1992; 8) However, given the fact that institutions are populated with people, complete institutional uniformity cannot be expected. (Peters, 2005; 26, 31, 42) Individuals may be members in a number of political institutions, each with their own set of rules and norms. (Peters, 2005; 43; Steinmo, Thelen and Longstreth, 1992; 8) Single institutions may have multiple, complex, vague and sometimes competing goals and values. (Peters, 2005; 3; Steinmo, Thelen and Longstreth, 1992; 21) Ambiguity may actually benefit some institutions, allowing flexibility for those institutions with a diverse membership and providing an environment of dynamic tension that encourages creativity and innovation. (Peters, 2005; 31; Steinmo, Thelen and Longstreth, 1992; 24) A number of expressions may meet the expectations of a single institutional rule, procedure or role. (Peters, 2005; 31) When making decisions or taking action, members are forced to interpret their role, the current situation and the applicable rule or norm; the structure of even the most established institutions may not be clear to everyone all the time. (Peters, 2005; 26, 30) Orthogonal cultures within institutions may be a source of alternative views and inter-organisational politics. (Peters, 2005; 38, 42) These factors sometimes give members the flexibility to interpret and choose the features that drive their behaviours. (Peters, 2005; 41)

⁷³⁸ Peters, 2005; 8, 28; Steinmo, Thelen and Longstreth, 1992; 12

⁷³⁹ Pierson and Skocpol, 2002; 707; Steinmo, Thelen and Longstreth, 1992; 3

⁷⁴⁰ Peters, 2005; 14; Steinmo, Thelen and Longstreth, 1992; 12

⁷⁴¹ Peters, 2005; 14

⁷⁴² Steinmo, Thelen and Longstreth, 1992; 3

⁷⁴³ Steinmo, Thelen and Longstreth, 1992; 10

choice theory, but in line with Critical Theory and Deliberative Democracy, new institutionalism sees preferences as endogenous, in other words preferences are influenced by process, rather than predetermined and external to relationship and procedure.⁷⁴⁴ For new institutionalists, explanations of behaviour must be consistent with plausible accounts of the motivations and behaviours of individuals, but members of institutions cannot be thought of as fully autonomous, rational and utility-maximizing because they are embedded in complex patterns of resources, responsibilities and relationships.⁷⁴⁵

Institutionalism focuses on the institutional variables that can influence policy outcomes and behaviour.⁷⁴⁶ For new institutionalists an institution's formal and informal rules, procedures and compliance mechanisms constraint and structure member relationships and influence behaviour.⁷⁴⁷ For some new institutionalists, member roles and routines, sometimes especially the mundane routines, most influence behaviour and outcomes.⁷⁴⁸ In general, the 'logics of appropriateness' - the interrelated understandings, rules, norms and routines – of each of the various forms of new institutionalism define for members the appropriate behaviours for various situations based on their role.⁷⁴⁹ In order to expect compliance, an institution's 'logic of appropriateness' must be seen as

⁷⁴⁴ Peters, 2005; 26; Steinmo, Thelen and Longstreth, 1992; 8

⁷⁴⁵ Peters, 2005; 26; Pierson and Skocpol, 2002; 707; Steinmo, Thelen and Longstreth, 1992; 3

⁷⁴⁶ Steinmo, Thelen and Longstreth, 1992; 1; These structural features work to reduce transaction and decision-making costs among members and can enhance institutional efficiency. (Peters, 2005; 33, 72) An institution's structure can motivate members, especially the normative features that emulate the values and commitment already held by the membership. (Peters, 2005; 34) Routines and other structural features often arise naturally as people begin to interact in an institutional setting. (Peters, 2005; 33) A high level of integration, internalisation and conformity to the institution's structural features is one measure of its success. (Peters, 2005; 42)

⁷⁴⁷ Peters, 2005; 19, 28, 74; Steinmo, Thelen and Longstreth, 1992; 2; March and Olsen, 1989, 21-6 in Peters, 2005; 29

⁷⁴⁸ Peters, 2005; 31; March and Olsen, 1989, 21-6 in Peters, 2005; 29; Pierson and Skocpol, 2002; 706; Steinmo, Thelen and Longstreth, 1992; 8

⁷⁴⁹ Peters, 2005; 36; March and Olsen, 1989, 21-6 in Peters, 2005; 29

acceptable, or legitimate, in the eyes of the membership.⁷⁵⁰ However, in some circumstances sanctions and enforcement mechanisms also work to constrain member action and reinforce appropriate behaviour.⁷⁵¹ In other words, an institution's 'logic of consequentiality' works with its 'logic of appropriateness' to shape individual action.⁷⁵²

New institutionalism contains a variety of approaches; to a large degree these theory derivations are based on the structural variable that is presumed to predominantly influence behaviour.⁷⁵³ For example, *normative institutionalism* emphasises the extent to which the shared norms and values of the institution influence member behaviour, policy outcomes and even the norms and values of individual members.⁷⁵⁴ For *rational choice institutionalism* the institutional rules and incentives provide the *strategic context* that constrain and influence member's attempts to maximize their own interests.⁷⁵⁵ *Mythic institutionalists* are interested in the myths and stories that define acceptable behaviour and drive the behaviour of institutional members.⁷⁵⁶ For *historical institutionalists*, the institution's genesis, historical development and traditions shape the

⁷⁵⁰ Peters, 2005; 27; March and Olsen, 1989, 22-3 in Peters, 2005; 29; Johnson, Dowd and Ridgeway, 2006; 59

⁷⁵¹ Peters, 2005; 31, 39-40; An important component of an institution's structure must include some form of formal or informal behaviour monitoring and enforcement mechanisms. (Peters, 2005; 30, 37) Peters describes three types of power that institutions have over their members – coercive, remunerative and normative. (Peters, 2005; 27) Membership in the institution itself is sometimes important for those who belong; the threat of expulsion can be a strong mechanism for reinforcing appropriate behaviour. (Peters, 2005; 37)

⁷⁵² Peters, 2005; 30

⁷⁵³ Peters, 2005; 2, 18, 81

⁷⁵⁴ Peters, 2005; 19, 26, 29; Finlayson, 2007; 546

⁷⁵⁵ Peters, 2005; 19, 31; Steinmo, Thelen and Longstreth, 1992; 7; *Bounded rationality* refers to the notion that rationality itself is sometimes shaped by the constraints of institutional rules and procedures. (Peters, 2005; 28) Peters argues that even those institutions that are dominated by individualist and instrumental concerns share important norms and values – for example freedom, efficiency and choice. (Peters, 2005; 27)

⁷⁵⁶ Peters, 2005; 26

behaviour of members and policy outcomes.⁷⁵⁷ Institutions and polices are 'path dependent'; once launched on a particular path institutional inertia makes it difficult to change course.⁷⁵⁸ The taken-for-grantedness assumptions reproduced by institutions ensure that all subsequent choices are shaped by previous ones.⁷⁵⁹ Once actors have travelled far down a particular path, political alternatives that were once plausible are no longer available.⁷⁶⁰ Once a decision is made, it endures on autopilot shaping members behaviour many years later.⁷⁶¹ Individual behaviour is thought to be a function of a collective history and shared meanings that are influenced by history.⁷⁶² This means that inequalities in power, perhaps initially insignificant, are reinforced over time and can become deeply embedded in an institution.⁷⁶³ For a historical institutionalist, in order to understand any contemporary political situation, it is important to understand its genesis and history.⁷⁶⁴

Historical institutionalism sees an inherent stability and continuity in institutions.⁷⁶⁵ Institutions reproduce themselves over time by recruiting new members who already share the worldview and the norms and values of the institution.⁷⁶⁶ Individuals who voluntarily choose to participate in an institution are likely to accept the constraints it imposes on them and membership

⁷⁵⁷ Finlayson, 2007; 546; Peters, 2005; 19, 71, 81; Pierson and Skocpol, 2002; 709

⁷⁵⁸ Peters, 2005; 19; 71, Steinmo, Thelen and Longstreth, 1992; 8; Pierson and Skocpol, 2002; 699; Historical institutionalists refer to the 'stickiness' of political development. (Pierson and Skocpol, 2002; 700; Steinmo, Thelen and Longstreth, 1992; 18)

⁷⁵⁹ Peters, 2005; 20; Johnson, Dowd and Ridgeway, 2006; 59; Steinmo, Thelen and Longstreth, 1992; 8

⁷⁶⁰ Pierson and Skocpol, 2002; 700

⁷⁶¹ Peters, 2005; 80; Pierson and Skocpol, 2002; 699

⁷⁶² Peters, 2005; 10

⁷⁶³ Pierson and Skocpol, 2002; 700

⁷⁶⁴ Peters, 2005; 72; Pierson and Skocpol, 2002; 700

⁷⁶⁵ Peters, 2005; 71; Steinmo, Thelen and Longstreth, 1992; 13; Pierson and Skocpol, 2002; 709

⁷⁶⁶ Peters, 2005; 39

inductions ensure that new members are aware of the rules.⁷⁶⁷ A lineage of members ensures that institutional rules and norms and their interpretations are reproduced over time from generation to generation.⁷⁶⁸ 'Veto points' are points in the policy process where a conservative opposition can thwart institutional innovation.⁷⁶⁹ Peters refers to the institutionalist's notion of the 'garbage can' which refers to an institution's set of 'routinised responses to problems' which ensures institutional stability.⁷⁷⁰ The cognitive constraints imposed by institutional membership may make it difficult for members to identify dysfunctional structural features and to discover creative solutions outside of the ideas that already dominate the institution.⁷⁷¹ Institutional structures sometimes persist even when important economic and cultural circumstance shift.⁷⁷² Historical institutionalists explain path dependency as the result of positive feedback and self-reinforcement from outcomes reached at critical junctures.⁷⁷³ A particular feature may not be the most appropriate, morally or efficiently.⁷⁷⁴ However, once a feature has been shown to produce positive results for the institution it will persist even if another better approach is identified.⁷⁷⁵ According to historical institutionalism, institutions resist moving away from seemingly functional structural features.⁷⁷⁶

According to historical institutionalism, adaptive change within an institution evolves gradually and iteratively or else it occurs through spontaneous

⁷⁶⁷ Peters, 2005; 80, 39

⁷⁶⁸ Peters, 2005; 80

⁷⁶⁹ Steinmo, Thelen and Longstreth, 1992; 7

⁷⁷⁰ Peters, 2005; 35

⁷⁷¹ Peters, 2005; 80

⁷⁷² Pierson and Skocpol, 2002; 708

⁷⁷³ Pierson and Skocpol, 2002; 699; Peters, 2005; 77; Steinmo, Thelen and Longstreth, 1992; 1

⁷⁷⁴ Peters, 2005; 72

⁷⁷⁵ Peters, 2005; 72

⁷⁷⁶ Peters, 2005; 72

revolution.⁷⁷⁷ Historical institutionalists are particularly interested in these moments of institutional change.⁷⁷⁸ Institutional evolution can be viewed as a 'path or branch process', which is developed through 'critical junctions' - points of departure from established institutional patterns.⁷⁷⁹ For historical institutionalists, institutions are characterised by what they call 'punctuated equilibrium' – long periods of stability 'punctuated' by crises that lead to abrupt institutional change followed by a return to institutional inertia.⁷⁸⁰ Given an institution's inclination for stability and continuity, institutional change is rarely planned.⁷⁸¹ Sometimes change occurs from within - internal politics and power balance shifts - and sometimes it occurs because of changes in the socio-economic context in which the institution is situated.⁷⁸² Incremental adjustments may occur when inadequate or dysfunctional structural features are identified.⁷⁸³ Internally motivated change can be brought about by leadership challenges or from non-conformity from orthogonal cultures within an institution exploiting contradictory, changing or ambiguous institutional goals and values.⁷⁸⁴ Sometimes leaders – individuals in a leadership role or exceptional individuals – will successfully motivate institutional change.⁷⁸⁵ A high degree of inconsistency between the values professed by an institution, the behaviour of its members and the values held by the surrounding society will

⁷⁷⁷ Peters, 2005; 74

⁷⁷⁸ Steinmo, Thelen and Longstreth, 1992; 27; Pierson and Skocpol, 2002; 693; Peters, 2005; 76

⁷⁷⁹ Steinmo, Thelen and Longstreth, 1992; 27; Peters, 2005; 78; Pierson and Skocpol, 2002; 709

⁷⁸⁰ Steinmo, Thelen and Longstreth, 1992; 15; Peters, 2005; 76-7

⁷⁸¹ Peters, 2005; 35

⁷⁸² Peters, 2005; 78; Steinmo, Thelen and Longstreth, 1992; 7; Institutional success can be evaluated based on the degree to which the institution's structural features allow its members to meet the external challenges they face – their ability to operate and adapt within the socio-economic context of the institution. (Peters, 2005; 42, 82)

⁷⁸³ Peters, 2005; 79

⁷⁸⁴ Steinmo, Thelen and Longstreth, 1992; 9; Peters, 2005; 38

⁷⁸⁵ Peters, 2005; 38

likely lead to institutional change.⁷⁸⁶ Institutional crises typically bring on 'intense political conflict over the shape of the new institutional arrangements'.⁷⁸⁷ Whether or not change is triggered by internal or external events, the structural changes themselves are shaped by political agency, strategy, conflict and choice; the institution becomes the dependent variable determined by its members.⁷⁸⁸ Institutional change alters the constraints imposed on members and reshapes their ideas, goals and preferences.⁷⁸⁹ Change cannot be precisely controlled because member intentions are not always singular, consistent and clear and contexts are complex.⁷⁹⁰ This means that institutions rarely represent the optimal solutions for the problems of collective decision and action.⁷⁹¹

A number of important criticisms have been raised against new and historical institutionalism. New institutionalism is not falsifiable.⁷⁹² Given the sometimes ambiguity and multiplicity of an institution's structural features, it would be difficult to argue that an institution's logic of appropriateness does not exist and that it does not influence member behaviour.⁷⁹³ Within historical institutionalism, there is almost no ability to predict change.⁷⁹⁴ Punctuations may be obvious after the fact, but at that point the argument becomes almost tautological.⁷⁹⁵ Another criticism is that historical institutionalists tend to describe the persistence of an institution and bracket out change events,

⁷⁸⁶ Peters, 2005; 36

⁷⁸⁷ Steinmo, Thelen and Longstreth, 1992; 15

⁷⁸⁸ Steinmo, Thelen and Longstreth, 1992; 11, 15, 27; Peters, 2005; 79

⁷⁸⁹ Steinmo, Thelen and Longstreth, 1992; 22, 27

⁷⁹⁰ Steinmo, Thelen and Longstreth, 1992; 22, 27; Peters, 2005; 34; Pierson and Skocpol, 2002;

708

⁷⁹¹ Pierson and Skocpol, 2002; 709; Steinmo, Thelen and Longstreth, 1992; 10

⁷⁹² Peters, 2005; 41

⁷⁹³ Peters, 2005; 41

⁷⁹⁴ Peters, 2005; 77

⁷⁹⁵ Peters, 2005; 77

sometimes inadvertently slipping into institutional determinism.⁷⁹⁶ Critics often complain that historical institutionalism is more descriptive and explanatory than predictive and that research with few cases cannot generate valid knowledge.⁷⁹⁷

The theory of new institutionalism compliments Critical Theory in many ways. In contrast to rational choice and behaviouralism, both new institutionalism and Critical Theory reject the idea that humans are fully rational and fully autonomous, resistant to institutional and relational influences.⁷⁹⁸ Rather these theories see that human behaviour, preferences, norms, interests and even identities are shaped by institutional structures.⁷⁹⁹ Critical Theory aims its focus at the ways ideologies shape individuals, while new institutionalism focuses on the rules, procedures, roles and norms of institutions that shape members.⁸⁰⁰ Both theories are interested in the way that institutional structures work to structure power and to privilege some actors over others.⁸⁰¹ At the same time, both new institutionalism and Critical Theory see that actors have the ability to self-form and transform themselves and to identify and reform the structural features that dominate them.⁸⁰² The structure-agency question for both Critical Theory and New Institutionalism is seen to be reciprocal; actors shape and reform institutions and institutions constrain and mould actors.

⁷⁹⁶ Peters, 2005; 41; Steinmo, Thelen and Longstreth, 1992; 16

⁷⁹⁷ Pierson and Skocpol, 2002; 713, 718

⁷⁹⁸ Peters, 2005; 21; Steinmo, Thelen and Longstreth, 1992; 1, 6; Chambers, 2002; 103; Pierson and Skocpol, 2002; 693, 706

⁷⁹⁹ Peters, 2005; 19; Pierson and Skocpol, 2002; 706; March and Olsen, 1999, 99 in Peters, 2005; 29; Steinmo, Thelen and Longstreth, 1992; 2; Chambers, 2002; 103

⁸⁰⁰ Dryzek, 1990; 29; Ritzer, 2008; 283; Geuss, 1991; 15; Bernstein, 1990; 181; Fay, 1987; 4

⁸⁰¹ Steinmo, Thelen and Longstreth, 1992; 2, 6

⁸⁰² Held, 1980; 172; Kincheloe and McLaren, 2000; 282

Critical Theorists and historic institutionalists are both interested in the genesis and development of ideology and structure.⁸⁰³ For both theories, new ideas and structures are developed rationally at a particular time and within a particular socio-economic environment.⁸⁰⁴ However, through initial positive feedback and reinforcement overtime, these ideas and structures can remain stagnant even as conditions evolve; overtime these structures lose their validity and value and can begin to constrain and dominate actors inappropriately. At the same time, both critical theorists and historic institutionalists are interested in change. Historic institutionalists are interested in the critical junctions or crises that precipitate change.⁸⁰⁵ Critical theorists begin in those areas of crises – domination and suffering - in society and employ their theories to bring on change – enlightenment and emancipation.⁸⁰⁶

Methodologically, Critical Theory and new institutionalism are also similar and complementary. Both Critical Theorists and new institutionalists study cases of real people within a specific geographic, political and temporal context. For Critical Theorists this is important because they are interested in the actual enlightenment and potential emancipation of specific groups of real people. For new institutionalists this is important because they see institutions as embedded within a particular socio-economic context; context is key.⁸⁰⁷ Institutionalism, like Critical Theory, rejects positivist approaches to political research.⁸⁰⁸ Institutionalists and Critical Theorists find the application of methods that

⁸⁰³ Peters, 2005; 10, 72, 75; Pierson and Skocpol, 2002; 700

⁸⁰⁴ Geuss, 1991; 88; Outhwaite, 2009; 31

⁸⁰⁵ Steinmo, Thelen and Longstreth, 1992; 15, 27; Peters, 2005; 76-8; Pierson and Skocpol, 2002; 709

⁸⁰⁶ Dryzek, 1990; 29; Ritzer, 2008; 283; Geuss, 1991; 15; Bernstein, 1990; 181; Fay, 1987; 4

⁸⁰⁷ Pierson and Skocpol, 2002; 717

⁸⁰⁸ Steinmo, Thelen and Longstreth, 1992; 26; Peters, 2005; 13; Outhwaite, 2009; 19; Held, 1980; 14; Bernstein, 1990; 179

explore the natural world inappropriate for the social world where actors shape and are shaped by their environment.⁸⁰⁹ As with Critical Theory, institutionalism does not avoid the normative dilemmas that are normally apparent in real world political situations.⁸¹⁰ Rather than seeking natural laws and regularities, institutionalists emphasize the broader contexts - regime type, economic, historical and cultural - that surround a political situation and explore the reasons structural features exist and interrelate in a particular socio-economic setting.⁸¹¹ This means that both the results of new institutionalism and Critical Theory research are more often descriptive and explanatory rather than predictive.⁸¹² Like Critical Theory, institutionalists often ask the 'big' real world questions that are of interest and relevant to the broader public, as well as, to academia.⁸¹³ This means that institutionalist research often draws considerable interest from more formal theorists; this, usually iterative, collaboration often produces richer understandings of the political world than would have resulted from a single methodological approach.⁸¹⁴

Historical institutionalism theory is used in this thesis in two ways. Historical institutionalism is used to construct the theory of ideology for the critical theory of public participation and deliberation in post-communist Romania developed for this thesis; historical institutionalism helps explain the historical development of Romanian public participation and deliberation and its contemporary socio-

⁸⁰⁹ Steinmo, Thelen and Longstreth, 1992; 26; Peters, 2005; 13; Geuss, 1991; 2; Ritzer, 2008; 15; Outhwaite, 2009; 22; Dryzek, 1990; 6

⁸¹⁰ Pierson and Skocpol, 2002; 697; Held, 1980; 162; Bernstein, 1990; 174; Fay, 1987; 24; Peters, 2005; 17, 21

⁸¹¹ Pierson and Skocpol, 2002; 711; Steinmo, Thelen and Longstreth, 1992; 26; Peters, 2005; 12

⁸¹² Peters, 2005; 85

⁸¹³ Pierson and Skocpol, 2002; 717

⁸¹⁴ Pierson and Skocpol, 2002; 698

economic context. I use historical institutionalism to analyse the ways that the rules, procedures and roles of the RMGC EIA hybrid forums structured power relations and worked to privilege the RMGC project proponent over the rest of the meeting participants, allowing the company to dominate individuals and civil society activists.

METHODOLOGY

Fay argues that a critical theory is actually composed of four interrelated theories: theories of crisis, ideology, emancipation and education. A critical theory's *theory of crisis* describes the social crisis (domination, frustration and suffering) and the factors that led to that crisis.⁸¹⁵ Its *theory of ideology* describes the origins of the actors' ideologies and the ways in which these ideologies led to the social crisis.⁸¹⁶ For this thesis, the theories of crisis and ideology are presented as part of the description of the historical development of Romanian public participation and deliberation in Chapter 8. A critical theory's *theory of education* illustrates the conditions necessary for the enlightenment of the actors.⁸¹⁷ The theory of education for this critical theory is offered in the conclusion chapter (Chapter 13). Finally, a critical theory's *theory of emancipation* describes the alternative situation and a general plan for the actors to eventuate the final state.⁸¹⁸ The hybrid forum deliberative legitimacy

⁸¹⁵ Fay, 1987; 32

⁸¹⁶ Fay, 1987; 31; Ritzer, 2008; 287; Fay (1987) uses the term 'theory of false consciousness' to describe this sub-theory of a critical theory. A notion of 'false consciousness' is often associated with early Marxism. (Eagleton, 1991) It is important to point out that the word false does not mean that the consciousness or ideology is not true, well-founded or rational, but rather that it frustrates the abilities of actors to pursue their true interests. According to Dryzek, ideologies in the pejorative sense specify 'false necessities'. He offers an example. Perhaps the 'necessity of always having to please financial markets' is a false necessity. (Dryzek, 2001; 663)

⁸¹⁷ Fay, 1987; 32

⁸¹⁸ Fay, 1987; 32

standard – developed from deliberative democracy theory and practice and outlined in Chapters 6 and 7 of this thesis - forms the basis of this theory's theory of emancipation.

Dryzek identifies three approaches for a critical theory; this research employs two of the three approaches – *pure critique* and *constructive critique*.⁸¹⁹ For a *pure critique*, reality is compared to some fixed standard and a *constructive critique* offers practical and possible alternatives to the status quo.⁸²⁰ Dryzek recommends using the concepts of communicative rationality and the ideal speech situation to develop the critical standards for a critical theory.⁸²¹ He argues that 'given time, a succession of discursive exercises held up to critical scrutiny could create and reinforce norms of free discourse, and the critical aspects of modern consciousness more generally.'⁸²² For this thesis, the deliberative legitimacy standard based on the theories of communicative action, the ideal speech situation and deliberative democracy and developed in Chapters 6 and 7 represent the fixed standard used for the *pure* and *constructive critique* of the hybrid forums employed as part of the RMGC authorisation process (Chapters 10-12).

Fay argues that a critical theory must be scientific, critical and practical all at the same time.⁸²³ A critical theory is scientific because it is explanatory, public,

⁸¹⁹ The approach not employed in this research is what Dryzek calls the *indirect critique*. (Dryzek, 1990; 30) In this approach, reality is compared to a 'counterfactual but contextually specific discourse' which has been built from an ideal or standard. (Dryzek, 1990; 31)

⁸²⁰ Dryzek, 1990; 30, 32; Fay, 1987; 31; The constructive approach to critique is not thought of as an alternative to pure or indirect forms, but as an important addition to them. (Dryzek, 1990; 32)

⁸²¹ Dryzek, 1990; 87

⁸²² Dryzek, 1990; 87; Ritzer, 2008; 538

⁸²³ Fay, 1987; 28

testable and based on empirical evidence.⁸²⁴ A critical theory is critical because it evaluates the ideologies of a particular group of people, demonstrates that their worldview prevents them from realising their true interests and offers a superior alternative.⁸²⁵ A critical theory is practical because it is presented to a targeted group of actors for their practical enlightenment and acceptance and ultimate emancipation.⁸²⁶

The research methodology for a critical theory that is scientific, critical and practical must be suited for an open-system, qualitative, hermeneutic, and inductive approach. Both Critical Theory and New Institutionalism emphasise the importance of real-life studies.⁸²⁷ In order for the actors to recognise their ideologies and their frustration and to accept and actuate the critical theory, the evidence for the theory must be drawn from their social reality – rather than from the simulated reality of the laboratory.⁸²⁸ A critical inquiry into the beliefs, attitudes and real interests of actors requires extensive or qualitative data collection and hermeneutic or interpretive data analysis.⁸²⁹ Critical theory research must have the ability to move back and forth between the concrete and abstract, between the empirical and theory and between theory and practice.

⁸²⁴ Fay, 1987; 37-38

⁸²⁵ Fay, 1987; 38

⁸²⁶ Fay, 1987; 39

⁸²⁷ Ritzer, 2008; 287; Chambers, 2002; 104; Geuss, 1991; 58; Dryzek, 1990; 29; Bernstein, 1990; 199; Fay, 1987; 4; Steinmo, Thelen and Longstreth, 1992; 13; Pierson and Skocpol, 2002; 697

⁸²⁸ Ritzer, 2008; 287

⁸²⁹ Bernstein, 1990; 229

Case studies allow the researcher to investigate processes, change and relationships within a complex real-life situation.⁸³⁰ Case studies are especially beneficial for forming 'descriptive inferences' and categorising phenomenon – especially when comparing real-life situations with an ideal-type.⁸³¹ Case study analysis is more appropriate for those investigations with a narrow but extensive scope; case studies can offer richer, more detailed and complete analysis.⁸³² The results of a single-unit case study are less likely to be representative across time and place; however, designed correctly case studies can be comparable to one another and back to existing theory.⁸³³ Single case study research is beneficial for understanding complex real-world situations with many processes and relationships.⁸³⁴ Single case studies may not produce lengthy strides in general knowledge, but 'scholarship is an inherently communal enterprise' and so the clustering of individual case studies can accumulated valid and important knowledge.⁸³⁵ Case studies have a strong advantage for exploratory research.⁸³⁶ Case studies can offer insight into causal relationships, but are less suited for shedding light on causal effects or probable estimation.⁸³⁷

Yin defines a case study as 'an empirical inquiry that investigates a contemporary phenomenon within its real life context, especially when the boundaries between phenomenon and context are not clearly evident.'⁸³⁸ He argues that a case study approach is appropriate when 1) the research question

⁸³⁰ Yin, 2003; 2

⁸³¹ Gerring, 2004; 346-7; Pierson and Skocpol, 2002; 699

⁸³² Gerring, 2004; 347-8; Pierson and Skocpol, 2002; 714

⁸³³ Gerring, 2004; 348

⁸³⁴ Pierson and Skocpol, 2002; 714

⁸³⁵ Pierson and Skocpol, 2002; 715

⁸³⁶ Gerring, 2004; 348, 350

⁸³⁷ Gerring, 2004; 348

⁸³⁸ Yin, 2003; 13

is explanatory, a 'how' or 'why' question 2) the study examines contemporary events and 3) participant behaviours cannot be manipulated.⁸³⁹ Critical theory based on historical institutionalism must be empirical, evaluative and practical. This means that critical theory and historical institutionalist research require a methodology that investigates real life social histories, conditions and ideologies; that can accommodate both quantitative and qualitative data collection and analysis and that is flexible enough to cope with both deductive and inductive approaches.⁸⁴⁰ Out of the three main research methodologies described by Robson - experiment, survey and case study – the case study methodology is the only alternative that could be practically employed for this thesis and that would yield the data required for a complete critical theory.⁸⁴¹

DATA COLLECTION

In order to address the research questions a number of varied types of data have been collected. *Semi-Structured Interviews* were conducted with 22 Romanian public officials. *Observer-as-Participant Observations* and *Self-Completed Surveys* were employed at each of the 14 RMGC EIA public meetings. *Complete-Participant Observations* were used to investigate the

⁸³⁹ Yin, 2003; 9

⁸⁴⁰ Steinmo, Thelen and Longstreth, 1992; 12; Institutionalists often develop their hypothesis inductively, in the course of analysing empirical material, rather than deductively based on theoretical assumptions prior to analysis. (Steinmo, Thelen and Longstreth, 1992; 12)

⁸⁴¹ In ideal circumstances a critical theorist would discover the beliefs, attitudes and worldview of the actors through intimate active involvement and interaction with them - for example, an ethnographic or participatory research methodology. (Geuss, 1991; 92) In this way, the critical theory is formed and confirmed through a process of self-reflection among the theorist and the actors. Alternatively, beliefs, preferences and true interests can be attributed to actors based on their explicit avowals – based on what they say – and based on their behaviours. (Geuss, 1991; 45; Fay, 1987; 38) This approach is less than ideal because declarations of wants and actual behaviours are often confused and inconsistent. (Geuss, 1991; 45; Bernstein, 1990; 231) More importantly, the theorist will reflect her own beliefs and attitudes on the actors in an attempt to understand and interpret their words and behaviours. (Bernstein, 1990; 202) Given the resource constraints imposed on this research, rather than intimate interaction and involvement with the participants, this critical theory is developed on the words and behaviours of the targeted actors.

Freedom of Information (FOI) element of the RMGC authorisation process. *Archival Research* of EIA written comments and responses, relevant national Romanian newspaper articles, email listserves, RMGC project documentation, company documents, opposition contestations, Romanian public documents and legislation and demographic data were analysed.

Data for this research project was collected between 12 July 2006 and 21 November 2007.⁸⁴² Before the data collection period for this thesis, Romania had taken legislative steps to come into compliance with EU norms regarding environmental public policy decision making.⁸⁴³ Romania had signed the United Nations Aarhus Convention on 25 June 1998 and ratified it with legislation in July 2000.⁸⁴⁴ In September 2002, Romania had passed legislation to regulate the authorisation process for projects with a significant impact on the environmental.⁸⁴⁵ RMGC had begun the process for securing an environmental agreement for its proposed gold mining project in Roşia Montană by submitting to the Ministry of the Environment its Project Presentation Report in December 2004⁸⁴⁶ and its EIA Report in May 2006⁸⁴⁷.

During the data collection phase for this research, the company took steps to secure the authorisation of its project. Between 24 July and 25 August 2006

⁸⁴² Between 22 July 2006 and 25 August 2006, I travelled around Romania following the RMGC public meetings. I arrived in Romania again in late September 2006 on an American Fulbright Grant and was based in Cluj-Napoca until late March 2007.

⁸⁴³ Interviews: Confidential 1; Alba County Culture and Religion; Cluj County Environmental Guard; Confidential 1; Hunedoara Prefect; National Agency for Mineral Resources; National EPA

⁸⁴⁴ Parties and Signatories to the Aarhus Convention Retrieved 12 March 2012 from http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-13&chapter=27&lang=en

⁸⁴⁵ Romanian Order 860/2002, 863/2002 and for Transboundary impacts 864/2002

⁸⁴⁶ RMGC, 2004

⁸⁴⁷ RMGC, 2006a

RMGC held its public meetings in various locations around Romania.⁸⁴⁸ On 31 January 2007 RMGC received from the Ministry of the Environment's official list of questions and contestations which had been compiled from the public meetings and the written comment period (EIA Annex Questions).⁸⁴⁹ RMGC delivered, to the Ministry of the Environment, its responses to the Annex Questions in its EIA Annex on 4 May 2007.⁸⁵⁰ On 13 September 2007 the Ministry of the Environment suspended the RMGC authorisation process.⁸⁵¹ On 4 December 2007 RMGC announced its intention to scale back its activities in Roşia Montană and to reduce its 325 employee work force by two-thirds.⁸⁵²

To collect opinion, perspective, experience and attitudinal data from state actors, I interviewed Romanian public administrators using a semi-structured interview method.⁸⁵³ Between January and March 2007, I conducted 22 one-to-one face-to-face semi-structured interviews with Romanian public administrators. For these interviews, I employed the self-selecting heterogeneous sampling technique.⁸⁵⁴ I interviewed Romanian public officials at the local, county and state levels and in various types of agencies: enforcing, authorizing, overseeing, policy and legislative. I interviewed both elected and

⁸⁴⁸ Roşia Montană Public Announcement Retrieved 12 March 2012 from Roşia Montană <http://www.rosiamontana.ro/Aarhus2/Annex01.pdf>; RMGC hosted 2 two additional meetings in Hungary as part of their Transboundary authorisation process. This process is defined in the Espoo Convention on Environmental Impact Assessment in a Transboundary Context. I did not attend the Hungarian meetings and these meetings are not included in this research.

⁸⁴⁹ Romanian Ministry of the Environment, 2011; 1

⁸⁵⁰ RMGC, 2007

⁸⁵¹ Alburnus Maior Press Release 20 September 2007

http://www.ngo.ro/site_item_full.shtml?x=33012

⁸⁵² Gabriel Resources 2008 1st Qtr Report page 15

⁸⁵³ Distinct from unstructured interviews, semi-structured interviews work from a set of predetermined questions. (Robson, 2002; 269; Creswell, 2003; 188) And, unlike fully structured interviews, the order and wording of semi-structured interview questions can be modified based on the responses and priorities of the participant. (Robson, 2002; 270) Semi-structured interviews yield qualitative data and are most useful when a study focuses on the behaviours, meanings, perceptions and attitudes of the participants. (Robson, 2007; 272)

⁸⁵⁴ Robson describes the heterogeneous method as 'a deliberate strategy to select individuals varying widely on the characteristics of interest.' (Robson, 2002; 266; Creswell, 2003; 188)

appointed Romanian public officials and I interviewed officials in different levels of agency hierarchy. I limited my sampling to public officials in the 5 counties where the public meetings for the RMGC project were held⁸⁵⁵ and focused my interviews on those agencies that were more likely to participate in the RMGC authorisation decision process. My goal was to interview at least 2 public officials in each county, focusing on Roşia Montană's county - Alba County.



Figure 2 - Romania Administrative Map

After identifying the agencies that I thought were most relevant for this case study, the person who first received me at each agency acted as gate keeper and selected the interview participant.⁸⁵⁶ All participants were assured that I was not requesting the interview in any official capacity and that they were free to refuse to participate in my research. I managed to interview public officials at nearly all levels of public administration: Council Members, Presidents of

⁸⁵⁵ The five counties are: Alba, Cluj-Napoca, Hunedoara, Arad and Ilfov. Bucharest, Romania's capital, is in Ilfov County. (Roşia Montană Public Announcement Retrieved 12 March 2012 from Roşia Montană <http://www.rosiamontana.ro/Aarhus2/Annex01.pdf>) Rather than interview county level public officials in the county of Ilfov, I interviewed state level administrators in Bucharest.

⁸⁵⁶ At reception, I did not ask to speak with a particular person. I introduced myself as a PhD student studying public participation in government decision-making in Romania and asked to interview someone for my research.

Councils, Mayors, Agency Directors, Chief Inspectors, mid-level managers and analysts and Prefects and Sub-Prefects.

Location	Agency	Level	Date
Hunedoara	Prefect	County	3 Jan 07
	Confidential 1 ⁸⁵⁷	County	4 Jan 07
Hunedoara	Environmental Enforcement	County	4 Jan 07
Cluj-Napoca	Environmental Enforcement	County	9 Jan 07
Cluj-Napoca	Prefect	County	24 Jan 07
Arad	County Council	County	7 Feb 07
Arad	Environmental Protection Agency	County	7 Feb 07
Câmpeni	City Hall	Local	19 Feb 07
Câmpeni	Commune Council	Local	19 Feb 07
Roşia Montană	Commune Council	Local	20 Feb 07
Roşia Montană	Commune Council	Local	21 Feb 07
Alba	County Council	County	22 Feb 07
Alba	Prefect	County	22 Feb 07
Alba	Culture and Religious Affairs	County	23 Feb 07
	Confidential 2	County	25 Jan 07
Alba	Environmental Protection Agency	County	26 Feb 07
Alba	Environmental Enforcement	County	26 Feb 07
State	Ministry of Economy & Commerce	State	3 Mar 07
State	National Environmental Protection Agency	State	6 Mar 07
State	Ministry of the Environment	State	7 Mar 07
State	Ministry of Culture & Religion	State	8 Mar 07
State	Agency for Mineral Resources	State	9 Mar 07

Table 2: Public Administrator Interviews⁸⁵⁸

The public administrator interviews that I conducted included each of the interview components suggested by Robson⁸⁵⁹:

1. Introduction
2. 'Warm-up' Questions
3. Main Body Questions
4. 'Cool-off' Questions
5. Closure

The introduction included a brief discussion about my background and the aims of my research. During this section of the interview I introduced my interpreter

⁸⁵⁷ The participants identified as Confidential 1 and Confidential 2 asked that their agency name and location be held confidential for this research.

⁸⁵⁸ Although I made an attempt, I was not successful in arranging interviews with the following agencies: Arad Prefect, Alba Agency for Regional Development and Cluj City Hall

⁸⁵⁹ Robson, 2002; 277

and research assistant, Ramona Dragomir,⁸⁶⁰ discussed confidentiality issues and requested to record the interview.⁸⁶¹ The body of the semi-structured interviews included warm-up, main body and cool-off questions. The questions were all open-ended questions.⁸⁶² The warm-up questions related to basic questions about the participant and the institution where he/she worked. During the main body of the interview I asked the participant questions about the participatory processes, ways that the public is involved in public policy decision making, how public administrators work with citizens and the RMGC authorization processes. During the cool-off section of the interview I asked the participant about public meetings in general. In order to close the interview, I asked if the participant thought I had missed anything and if they had anything to add to the interview. Also during this section, I asked for the participant's permission to attribute his/her quotes in my final thesis.⁸⁶³

The interviews were conducted in a mixture of English and Romanian. Ms. Dragomir acted as interpreter for each interview.⁸⁶⁴ All of the interviews were

⁸⁶⁰ At the time Ramona was an undergraduate student studying at the Political Science and Public Administration department at Babeş-Bolyai University. Ramona agreed to act as a paid interpreter for the interviews and as a research assistant during the data collection phase of this research.

⁸⁶¹ Please see Appendix A for a copy of the Interview Introduction Guide I used during my interviews. This guide was reviewed and approved by my local advisors and supervisors.

⁸⁶² Robson describes open-ended questions as those questions that 'provide no restrictions on the content or manner of the reply other than on the subject area.' (Robson, 2002; 275)

⁸⁶³ Please see Appendix B for a copy of the Semi-Structured Interview Guide I used during these interviews. The guide was developed with the assistance of my local advisors, Drs. Badescu and Marian, and approved by my supervisors.

⁸⁶⁴ For some interviews, Ramona interpreted my questions from English to Romanian and a summary of the participant's response from Romanian to English. Ramona was instructed to interpret my questions as accurately as possible. Based on the interview recordings Ramona did an excellent job accurately interpreting my questions from English to Romanian. Because the interviews were recorded, Ramona only needed to summarize - in English - participant responses sufficiently for me to ask follow-up questions. Some participants understood English well enough that it was not necessary for Ramona to interpret my question, but the participant felt more comfortable responding in his/her native tongue. A few of the interviews were conducted entirely in English.

recorded, with the exception of the Ministry of the Environment's interview.⁸⁶⁵ The interview recordings were transcribed in the original language and the Romanian portions were translated into English.⁸⁶⁶ All interviews took place in the participant's office and lasted between 28 to 102 minutes, with an average of 61 minutes. For each interview, I took field notes about the interview negotiation, building security and access, comments before and after the recorded portion of the interview, and the participant's physical appearance, behaviours and office layout.⁸⁶⁷ After each interview I sent a thank you letter to the participant.⁸⁶⁸

Interviews are valuable to better understand participant behaviours, perceptions, motivations and attitudes.⁸⁶⁹ However, Robson warns that attitudes are relatively difficult to determine. He says that attitudes 'are often complex and multidimensional, and appear particularly prone to the effects of questions wording and sequence.'⁸⁷⁰ Nevertheless, interviews have the potential to yield rich and enlightening material for an investigation.⁸⁷¹

⁸⁶⁵ Creswell, 2003; 189 The interview participant at the Ministry of the Environment refused permission to record the discussion. During that interview, which was conducted in English, I tried to capture the participant responses in my field notes. (Creswell, 2003; 189)

⁸⁶⁶ The final versions of the transcripts only include the question heard by the participant and the participant's response. In other words, if the questions were interpreted from English to Romanian, my original question was not included in the final version of the transcript. If the responses were interpreted from Romanian to English, Ramona's interpretations to me were also not included in the final version of the transcript.

⁸⁶⁷ Creswell, 2003; 189

⁸⁶⁸ In these letters, I thanked the participant for his/her time, confirmed his/her permission to quote him/her in my thesis and provided contact details for me and Ramona in the event the participant had any questions or wanted to amend any of their responses. Please see Appendix C for a sample of the thank you letter that I sent (in both English and Romanian) to each interview participant.

⁸⁶⁹ Robson, 2007; 272

⁸⁷⁰ Robson, 2002; 272

⁸⁷¹ Robson, 2002; 273

Ethically, I thought that it was important for me to be transparent about my research topic with interview participants. However, this openness likely influenced the way participants responded to the questions.⁸⁷² The fact that I introduced the research topic as public participation in government decision-making revealed my personal bias towards public participation. It is also possible that I gave verbal and non-verbal cues that led the participants to respond in a certain way. Because I didn't ask the same exact questions in the same exact order and the same exact way with each participant, there might have been variations in the responses which can jeopardize data reliability.⁸⁷³

To collect opinion, perspective, experience and attitudinal data from individual, civil society and company actors, I observed and recorded the 14 public meetings that were hosted by RMGC as part of their authorisation process. These meetings were held in 5 Romanian counties between 24 July 2006 and 25 August 2006. During these sessions, I took the role of Observer-as-Participant.⁸⁷⁴ Before each meeting, I stood at the venue entrance and introduced myself (in Romanian) as an independent researcher from the University of Bradford studying Romanian democracy. I specifically announced to meeting participants that I was not a representative of RMGC or the opposition.

⁸⁷² Creswell, 2003; 186 'Biases are difficult to rule out.' (Robson, 2002; 273)

⁸⁷³ 'The lack of standardization that [the semi-structured interview] implies inevitably raises concerns about reliability.' (Robson, 2002; 273)

⁸⁷⁴ The observer-as-participant role is 'someone who takes no part in the activity, but whose status as researcher is known to the participants.' (Robson, 2002; 319; Creswell; 2003, 186) Before I arrived in Romania I informed both RMGC and the formal opposition to the project, Alburnus Maior, that I would be attending the sessions. The public meetings were part of an authorisation process and were open to the public so I could not be denied access to the meetings.

Location	Venue	Date	Location Type	Duration ⁸⁷⁵	Distance	Formal Opp ⁸⁷⁶
Roşia Montană	Football Stadium	24 Jul 06	Village	4.50 hrs	0	Present
Abrud	High School Gymnasium	25 Jul 06	Town	4.25 hrs	11 km	Present
Câmpeni	Cultural Centre	26 Jul 06	Town	4.50 hrs	16 km	Present
Alba Iulia	Cultural Centre	31 Jul 06	City	5.00 hrs	77 km	Present
Zlatna	Cultural Centre	2 Aug 06	Town	3.25 hrs	42 km	Absent
Brad	High School Gymnasium	4 Aug 06	Town	2.50 hrs	50 km	Absent
Cluj-Napoca	Cultural Centre	7 Aug 06	Municipal	11.75 hrs	127 km	Present
Turda	Municipal Theatre	9 Aug 06	City	4.75 hrs	98 km	Present
Bistra	Wedding Hall	14 Aug 06	Village	2.25 hrs	16 km	Absent
Baia de Arieş	Workers Club	15 Aug 06	Village	2.25 hrs	36 km	Absent
Lupşa	Cultural Centre	16 Aug 06	Village	2.75 hrs	27 km	Absent
Bucharest	Romexpo Complex	21 Aug 06	Municipal	11.25 hrs	428 km	Present
Deva	Cultural Centre	23 Aug 06	City	4.25 hrs	85 km	Absent
Arad	Cultural Centre	25 Aug 06	City	5.00 hrs	202 km	Absent

Table 1: RMGC authorisation Public Meetings⁸⁷⁷

As soon as the meeting started I found a seat toward the back of the room and turned on my digital recorder.⁸⁷⁸ The meetings lasted between just over 2 hours and nearly 12 hours. The average meeting duration was almost 5 hours. For the most part, the meetings were conducted in Romanian. However, the RMGC spokesman at the meetings spoke English with Romanian interpretation.⁸⁷⁹

⁸⁷⁵ Rounded to the quarter hour.

⁸⁷⁶ Participation by the formal opposition.

⁸⁷⁷ Roşia Montană Public Announcement Retrieved 12 March 2012 from Roşia Montană <http://www.rosiamontana.ro/Aarhus2/Annex01.pdf>

⁸⁷⁸ For each meeting, the recording device was kept on during the opening statement read by the Ministry of the Environment representative and also during the 45-minute RMGC presentation of the proposed project. The digital recorder was turned off during the 30 minute break between meeting sessions when participants registered to address the meeting and during other breaks. The recorder was turned on again during the participant question/comment and title owner response portion of the meetings.

⁸⁷⁹ A handful of meeting participants spoke either Hungarian or English with Romanian interpretation. Interpretation services were not available at the meetings, except for the Bucharest meeting where Romanian to English interpretation through headphones was offered for meeting participants. I did not have an interpreter present with me during the meetings and my Romanian language abilities are not strong enough for me to have understood the meetings

Both the Romanian and English portions of the meetings were transcribed and the Romanian portions were translated into English.⁸⁸⁰ My field notes during the public meetings included 'descriptive observations' such as 'setting, the people and events' of the session.⁸⁸¹ Specifically these notes included observations about meeting logistics, attendance and the gender and approximate age of each speaker.

In order to minimize the effects of my presence at the public meetings, I employed the two main strategies described by Robson, *minimal interaction* and *habituation*.⁸⁸² I am sure that my presence at the RMGC meetings as an observer and researcher influenced the outcomes or process of the public meetings in some way. However, to the extent possible I made every attempt to minimize that influence.

as they happened. I was required to limit my analysis of the meeting deliberations to a review of the translated versions of the meeting transcripts after the meetings took place.

⁸⁸⁰ The working transcript included - for each speaker – a speaker pseudonym, the start and end times of the speech, the speech in the original language and in English. In the final transcript, only the portions that were heard and understood by the Romanian audience (the portions originally spoken in Romanian and interpreted versions of the questions/comments and responses) were included. Applause, interruptions, pauses longer than 3 seconds, instructions from the moderator were all noted in the working and final transcripts.

⁸⁸¹ Robson, 2002; 320; Creswell, 2003; 189

⁸⁸² Robson, 2002; 328 While I had individual interactions with meeting participants before the meeting, during breaks and after the meeting, I avoided approaching participants and only responded when participants addressed me directly. I did not make any public statements during the meetings. From time to time RMGC employees, members of the opposition, meeting participants or members of the press asked me for my opinion about the meetings. In a spirit of transparency, I honestly responded to all questions about the objectives and activities of my research. However, I politely refused to respond to questions about the RMGC public meetings so as not to influence the structure or outcomes of the sessions. (Field Notes 24 July 2006) Habituation was achieved by my repeated presence at every meeting and a stable routine of my activities during each meeting. By about the 7th meeting, participants hardly acknowledged my presence.

To collect opinion, perspective, experience and attitudinal data from meeting participants, I distributed and collected *Self-Completed Surveys*⁸⁸³ at each of the 14 RMGC public meetings.⁸⁸⁴ While surveys can take many forms, Robson identifies 3 central features:

⁸⁸³ There are three ways to administered questionnaires: self-completion, face-to-face interview or telephone interview. Robson describes a self-completed survey simply as one where 'respondents fill in the answers by themselves.' (Robson, 2002; 236)

⁸⁸⁴ Before the public meetings, I exchanged emails with RMGC and Alburnus Maior about my attendance at the public meetings, and the objectives and activities of my research. I provided a draft copy of the survey to RMGC and Alburnus Maior. I offered to consider modifying the survey if they had any suggestions or concerns about the tone or content of the survey. RMGC expressed concerns about my initial plan for survey distribution and collection, my plan to have participants complete the survey independently and about the content of the survey. These concerns about the survey distribution and collection were articulated to me in an email exchange about my planned activities for the RMGC public meetings. (Esko/Heidebroek 20 June 2006 Email; Esko/RMGC 12 July 2006 Email; Burns/Esko 12 July 2006 Email; Heidebroek/Esko 20 June 2006 Email; Esko/Burns 20 July 2006 Email; Esko/Alburnus Maior 20 July 2006 Email; Field Notes 23 July 2006) Additionally, I received a telephone call from two RMGC employees on Sunday 23 July 2006 – the Sunday before the first public meeting in Roşia Montană on Monday 24 July 2006. Originally, I had planned to leave a uniquely numbered copy of a survey on each seat at the meeting venue and to ask the participants to leave the completed survey on their seats at the conclusion of the session. I intended to collect the completed surveys from the seats after the participants had left the meeting venue. RMGC expressed concerns about the logistics of this plan – one of the sessions was held outside and the wind/rain might have damaged or blown the surveys off of the chairs; there might not have been enough chairs for all participants; participant disruption might scatter surveys or the surveys might distract meeting participants. RMGC representatives expressed their concern that I would not get sufficient responses to a self-completed survey. They suggested I use a team of research assistants to complete the survey for the meeting participants. When I said that I was on my own, RMGC offered a team of volunteers to help me interview meeting participants. RMGC representatives expressed their concerns about the content of the survey. They suggested that I change the question which originally read, 'what is your highest level of education?' They thought that the question would sound insulting to Romanians. Secondly, RMGC requested that I add a question, 'Are you satisfied with the way questions were answered at today's meeting?' I told the RMGC employees that I was happy to modify the survey based on their suggestions. However, because it was the Sunday before the first meeting in Roşia Montană the following afternoon (at that time I was still in Bucharest) I would not have been able to make the changes and print out new surveys for the first meeting. I informed RMGC that the changes would be made to the survey for the second meeting on Tuesday in Abrud. RMGC offered to change and print the survey for me and also offered to let me use their facilities to change and print the survey for the first meeting. I expressed to the RMGC representatives my commitment to research independence and neutrality, participant confidentiality and my intention to minimize the distractions caused by my research for participants of the RMGC public meetings. I refused their offers to help with the printing and administration of the survey as well as their offer to supply a team of volunteers to help complete surveys for meeting participants. At this point RMGC said that I could not distribute or collect the surveys from inside the venue; I would have to stand outside the venue before and after the meetings to distribute and collect the surveys. (Field Notes 23 July 2006) Eventually RMGC created their own survey, which was nearly identical to mine. Their volunteers – dressed in green RMGC t-shirts – interviewed meeting participants to complete the RMGC survey. (Field Notes 25 July 2006) Alburnus Maior representatives suggested two modifications to the survey. Alburnus Maior asked that the question about affiliations be

- The use of a fixed, quantitative design
- The collection of a small amount of data in standardized form from a relatively large number of individuals
- The selection of representative samples of individuals from known participants⁸⁸⁵

The survey used for this research was written in Romanian and started by declaring that completion of the survey was optional.⁸⁸⁶ The sampling method for this survey was self-selected or volunteer sampling.⁸⁸⁷ The data from these completed surveys were entered into a Survey Database.

changed to explicitly ask if the respondent was an employee or associate of RMGC. Alburnus Maior also requested an additional question that asked if the respondent had attended more than one RMGC public meeting and if so which meetings the respondent had attended. These modifications were made to the survey after the third meeting on 26 July 2006 in Câmpeni.

⁸⁸⁵ Robson, 2002; 230

⁸⁸⁶ Please See Appendix D for a copy of the Survey in Romanian and Appendix E for a copy in English. In the survey I briefly introduced myself and my research. I asked demographic questions about the respondent's city of residence, gender, age, occupation, ethnicity and education. Closed questions - which force the respondent 'to choose from two or more fixed alternatives' (Robson, 2002; 275) - were used to collect demographic data. I then asked questions about the respondent's affiliations, his/her RMGC public meeting attendance and his/her motivations for attending the public meeting. Through the survey I asked respondents for their opinions of the public meetings and the decision making process in general with regard to the proposed RMGC gold mine project. In the survey I briefly asked the participants about his/her opinion of the proposed project. Yes/no questions were developed to collect opinion and attitudinal data. Finally, I invited the respondent to provide his/her contact details and offered my contact details in the event the participant wished to reach me for any reason.

⁸⁸⁷ To distribute the surveys, I stood at the entrance of each of the 14 meeting venues and offered (in Romanian) a copy of the survey to participants as they entered the venue. Some people refused the survey and some took a survey. Participants completed the survey during the meeting. During the breaks and after each meeting, I stood at the venue exit and requested completed surveys. Many people did not return a completed survey. Many people left the meetings early - before I was waiting at the venue exit- without returning their surveys. Overall 252 people returned surveys.

Location	RMGC Estimate ⁸⁸⁸	Alburnus Maior Est. ⁸⁸⁹	Press Est.	Field Notes Est.	Surveys Distributed	Surveys Collected ⁸⁹⁰
Roşia Montană	>500 ⁸⁹¹	550 ⁸⁹²	500 ⁸⁹³	400	200	15
Abrud	>300	350	NA	200	122	16
Câmpeni	>300	300	NA	100	85	25
Alba Iulia	>300	NA	NA	>300	120	19
Zlatna	>200	NA	200 ⁸⁹⁴	<150	80	29
Brad	300	NA	NA	175	69	31
Cluj-Napoca	<1,000	NA	NA	550	135	9
Turda	300	NA	NA	200	71	17
Bistra	Avg. 133	NA	NA	100	9 ⁸⁹⁵	1
Baia de Arieş	Avg. 133	NA	NA	175	42	18
Lupşa	Avg. 133	NA	NA	120	35	11
Bucharest	NA	NA	>600 ⁸⁹⁶	NA	243	28
Deva	400	NA	NA	150	57	20
Arad	NA	NA	NA	200	65	13

Table 2: Estimated Meeting Attendance and Survey Distribution and Collection

As a stand-alone method there are some validity and reliability issues with the way this self-completed survey was administered. Only a small percentage of the people who lived in each community attended the meetings and of those who did attend the meetings only a small percentage returned a completed survey. People who attended more than one meeting had more than one opportunity to receive, complete and return a survey.⁸⁹⁷ I had no way to control

⁸⁸⁸ RMGC, 2006e

⁸⁸⁹ Alburnus Maior, 2006

⁸⁹⁰ The number of surveys collected is a small percentage of the estimated attendance at each of the meetings. This was because I collected the surveys during the meeting breaks and at the conclusion of the meeting so that I could record all of the speakers. Often people left the meeting during the break. Others left before I could reach the venue exit at the conclusion of the meeting.

⁸⁹¹ RMGC, 2006e

⁸⁹² Alburnus Maior, 2006d

⁸⁹³ EVZ, 2006a Article seems to quote RMGC press release.

⁸⁹⁴ EVZ, 2006c Article seems to quote RMGC press release.

⁸⁹⁵ I arrived late for the meeting because the driver couldn't find the venue.

⁸⁹⁶ Ziuva, 2006

⁸⁹⁷ Based on the data from the Speaker Database and my observations, the people who attended more than one meeting were usually those who supported the project. Therefore the results of this survey are likely to be skewed in favour of those who support the project.

that people completed only one survey. Additionally, people usually completed their surveys during the meeting and I couldn't control the conditions under which they completed their form.⁸⁹⁸ Given the methodological issues with this survey, its results can only be said to represent those who volunteered to participate⁸⁹⁹ and cannot be extrapolated to the residents of Romania or the jurisdictions of each meeting location. Nor can it be said with any confidence that the results of the survey represent the demographics, attitudes and opinions of the meeting participants in general.

*Complete-Participant Observations*⁹⁰⁰ were used to investigate the Freedom of Information (FOI) element of the RMGC authorisation process. I made a few of the information requests with my role as a foreign researcher fully disclosed. However for the most part, Romanian citizen students – who were hired by me as research assistants – requested the information pretending to be working on university course assignments. With this data we investigated the reliability of FOI responses, the availability of project data, the response time for each request, as well as, the formal and informal process required for Romanian citizens to obtain information about public policy issues.

⁸⁹⁸ Some people may have felt time pressure, peer pressure or even organizational pressure to complete the form in a particular way. Having said that, some (73%) of the people included contact details on the survey. While I didn't verify the survey data, the surveys with contact details are at least verifiable. Perhaps we can suppose that those who completed verifiable surveys are less likely to return more than one survey or provide disingenuous responses. Additionally, there were no duplicate contact details in the batch of surveys nor were there surveys with exact duplicate responses.

⁸⁹⁹ It can be expected that those participants with strong feelings for or against the project or for or against the authorization process were more likely to complete and return a survey.

⁹⁰⁰ 'The Complete-Participant role involves the observer concealing that she is an observer, acting as naturally as possible and seeking to become a full member of the group.' (Robson, 2002; 316; Creswell, 2003; 186)

Respondent	FOI Request Content	Request Dates	Medium
Ministry of the Environment	7 Questions about the RMGC public meetings	12 Jul 06	<ul style="list-style-type: none"> • Email to general address
Ministry of the Environment	Question about public announcements for the RMGC public meetings & Request for authorisation document	15 Dec 06 15 Dec 06 1 Feb 07 7 Mar 07 7 Mar 07	<ul style="list-style-type: none"> • Telephone call to individual • Email to individual • Email to general address • Office Visit • Email to public relation
Ministry of the Environment	Questions about the CAT for the RMGC project	19 Oct 07 5 Nov 07 13 Nov 07	<ul style="list-style-type: none"> • Email to public relations • Email to individual • Email to public relations
National Agency for Mineral Resources	Questions about the RMGC mining rights and license	20 Mar 07 9 May 07	<ul style="list-style-type: none"> • Email to general address • Email to individual
Alba Institute for Statistics	Alba Town and Village Demographic Statistics	1 Feb 07 13 Feb 07 23 Feb 07	<ul style="list-style-type: none"> • Online form • Office Visit • Office Visit
RMGC	7 Questions about the RMGC public meetings	12 Jul 06	<ul style="list-style-type: none"> • Email to general address
RMGC	Request for English language version of authorisation on CD	7 Mar 07 21 Mar 07 21 Mar 07	<ul style="list-style-type: none"> • Email to general address • Telephone call to general • Email to general address
Alburnus Maior	Questions about the RMGC public meetings	20 June 06	<ul style="list-style-type: none"> • Email to individual
Alburnus Maior	Request for budget information and a list of financial supporters	14 Mar 07 16 Apr 07 21 May 07 20 Jul 07	<ul style="list-style-type: none"> • Email to general address • Telephone call to individual • Telephone call to individual • Telephone call to individual

Table 3: Freedom of Information Request Schedule

Between 12 July 2006 and 13 November 2007, I worked with my research assistants to submit 4 formal FOI requests and 1 informal request to various government agencies. In addition, we submitted 2 information request to the project's main opposition NGO, Alburnus Maior, and 2 information requests to RMGC. See Appendices H and I for examples of formal and informal information requests.

I drew on *Archival Research*⁹⁰¹ to collect data about the Romanian authorisation A Process and data about the opinions, perspectives, experiences and attitudes

⁹⁰¹ Creswell, 2003; 188; Robson says that, 'an archive is simply a record, or a set of records', either containing text or quantitative statistical data. (Robson, 2002; 360)

of individual, state, civil society and economic actors. The documents analysed for this research included EIA written comments and responses, Romanian state and RMGC public documents regarding the authorisation process, relevant national Romanian newspaper articles, civil society activist contestations, email listserves, legislation and conventions and demographic data. Most of the Romanian public documents relating to the RMGC environmental agreement process could be found on the Ministry of the Environment's webpage.⁹⁰² I also used a number of documents published by the company⁹⁰³ and the opposition⁹⁰⁴ for the Archival Research portion of this project. As part of this research I analysed newspaper articles that related

⁹⁰² http://www.mmediu.ro/protectia_mediului/rosia_montana/rosia_montana.htm These documents included the Scoping Stage Guidelines, the Official Minutes for each public meeting, a public meeting Speaker List, the compilation of the public comments in the EIA Annex Questions document and the 78 Volume RMGC Annex document. The Speaker List listed the names, contact details and comments/questions of the people who spoke at the public meetings. One speaker from the Câmpeni meeting was not included in the Ministry of the Environment list. The Official Minutes as compared to the transcripts made from my recordings of the meetings were so inaccurate to make them meaningless for this research. Out of the Speaker List, I created a 491 record Speaker Database that was used for some of the analyses in this thesis.

⁹⁰³ <http://www.gabrielresources.com/site/index.aspx> The RMGC 33 volume *EIA Report* describes the project and its possible impacts on the environment. (RMGC, 2006a) The company's *Resettlement and Relocation Plan* describes its plan to resettle the communities in the commune of Roşia Montană. (RMGC, 2006b) The company submitted its *Project Presentation Report* to start the authorisation process for its proposed project. (RMGC, 2004) In its 78 volume *EIA Annex* document, RMGC responds to the questions it received from the Ministry of the Environment in its *EIA Annex Questions* document. (RMGC, 2007) From the Gabriel Resources website, I managed to download the 2 volumes of the *Update of the Urban Zoning Plan* and the updated plan. (RMGC, 2006d; RMGC, 2010) From the Gabriel Resources and the RMGC websites I was able to download RMGC press releases and financial reports.

⁹⁰⁴ I registered for a Romanian EU email list service dedicated to dialogue related to EU integration. Between 17 July 2006 and 22 October 2008, I collected 190 email and attachment documents regarding the proposed RMGC project. The opposition submitted a number of contestations regarding the RMGC process that were reviewed for this research. Alburnus Maior commissioned studies and reports to assess the RMGC EIA and EIA Annex. The Open Society Foundation in Romania (a Soros Foundation) produced a report on Romania's accession to the EU, including some remarks about the RMGC authorisation process. Various members of the Romanian Academy produced declarations and reports about the RMGC.

directly and indirectly to the RMGC project.⁹⁰⁵ Archival research was also conducted in order to study and analyse various international documents.⁹⁰⁶

ETHICAL CONSIDERATIONS

When designing this research project, I categorized this research topic as *sensitive*.⁹⁰⁷ Shaw identifies seven ethical conditions for research - researcher and participant safety; participant privacy, anonymity and confidentiality; participant consent and convenience; research transparency and unintended uses of the data.⁹⁰⁸ Lee and Renzetti identify four areas 'in which research is more likely to be threatening than in others.'⁹⁰⁹ These areas include participant privacy, deviant behaviour, power relationships and that which is sacred to the participant.⁹¹⁰ Before leaving for Romania I discussed, with my supervisors and fellow research students, the ethical considerations for each of the four data collection methods I planned to use in the field – public official interviews, public meeting observations, public meeting surveys and FOI Requests.⁹¹¹ Before

⁹⁰⁵ I collected more than 950 newspaper articles from the online versions of 2 national Romanian newspapers and various foreign newspapers. These articles refer to the RMGC project, mining in Alba County generally, organizations involved in the RMGC process and individual participants of the process. Please see Appendix G for a list of the keywords used for the online newspaper article searches.

⁹⁰⁶ I analysed the International, European and Romanian legislation that is related to this case. The governments of Romania and Hungary commissioned a report from an Independent Group of International Experts (IGIE) to evaluate the RMGC authorisation. (IGIE, 2006) The Parliamentary Assembly of the Council of Europe, commissioned an information report by the then General Rapporteur on the Cultural Heritage, Mr Eddie O'Hara. (PACE, 2004)

⁹⁰⁷ Lee and Renzetti define a sensitive topic as 'one that potentially poses for those involved a substantial threat, the emergence of which renders problematic for the researcher and/or the researched the collection, holding, and/or dissemination of research data.' (Lee and Renzetti, 1993: 5)

⁹⁰⁸ Shaw, 1999: 128

⁹⁰⁹ Lee and Renzetti, 1993: 6

⁹¹⁰ Lee and Renzetti, 1993: 6; While this project does not address deviant behaviour, I was required to consider participant privacy, power relationships and matters of importance for the research participants when creating the research design.

⁹¹¹ Because *Archival Data*, or secondary data, used in this research is public and as long as the data is verifiable and accurately represented in my research, there are really no ethical considerations for this data collection method. This data collection method used in this research will not be considered in this section.

each public official interview the research assistant and I discussed the possible ethical issues of the interview negotiation and interview process. My research supervisors were contacted immediately when I identified in the field any ethical or safety risks for myself, the research team or research participants. In this section, I discuss the ethical issues related to the data collection methods for this research project.

While the threat of violence was possible, the risk of violence to me as a researcher, to the research assistants or to any of the research participants was low. In Romania in the past individual safety may have been an issue for people who met and communicated with foreigners. According to my local advisors, research assistants and the research participants themselves communication with foreigners is no longer a safety risk in Romania. While there is no way that I can be certain, those who participated in this research did not appear to be afraid for their physical safety. Obviously, the participants may not have been completely honest in their responses to my questions, but this would be a methodological issue not an ethical one.

The interviews were conducted in public office buildings, the public meetings were held in public and the FOI Requests were issued via email or in public office buildings. At no time during the data collection phase of my research did I feel that the participants', research assistant's or my own personal safety was at risk. While controversy continues to surround the RMGC proposed gold mining project, actual violence has been only a very small element of this public policy dispute. No evidence of actual physical violence was witnessed by - or reported to - me as a result of the data collection phase of this research.

While physical safety did not appear to be an issue with regard to the semi-structured interviews, a number of the participants did seem to be afraid that their comments would be misrepresented. For example, 3 of the 22 participants requested that their comments remain anonymous⁹¹² and 2 of these 3 participants requested that the name and location of their agency remain confidential⁹¹³. Of those 3, one requested an electronic copy of the interview recording as evidence of the actual conversation in the event that his/her comments were later distorted.⁹¹⁴ These participants seemed especially uncomfortable with the questions about the proposed gold mine in Roșia Montană.⁹¹⁵ More than one participant said that their comments about the Roșia Montană project had been misrepresented in the past by the Romanian press.⁹¹⁶

While the risk was low, researcher safety was an important consideration during the public meeting observation portion of this research. As a researcher travelling alone in remote areas of Romania with limited transportation options, I was required to consider my own safety during the period when I followed the RMGC public meetings. When possible I used public transportation or private taxi cabs. In the more remote areas of the country I was required to take rides with the informal ride sharing system used by the locals. In those instances, I informed at least one local person and my family back in the U.K. about my travel plans. The public meetings were held in public with many witnesses; I deemed them safe.

⁹¹² Interviews: Confidential 1; Confidential 2 and Ministry of the Environment

⁹¹³ Interviews: Confidential 1; Confidential 2

⁹¹⁴ Confidential 1 Interview; This recording was provided to the participant.

⁹¹⁵ Interviews: Confidential 1; Arad County Council; Alba County Council; Ministry of the Environment; Alba County EPA; Confidential 2

⁹¹⁶ Interviews: Confidential 1; Arad County Council

The surveys were distributed in public during the RMGC public meetings. Apart from the safety issues around participating in the RMGC public meetings, participants may have felt intimidated if they were seen speaking with me or completing one of my surveys. The perceived threat may not have been around physical intimidation as much as peer acceptance or job security. I made sure that I did not initiate contact with meeting participants but only spoke to attendees after they had first spoken to me. I invited people to take and complete a survey, but I was never insistent. I announced to all meeting participants, in Romanian, that I was a neutral and independent researcher, not at all affiliated with the government, RMGC or any of the opposing NGOs.

The FOI Request process – in terms of physical safety - was safe for the researcher, research assistants and participants.⁹¹⁷ At one point in history, making these sorts of requests to government officials or responding to these requests may have been dangerous for Romanian citizens – at a minimum in terms of their job security. However I was informed by my local advisors and research assistants that these forms of communication were no longer a safety risk for Romanians.

For this research, I did ‘intrude into the private sphere’ of those being studied.⁹¹⁸ The public official interviews and the FOI Requests were conducted with public officials in their official capacity. The interviews were conducted in private and safe locations, usually the offices of the participant. However, it could be argued that this data was collected from within these participants’ private

⁹¹⁷ Most of the requests were made via email. A few requests required a visit to a secure public building.

⁹¹⁸ Lee and Renzetti, 1993: 6

spheres.⁹¹⁹ The collection of observational data during the public meetings took place within the public sphere. It could be argued that this data does not require rigorous participant privacy considerations. The participants of the RMGC public meetings held no illusions that their activities or comments would be held private and confidential.⁹²⁰ Most participants who completed a survey did so during the public meeting.⁹²¹ For the self-completed surveys the participants were asked to provide personal information about their background, contact details and their opinions and attitudes. This process reduced the opportunity for privacy for research participants. However, a lack of privacy may have been more of a methodological concern than an ethical one – participants may have felt the need to respond to questions in a way that pleased their peers or possible employers.⁹²²

While the identities of the individuals who responded to the FOI Requests will remain anonymous, the names of the organizations involved will be disclosed. It is possible that the results of this research may pose a risk to the reputation of the government agencies, the NGO and the company investigated. The organizations included in this research claim to act for the benefit the public, their actions certainly impact the public and they are publicly funded - either

⁹¹⁹ One of the findings discovered during this research was the blurring of the public and private spheres, especially for public officials who are also private citizens and whose private interests happen to be met by careers in the public sector. This blurring seemed even more pronounced with local and elected officials.

⁹²⁰ As each speaker took a turn at the microphone his/her name was announced by the Ministry of the Environment moderator. The meetings were recorded and are now part of Romania's public record. The Ministry of the Environment even posted on their website a summary of the each participant's comments along with his/her name, address, telephone number and affiliation.

⁹²¹ A few participants took a survey during one meeting and returned it at a subsequent meeting. One participant returned the survey through the post.

⁹²² Participants had an opportunity to complete the survey anonymously. However, of the 252 people who completed the survey, only 69 (27%) did not provide their name on the survey and 3 of those provided a telephone number.

through taxes, shareholder investments or public donations. While I made every effort to protect the identities of individuals, I felt that I could legitimately disclose the names of the agencies, NGOs and companies involved in this portion of the research.

To avoid participant identification, project data is published anonymously⁹²³ or in summary format in this thesis. Detailed completed survey data will be disseminated only in database form and anonymously.⁹²⁴ Interview data - such as field notes, transcripts and recordings - will not be disseminated or published without the advanced consent of the participant.⁹²⁵ All recordings, transcripts, surveys and FOI Responses have been stored anonymously.⁹²⁶ Pseudonyms were assigned to research participants and their actual names have been stored separately in the field notes, which are kept in a different location from the actual data.⁹²⁷ The identities of the participants were kept from the research assistants who transcribed and translated the recording. All research assistants formally agreed to keep all research data confidential.

Some research participants might see this research and its results - or even public participation in public policy decision making itself - as a threat to their position of power. They might see an open public debate about policy, which in the past may have been determined by less transparent and less inclusive methods, as a threat to the already existing power structure. This threat, real or

⁹²³ While RMGC responses during the public meetings have been attributed to the company, specific employees – with the exception of the RMGC spokesperson and his interpreter - are not identified in this published document.

⁹²⁴ Original completed surveys will not be distributed and will be destroyed at the conclusion of this research.

⁹²⁵ BSA, 2002: 3

⁹²⁶ SRA, 2003: 39

⁹²⁷ BSA, 2002: 5

imagined, had important implications for the design of the interview questions and the dissemination of research data and results. For the most part, the ethical considerations of participation negotiation and the storage and dissemination of data are similar to the considerations for participant privacy.

This research dealt with 'things sacred' to the research participants.⁹²⁸ Public policy dispute processes often directly touch on issues of home and property, money, jobs and livelihoods, lifestyles, families, health and safety and community. In other words, public policy disputes can impact the most important aspects of the lives of a community and its members. In addition, the complexity of multiple parties with conflicting positions negotiating to protect their interests further escalates the sensitivity of the topic. Data collection from within a public policy process must be considered significant and therefore sensitive for the participants involved.

Brink adds another area of sensitivity, which is relevant to my research. She highlights the sensitivity of research when a researcher 'enters the field foreign to the language and customs of the people being studied' and 'ignorant of the correct or appropriate behaviours' of the local community.⁹²⁹ I conducted my fieldwork as a foreigner and for each data collection method I had to consider my impact as an outsider on the research participants. As a middle-class American woman, I could not be aware of all the cultural, ethical and legal issues related to the research of a sensitive topic in Romania.

⁹²⁸ Lee and Renzetti, 1993: 6

⁹²⁹ Brink, 1993: 235

In order to ensure that I conformed to local ethical standards and relevant legislation, I sought advice from two Romanian professors - who acted as my local advisors - in the Political Science and Public Administration department at Babeş-Bolyai University in Cluj-Napoca, Drs. Gabriel Badescu and Cosmin Marian. Additionally, I had a team of 11 Romanian research assistants who provided cultural advice and guidance during the data collection and analysis phases of this research. I studied Romanian culture and language for nearly two years before I arrived in Romania. I attended a five-week intensive language and culture course in Baia Mare, Romania in the summer of 2005. I participated in a weeklong conference in Bucharest sponsored by the John Hopkins Institute for Policy Studies in early July 2006, where we focused our discussions on the culture of civil society in Romania. Additionally as a Fulbright grantee, I had an opportunity to participate in fieldtrips and workshops where I learned more about Romanian history, culture and the Romanian/American diplomatic relationship. I continued to study the Romanian language at Babeş-Bolyai University while I was based in Cluj-Napoca.

In addition to considering the ethical implications of this research on the research participants, it was also important for me to bear in mind the ethical treatment of the people who worked on my research team. Eleven people were hired as my research team while I was in Romania. One person acted as my fieldwork assistant and interpreter during the semi-structured interviews and the Complete-Participant observations. Ten people translated the self-completed surveys, much of the archival research data and transcribed and translated the interview and public meeting recordings. This research team was recruited from the undergraduate student body in Political Science and Public

Administration department at Babeş-Bolyai University. In exchange for their services, the students received payment based on the typical local hourly rate for part-time student employment. Each student who successfully performed his/her duties also received from me a written recommendation on University of Bradford letterhead that they could use when seeking future employment.

During my stay in Cluj-Napoca from September 2006 to March 2007, my accommodation and research expenses were paid for by an American Fulbright Grant. For this grant I was required to maintain accurate and detailed financial data and to submit monthly financial reports and periodic research progress reports to the Fulbright Commission. As a recipient of this grant, I was not permitted to participate politically in Romania.⁹³⁰ The Fulbright Commission in Romania put no other restrictions on - nor provided any direction for - my research.

This research must address the possibility of unintended uses of the data and results of the project. Researchers 'should be aware that they have some responsibility for the use to which their data may be put and for how the research is to be disseminated.'⁹³¹ Research – and indeed just conversations about - open public policy dispute processes could challenge existing power structures in Romania. Additionally, the controversy over RMGC's proposed gold mine in Roşia Montană continues. The controversial nature of the project meant that many of the research participants expressed concern that their comments would be misrepresented. It has been important when publishing

⁹³⁰ This restriction did not affect my research because my intention was always to – to the extent possible - act as a neutral observer while investigating Romanian public participation and the public policy decision making process.

⁹³¹ BSA, 2002: 2

this thesis to consider how various stakeholders may use its results, or even distort the results, to further their own interests.

According to the University of Bradford's ethical standards, 'the dignity, rights, safety and well-being of participants must be the primary consideration in any research study'.⁹³² In order to meet this standard, research project design approvals were obtained from my supervisors prior to commencement of fieldwork. I met with each research assistant to discuss the research fieldwork objectives, strategies, risks, confidentiality and possible ethical issues. I have committed to send a copy of this thesis to all research participants who have requested it. During this research project, the researcher and research assistant strove to treat each participant with respect and dignity.

All interview and public meeting survey participants participated in this research voluntarily.⁹³³ During the interview introduction and at the top of the survey, it was made clear to participants that they had the option to participate or not in the research and the option to respond or not to any of the individual questions. People were invited rather than pressured to participate.⁹³⁴ Participants could, without justification, terminate their participation.⁹³⁵ Participant consent regarding the attribution of quotes in the published thesis was obtained from each interview participant.⁹³⁶ At the end of each interview I asked for participant

⁹³² University of Bradford, 2003: 11

⁹³³ SRA, 2003: 27

⁹³⁴ The fact that so few people attending each of the meetings actually returned a completed survey is evidence that participants were aware that the survey was not mandatory.

⁹³⁵ While some participants provided limited responses to some questions, no participant actually prematurely terminated an interview. If one had, the interview would have been stopped and a note would have been inserted into the transcript at the point of termination.

⁹³⁶ During the opening of each interview I explained to the participants the various ways their responses could be attributed in my published thesis: in summary form, as anonymous quotes or as attributed quotes – only with participant permission.

permission to attribute their quotes.⁹³⁷ None of the people interviewed were determined to have come from a 'vulnerable' population - such as a child or intellectually disabled adult.⁹³⁸ All participants have been given an opportunity to review, modify or amend their private interview transcripts.⁹³⁹

Participants of the public meetings did not explicitly volunteer or consent to be part of this research project. However, the RMGC meetings were open to the public. This meant that the activities and comments made by those who participated were made in a public setting.⁹⁴⁰ Their participation at a public proceeding implies their consent for the data to be used by observers. Even so for this research, participant activities and comments are stored and reported anonymously.

Because the investigation into the FOI Request process was covert, participants did not consent to be part of this research. Public authorities responded to these requests out of legal and workplace obligations. Associations provided the information voluntarily. However as will be seen in this research, information was not provided in those cases when the information holder did not agree to provide the information.

⁹³⁷ This question and the participant's response were recorded with the rest of the interview on the digital recorder. Participant quote attribution consent was confirmed in the thank you letter sent to each interview participant.

⁹³⁸ If this had been the case, I would have sought additional interview permission from a guardian.

⁹³⁹ At the conclusion of each interview, I left – with the interview participant - business cards with my current contact details. My and Ramona's contact details were provided in the thank you letter sent to each participant after the interview. In the thank you letter, participants were offered an opportunity to ask additional questions or to modify their responses from the interview. At this time, no participant has requested to modify his/her interview responses. Unless the original transcript is incorrect, modifications and amendments will be noted as additional data.

⁹⁴⁰ The public nature of these meetings was made clear to meeting participants. The meeting proceedings were video and audio recorded by RMGC. The RMGC recordings are maintained by Ministry of the Environment, are considered part of the public record and are subject to Romania's FOI laws.

With the exception of the FOI Request data collection process, my role as a neutral researcher was made clear to all research participations. All participants were informed about the high-level objectives of this research. I responded honestly to their questions about the research topic and process.⁹⁴¹ As they entered the meeting venue, meeting participants were informed (in Romanian) about my presence at the meetings and research topic. The survey document itself includes a short description of the research objectives and the intended use of the survey data. The interview data collection, storage and dissemination process was briefly explained to each interview participant.⁹⁴²

The purpose of the FOI requests and the objectives of the research were not made known to the participants. Generally – given the covert nature of Complete-Participant observations - the possible ethical issues around Complete-Participant observation methods can be quite complex - focusing on researcher transparency and participant consent. I chose to use covert methods for the FOI Request data collection process because I anticipated that participants would respond differently to an information request from an American researcher than they would respond to a request from a Romanian citizen. Public access to information from statutory agencies, NGOs and companies involved in a public policy dispute is an important element of public participation. I, therefore, feel a covert investigation into the availability of their data is justified.

⁹⁴¹ SRA, 2003: 28; Shaw, 1999

⁹⁴² SRA, 2003: 28; Shaw, 1999: 126

I made every attempt to ensure that the data collection process was convenient for the participations.⁹⁴³ Interview sessions were scheduled at the convenience of the participant and were designed to collect data without overburdening them. All interview participants determined if, when and for how long an interview occurred. The survey was short and could be completed quickly in order to be convenient and less disruptive for meeting participants. I made it easy for participants to return their completed survey by collecting the surveys at the venue exit after each meeting.

It was important that this research did not disrupt the FOI request process for others who submitted information requests about the RMGC proposed project. It was also important to not overburden the people responding to these information requests. Therefore, the questions were short and simple. The data for each of the questions would have been available and easy to access. I did not want the questions themselves to influence the process in any way. I therefore asked questions that I believed to be non-controversial and non-threatening.

All collected data (recordings, transcripts, surveys, FOI Responses and field notes) were kept in a secure location in the field until they were shipped back to my home office in Bradford. Copies of the original surveys will be destroyed at the end of this research, but the data has been entered anonymously into a database. The interview recordings, transcripts, databases, FOI Responses and their backups are stored electronically on my personal computer and on CD. My personal computer is protected by password and the CDs are securely

⁹⁴³ SRA, 2003: 27

stored in my home office. I have not kept hard written copies of the transcripts. The anonymous recordings, transcripts and databases are maintained, backed-up and auditable for 'five years from the date of any publication based upon it'.⁹⁴⁴

DATA ANALYSIS

This research employs both qualitative and quantitative data analysis. For the critical theorist, the attitudes, beliefs and interests of the actors are an essential part of the study.⁹⁴⁵ This means that social research based in a critical theory paradigm must include interpretive hermeneutic *qualitative* data analysis. *Quantitative* data can be used to discover and describe the characteristics of a particular population, to identify patterns between variables and to understand and compare participant perspectives, attitudes and opinions. Robson asserts that quantitative data 'are central to much flexible design research to see what has been found, and to help direct later stages of data collection.'⁹⁴⁶ The qualitative data for this research includes the archival research documents, FOI Requests, field notes and transcripts from public administrator interviews and the public meeting recordings. The quantitative data was compiled from the Ministry of the Environment's Speaker List and the Self-Completed Survey.

Kincheloe and McLaren argue that qualitative data interpretation or hermeneutics is one of the most important aspects of research investigating

⁹⁴⁴ University of Bradford, 2003: 2

⁹⁴⁵ Bernstein, 1990; 229

⁹⁴⁶ Robson, 2002; 399

symbolic interaction.⁹⁴⁷ For hermeneutic analysis the researcher works to understand and make sense of the text/speech act and then to articulate its essence.⁹⁴⁸ As part of the interpretation of a text/speech act, the analyst grapples with the text, considers the historical and contemporary contexts within which it was produced, reflects on the possible motivations of the writer/speaker and identifies the meanings generated.⁹⁴⁹ Hermeneutic analysis within the context of a critical theory specifically works to reveal power dynamics within the text/dialogue.⁹⁵⁰ In order to make sense of the text/speech act the interpreter moves back-and-forth between the specific text/speech act and the contextual social dynamics.⁹⁵¹ The interpreter seeks to identify the values and perspectives of the writer/speaker, to understand what is important for them and to have this direct the interpretation.⁹⁵²

Kincheloe and McLaren assert that no mechanical formula can be followed for a hermeneutical analysis; to learn hermeneutics one must simply practice it.⁹⁵³ Researchers must always be aware that their understandings and interpretations are always in relation to something else.⁹⁵⁴ Researchers cannot develop theories and perspectives without referring to something within their

⁹⁴⁷ Kincheloe and McLaren, 2000; 285; Outhwaite, 2009; 22; Habermas, 1971; 309; Bernstein, 1990; 196

⁹⁴⁸ Kincheloe and McLaren, 2000; 285 Kincheloe and McLaren argue that *all* research is interpretive in that 'perception itself is an act of interpretation' and that research is a quest for understanding. (Kincheloe and McLaren, 2000; 285)

⁹⁴⁹ Kincheloe and McLaren, 2000; 286 Hermeneutics typically analyse texts, which are effectively a dialogue between the writer and the reader. For this research, I am analysing texts – public meeting and interview transcripts – but the texts are a dialogue between multiple participants.

⁹⁵⁰ Kincheloe and McLaren, 2000; 286

⁹⁵¹ Kincheloe and McLaren, 2000; 286

⁹⁵² Kincheloe and McLaren, 2000; 287

⁹⁵³ Kincheloe and McLaren, 2000; 286

⁹⁵⁴ Kincheloe and McLaren, 2000; 286

own understanding and worldview.⁹⁵⁵ Rather than attempting to discard our worldviews, researchers must identify and understand our own experiences, perspectives, prejudices, beliefs and attitudes and the ways they shape our interpretations.⁹⁵⁶ Critical researchers must disclose their own assumptions so that their interpretations can be understood from within their own historical, social and political context.⁹⁵⁷ No interpretation can be expected to reveal the final truth.⁹⁵⁸ All interpretations are also subject to the interpretation and criticism of others.⁹⁵⁹

Miles and Huberman define qualitative data 'analysis as consisting of three concurrent flows of activity: data reduction, data display and conclusion drawing/verification.'⁹⁶⁰ Data reduction includes selecting and abstracting the qualitative data through summaries, coding and theme identification. In data displays the researcher organizes and compresses the qualitative data through matrices and diagrams. During conclusion drawing and verification the researcher recognizes patterns and possible explanations and relationships.

Coding - using the NVivo7 software application - has been employed for this research on the qualitative data. 'Codes are tags or labels for assigning units of meaning to the descriptive or inferential information compiled during a study' and can be used to identify themes, explanations, relationships and important concepts and to compare ideas between participants.⁹⁶¹ The qualitative data for this research was coded so that groupings and comparisons could be made

⁹⁵⁵ Kincheloe and McLaren, 2000; 286; Outhwaite, 2009; 23

⁹⁵⁶ Kincheloe and McLaren, 2000; 288 Outhwaite, 2009; 23

⁹⁵⁷ Kincheloe and McLaren, 2000; 292

⁹⁵⁸ Kincheloe and McLaren, 2000; 289; Bernstein, 1990; 218; Dryzek, 1990; 32

⁹⁵⁹ Kincheloe and McLaren, 2000; 289; Bernstein, 1990; 218; Dryzek, 1990; 32

⁹⁶⁰ Miles and Huberman, 1994; 10

⁹⁶¹ Miles and Huberman, 1994; 56

between the concepts articulated by each of the individual research participants. In this way the phrases uttered by the interview or public meeting participant are the data - the evidence.⁹⁶²

The codes for each of the documents and transcripts (interviews, public meetings, field notes, EIA documents, contestations, company documents) were derived from the research questions, from Romanian historic and political literature, from deliberative theory and from the transcripts themselves.⁹⁶³ I applied up to four levels of codes to each relevant phrase uttered by the participant.⁹⁶⁴ The highest level codes sought to distinguish participant claims describing the Romanian context generally from those claims describing the RMGC authorisation participatory processes specifically. So for example, participant phrases that describe Romanian nationalism in general are coded differently than those truth claims that describe or demonstrate nationalism as part of the RMGC authorisation process. This level of coding allows me to identify and distinguish those claims related to the circumstances and conditions from which the Romanians have developed their worldview (for the

⁹⁶² See Appendix J for a list of the codes used for this data analysis.

⁹⁶³ Because of the volume of data and the time required to code an individual transcript, only a selection of the interviews and public meetings were coded. All of the 22 interviews have been coded and analyzed. I attended and recorded all 14 meetings, but of the 28 sections - each of the 14 public meetings had 2 sections - of the public meetings 10 sections have been coded and analyzed. I wanted a variety of the meetings for analysis so I selected meetings based on the location type (village, town, city or municipality) and whether or not the formal opposition was present. The Ministry of the Environment's opening statement and the title owner's presentation portions of the meetings were virtually identical. Therefore, the recordings of the opening statement and presentation portions of the meeting were analysed for only 3 meetings - a meeting at a village (Lupşa), a town (Câmpeni) and a city (Alba Iulia). The recordings of the question/comment and response section of 6 meetings were analysed - meetings at 2 villages (Roşia Montană and Bistra), 2 towns (Câmpeni and Zlatna) and 2 cities (Alba Iulia and Deva). Twenty-minute sections of the nearly 12 hour question/comment and response portion of one large municipality (Bucharest) were analysed. The interview and public meeting transcripts that have not been coded have been reviewed for comments that specifically address the research questions. This data has been used to supplement the results derived from the coded transcripts. Evidence - found in the un-coded transcripts - that contradicts the results drawn from the coded interviews has been examined thoroughly.

⁹⁶⁴ Participant claims about substantive RMGC project related issues were ignored.

theory of ideology) from those claims that critique the legitimacy of the hybrid forums employed as part of the RMGC authorisation process (for the *theory of emancipation*). This level of coding also includes a series of attributes (project supporter or opponent, speaker age, speaker gender, speaker town of residence, etc) so that I could compare the claims of the various types of participants. Below this level, sub-codes for each of the seven deliberative legitimacy elements, as well as, codes for the general characteristics of Romanian public administration and participation were applied to relevant documents and transcripts. The sub-codes at the third and fourth levels provide more details – highlighting agreement and dispute among participants – about the legitimacy of the RMGC authorisation process and the factors that impact that legitimacy.⁹⁶⁵ The application of these codes was inclusive⁹⁶⁶, exclusive⁹⁶⁷ and exhaustive.⁹⁶⁸

Miles and Huberman recommend the use of data displays that ‘are focused enough to permit a viewing of a full data set in the same location, and are arranged systematically to answer the research questions at hand.’⁹⁶⁹ They discuss two types of displays, matrices and networks. ‘A matrix is essentially the “crossing” of two lists, set up as rows and columns.’⁹⁷⁰ Networks are diagrams that show ‘nodes’ connected by lines or links. This research uses both matrices and diagrams to display and analyse the qualitative data.

⁹⁶⁵ Please see Appendix

⁹⁶⁶ In other words, more than one code can be assigned to the data without being inconsistent. As a matter of fact, each relevant phrase uttered by each participant is coded with each of these of the three levels of codes.

⁹⁶⁷ Exclusive codes represent data that are separate and distinct. For example, data can not represent a citizen actor who is both a business and a NGO representative.

⁹⁶⁸ Exhaustive codes mean that all possible types of categories have been included in the code list.

⁹⁶⁹ Miles and Huberman, 1994; 92

⁹⁷⁰ Miles and Huberman, 1995; 93

The Speaker and Survey Databases yield quantitative data. These quantitative data have been used to analyse survey respondent and speaker demographics and to identify relationships between individual demographics and public attitudes around the RMGC authorisation process. The Speaker and Survey Databases have been downloaded into the statistical software package SPSS, which has been used to calculate and generate the frequency distributions, summary statistics and cross tabulations.

The Speaker and Survey Databases were created from four data sources. Because the names and addresses of each speaker were recorded in the Ministry of the Environment's Speaker List and because most people who responded to the Self-Completed Survey included their name, home town, address and telephone number, I was able to assign a unique identifier for each participant and combine the data from both sources. From my public meeting observation field notes, I added data about the each speaker's gender and approximate age. In some cases this data was confirmed by responses to the Self-Completed Survey. Speaker comments recorded in the Speaker List were confirmed from the Public Meeting Transcripts and used to code each speaker's attitude about the RMGC public participation process and the project. The data from these four sources provide a rich understanding of the types of people who attended and spoke at the RMGC public meetings and their attitudes about public participation in Romania and the RMGC project.⁹⁷¹

This research used frequency distributions, summary statistics and cross tabulations to analyse the quantitative data. Frequency distributions have been

⁹⁷¹ See Appendix F for a list of fields included in the database.

calculated to gain an understanding of the types of people who attended the public meeting and to analyse public opinion about the RMGC public participation process. Measures of central tendency, or summary statistics, 'are ways of representing some important aspect of a set of data by a single number.'⁹⁷² Measures of central tendency (such as mean, median and mode) and measures of variability (such as range and variance) have been used to compare the meeting participants and speakers and their attitudes about the RMGC participation process. Cross tabulations use multiple variables to identify the relationships between them.

POSSIBLE METHODOLOGICAL ISSUES

An acceptable critical theory requires the free assent through self-reflection⁹⁷³ of the actors to whom the theory is addressed.⁹⁷⁴ This means that a critical theory is tested when the actors for whom the theory is addressed accept the theory, are freed from a worldview that frustrates their ability to realise their true interests and decide for themselves the kind of life they will lead going forward.⁹⁷⁵ This does not mean that a critical theory *predicts* that actors will freely assent to a critical theory.⁹⁷⁶ A critical theory shows actors their overwhelming interest in bringing about the transformation and asserts that

⁹⁷² Robson, 2002; 407

⁹⁷³ Self-reflection here is important. Otherwise, actors may reject a correct theory because of their false ideologies. (Bernstein, 1990; 202-3)

⁹⁷⁴ Geuss, 1991; 78 Bernstein, 1990; 201 This condition of reflective acceptability is distinct from the positivist approach which confirms theories through empirical observation and experiment. (Geuss, 1991; 79) Geuss wonders if the free of accent of both sets of actors is required for those cases of domination by one set of actors over another. (Geuss, 1991; 74)

⁹⁷⁵ Dryzek, 1990; 30; Bernstein, 1990; 182; Fay, 1987; 28

⁹⁷⁶ Geuss, 1991; 77 This is the Frankfurt School's criticism of Marxism, which predicted the inevitability of a classless society. (Geuss, 1991; 77)

rational actors *ought* to accept the theory based on their fundamental interests.⁹⁷⁷

Although the validity of a critical theory is tested by the reflective acceptance or rejection of the theory by the targeted actors, this research also considers the case study validity and reliability tests described by Yin. He asserts that there are four tests that are commonly used in order to determine research quality: construct validity, internal validity, external validity and reliability.⁹⁷⁸ Construct validity requires that appropriate data and data collection methods are used to measure or test a particular concept.⁹⁷⁹ Internal validity ensures that variables are indeed related rather than actually caused by external factors.⁹⁸⁰ External Validity 'deals with the problem of knowing whether a study's findings are generalizable beyond the immediate case study.'⁹⁸¹ Reliability ensures that repeated applications of the case study would yield the same results and conclusions.⁹⁸²

Yin describes three tactics to ensure construct validity in a case study: multiple sources of evidence, chain of evidence and draft review by key informants.⁹⁸³ According to Yin, 'the most important advantage presented by using multiple sources of evidence is the development of 'conversing lines of inquiry' - or

⁹⁷⁷ Geuss, 1991; 57 The actual occurrence of enlightenment or emancipation occurrence depends on other unpredictable factors. (Geuss, 1991; 76) Critical theories may be rejected because the actors are not suffering enough to overcome their 'natural resistance' to change and instability; they are unable to discern their false ideologies or perhaps because the theory itself must be re-examined. (Fay, 1987; 29-30; Bernstein, 1990; 215)

⁹⁷⁸ Yin, 2003; 33-39

⁹⁷⁹ Yin, 2003; 35

⁹⁸⁰ Yin, 2003; 36

⁹⁸¹ Yin, 2003; 37

⁹⁸² Yin, 2003; 37-38

⁹⁸³ Yin, 2003; 34

triangulation.⁹⁸⁴ Data triangulation addresses construct validity when more than one source of data supports the results of the case study. A chain of evidence allows the reader of the research study to ‘trace the steps’ between the initial research questions and the results of the case study.⁹⁸⁵ Finally in order to ensure construct validity, Yin suggests that the case study be reviewed by the research participants and informants.⁹⁸⁶

This case study research uses all of the Yin’s tactics to ensure construct validity. Triangulation was achieved in this study by collecting evidence from multiple data sources using multiple methods. Data was collected from all participant types – public administrators, the company, civil society activists and individuals – using multiple data collection methods – interviews, observer-as-participant, complete-participant observer, survey and archival research. This case study provides a clear chain of evidence from the research questions to the conclusions; the qualitative data collected and analysed for this research are used to develop the four theories of this critical theory. At submission a copy of this thesis was forwarded to Drs. Gabriel Badescu and Cosmin Marian and to my two main research assistants, Ramona Dragomir and Cris Ciupe. Their comments will be added to the final document.

Research studies that investigate causal relationships (event x led to event y) are concerned with internal validity.⁹⁸⁷ Internal validity is threatened when an outside factor (event z) may have led to the result (event y) rather than the

⁹⁸⁴ Yin, 2003; 98

⁹⁸⁵ Yin, 2003; 105

⁹⁸⁶ Yin, 2003; 159

⁹⁸⁷ Yin, 2003; 36

supposed causal factor (event x).⁹⁸⁸ Two of the four theories of a critical theory assert causal relationships. The *theory of crisis* considers the causes of the crisis and the *theory of ideology* describes the conditions and worldview that shape the participation ideologies that lead to the social crisis.⁹⁸⁹ For this critical theory, I use historical institutionalism's concept of punctuated equilibrium to explain the causal relationships in the theories of crisis and ideology. This theory sees institutions as characterised by long periods of stability which are punctuated by crises (sometimes externally and sometimes internally generated) that lead the institution to depart from its established patterns.⁹⁹⁰ For this thesis, the causal relationship between Romania's historical and contemporary socio-economic conditions and its institution of public participation and deliberation are examined.

According to Yin, in order to ensure external validity, either multiple-case studies are required or the research must rely on analytical generalisation.⁹⁹¹ In order to improve external validity for a single-case study like this one, the researcher relies on analytical generalisation – research results must be generalized back to broader theory.⁹⁹² As a single-case study, it would be difficult – and it does not make sense for either a critical theory or a theory based on new institutionalism - to attempt to extrapolate the specific results of this research to other Romanian participatory processes or to hybrid deliberative forums in communities outside of Romania – especially, the

⁹⁸⁸ Yin, 2003; 36

⁹⁸⁹ Outhwaite, 2009; 31; Bernstein, 1990; 216

⁹⁹⁰ Steinmo, Thelen and Longstreth, 1992; 27; Peters, 2005; 78; Pierson and Skocpol, 2002;

709

⁹⁹¹ Yin, 2003; 34

⁹⁹² Yin, 2003; 37

*theories of crisis, ideology and education.*⁹⁹³ More than one of the public administrators interviewed for this research admitted that the RMGC authorisation process has been very different from other Romanian authorisation processes and Romanian participatory activities in general.⁹⁹⁴ Anyway, a critical theory is applicable only for a targeted population so external validity is not as important for a case study grounded in critical theory. However, having said that, I would argue that this project's *theory of emancipation* is generalizable. The hybrid forum legitimacy standard was developed from deliberative democracy theory. As a theory based standard, this standard is analytically generalizable and can be applied to any hybrid deliberative forum at anytime or anyplace. Second, while the RMGC *project* is different from other Romanian projects that have been subject to an EIA process, the RMGC EIA *process* itself is similar to other Romanian EIA processes and indeed other EIA processes around the world. The results of the research to investigate this process can be used to compare and analyse other EIA processes.

'The goal of reliability is to minimize the errors and biases in a study.'⁹⁹⁵ In a case with perfect reliability, a later researcher - using the same procedures for the same case study - would arrive at the same conclusions reached by the

⁹⁹³ Steinmo, Thelen and Longstreth, 1992; 5; Pierson and Skocpol, 2002; 694

⁹⁹⁴ Interview: Alba County Council; Alba County Environmental Guard; Alba County SubPrefect; Arad County Environmental Protection Agency; Confidential 2; Confidential 1; Hunedoara County Environmental Guard; National Agency for the Protection of the Environment; The RMGC authorisation process has been different from other processes because it requires a complex series of authorisations, the public meetings were better organised and the project has experienced a greater amount of publicity, controversy and public participation. (Alba County Council Interview; Alba County Culture and Religion Interview; Alba County Environmental Guard Interview; Arad County Environmental Protection Interview; Confidential 2; Cluj County Environmental Guard Interview; Confidential 1; Hunedoara Environmental Guard Interview; National Environmental Protection Interview)

⁹⁹⁵ Yin, 2003; 37

current researcher.⁹⁹⁶ Reliability of a case study is improved when the research procedures have been thoroughly documented.⁹⁹⁷ To rigorously document the research processes, Yin suggests the use of a case study protocols and databases.⁹⁹⁸ Case study protocols include an overview of the case study project, detailed descriptions of the field procedures, the case study questions and a case study report guide.⁹⁹⁹ For this research the case study protocols are described in this chapter and in the appendices. The case study database includes the raw data, documents and notes.¹⁰⁰⁰ The case study database is stored on my computer, backed-up on DVD and auditable for five years from the date of publication.

The research as part of this single-case study project works to collect and analyse the data required to develop a complete critical theory about Romanian public participation and deliberation. This theory describes the political crisis of domination and frustration that manifested itself during the RMGC authorisation process. Drawing from Romanian historical and political literature, as well as, from primary data collected for this research, this theory explores the historical and contemporary conditions that have shaped the Romanian worldview regarding governance and participation and have resulted in the crisis experienced during the RMGC authorisation process. If accepted by future participants of hybrid forums, this theory offers a deliberative standard that provides an opportunity for Romanians to experience greater freedom and self-determination from public participation and deliberation.

⁹⁹⁶ Yin, 2003; 37

⁹⁹⁷ Yin, 2003; 37

⁹⁹⁸ Yin, 2003; 38

⁹⁹⁹ Yin, 2003; 69

¹⁰⁰⁰ Yin, 2003; 101

CHAPTER 5: DELIBERATIVE DEMOCRACY & DELIBERATIVE SYSTEMS

For this thesis, I expand on Deliberative Democracy theory – particularly on the notion of the *deliberative system* and the concept of *deliberative legitimacy*. In this chapter, I begin with a look at deliberative theory and deliberative systems. I review the deliberative democracy theoretic literature to describe and analyse deliberative democracy’s current understanding of the deliberative system. While what constitutes a discursive or deliberative arena is still somewhat contested¹⁰⁰¹, it is possible to identify and distinguish the range of forums that can constitute a deliberative system. This chapter confirms that a deliberative system consists of a number of distinct but related types of deliberative forums and arenas. But first, as with all critical theories, the theory developed for this thesis must include a description of its genesis and development.¹⁰⁰²

Deliberative democracy is fundamentally a normative theory of democracy¹⁰⁰³; deliberative democrats¹⁰⁰⁴ are ultimately pursuing an expanded, more ‘authentic’, more rational and ‘deeper’ democracy with more and better public

¹⁰⁰¹ Hendriks, 2006; 491; Rosenberg, 2007; 4; Button and Ryfe, 2005; 27

¹⁰⁰² Geuss, 1991; 79; Held, 1980; 176

¹⁰⁰³ Hendriks, 2006; 486; Benhabib, 1996a; 68; Parkinson, 2003; 191; Freeman, 2000; 373; For Dryzek, his theory of discursive democracy is an empirical theory rather than normative one. (Dryzek, 2000; 72; Benhabib, 1996a; 84)

¹⁰⁰⁴ Dryzek, 2000; 14; Hendriks, 2006; 487; Fraser, 1992; Benhabib, 1996a; Barber, 2003; Mansbridge, 1996

deliberation.¹⁰⁰⁵ Generally considered to be founded on the Habermasian critical theory of Communicative Action¹⁰⁰⁶, the heart of deliberative democracy theory is collective argument and reasoning among citizens.¹⁰⁰⁷ Political actors use discourse, an argumentative procedure, to propose, accept, test, analyse, evaluate and reject objective, normative and subjective validity claims.¹⁰⁰⁸ The activities of public deliberation and participation work toward mutual understanding and agreement around common concerns.¹⁰⁰⁹

THEORY GENESIS AND DEVELOPMENT

During the 1990s, the theory of democracy took a turn toward deliberative democracy theory.¹⁰¹⁰ Increasingly, democracy theorists began to see deliberative democracy as the legitimate form of democracy.¹⁰¹¹ Many theorists see the increased interest in participatory and deliberative democracy as a revival of the classical civic-republican conceptions of democracy and citizenship found in the city-states of ancient Greece.¹⁰¹² Here, the collective *polis* held legislative and resource distribution decision making authority.¹⁰¹³ Rationality, for Aristotle, required collective interaction and discourse and

¹⁰⁰⁵ Dryzek, 2000; 175; Fishkin and Farrar, 2005; 77; Carson and Hartz-Karp, 2005; Gaventa, 2007; xii; Outhwaite, 2009; 134; Connelly, 2009; 193; Benhabib, 1996a; 69; Melville, Willingham, and Dedrick, 2005; 42

¹⁰⁰⁶ Elster, 1998; 1; Gaventa, 2006a; 17; Dryzek, 1990; 29; Young, 1996; 122; Freeman, 2000; 407; Dryzek, 2000; Connelly, 2009; 186; Mansbridge, 2007; 261

¹⁰⁰⁷ Cohen, 1989b; 30; Gaus, 1997; 205; Hendriks, 2006; 491

¹⁰⁰⁸ Outhwaite, 2009; 128; Bernstein, 1990; 210; Dryzek, 1990; 54; Cohen, 1989b; 32; Gaus, 1997; 205; Gaventa, 2006a; 25

¹⁰⁰⁹ Bohman and Rehg, 1997; xiii

¹⁰¹⁰ Dryzek, 2000; 2; Rosenberg, 2007; 1; Chambers, 2002; 99; Levine, Fung and Gastil, 2005; 280; Cornwall and Coelho, 2007; 4; Elster, 1998; 1; Hendriks, 2006; 491; Parkinson, 2003; 180; Gutmann and Thompson, 1996; 4

¹⁰¹¹ Dryzek, 2000; 2; Benhabib, 1996a; 68; Hendriks, 2006; 486; Mansbridge, 2007; 251; Cohen, 1997; 72; Chambers, 2002; 98; Freeman, 2000; 373

¹⁰¹² Bohman and Rehg, 1997; xiv; Carpini, Cook and Jacobs, 2004; 315; Dryzek, 1990; 9; Cohen, 1997a; 80; Conover, Searing, and Crewe, 2002; 21; Hendriks, 2006; 491; Freeman, 2000; 378; Gaventa, 2006a; 12; Cohen and Uphoff, 2011; 35; Elster, 1998; 1; Johnston, 2011; 392; Williamson and Fung, 2004; 6

¹⁰¹³ Williamson and Fung, 2004; 6

involved persuasion, reflection, judgement and disclosure.¹⁰¹⁴ Politics was defined by reason, rather than power, and was employed to plan, implement and evaluate collective life.¹⁰¹⁵ The practices of public participation and deliberation were considered essential elements of a good person and of “the good life”.¹⁰¹⁶

For about 25 years after World Wars I and II, the dominate democracy theories were based on conceptions of competition, exclusion, the instrumental and aggressive pursuit of self-interest and the expression of fixed preferences through voting (Schumpeter, 1942; Downs, 1957; Dahl, 1956).¹⁰¹⁷ *Rational choice* theory assumes that people act autonomously as individuals based on a rational calculation of the personal utility of the options.¹⁰¹⁸ Individuals are not constrained by formal or informal institutions and their preferences are external to the political process.¹⁰¹⁹ *Democratic elitism* looks to protect democracy from *too much* participation by the uninformed, irrational, irresponsible, prejudiced, selfish, gullible and apathetic masses.¹⁰²⁰ After the experiences of the Bolshevik revolution and Nazi Germany’s mass public rallies, this conception of democracy sees collective participation as dangerous, lawless and violent – a threat to stability.¹⁰²¹ The inclinations of the public must sometimes be resisted

¹⁰¹⁴ Dryzek, 1990; 9; Cohen and Uphoff, 2011; 35; Gaus, 1997; 205; Manin, 1987; 345

¹⁰¹⁵ Dryzek, 1990; 10

¹⁰¹⁶ Cohen, 1997a; 80; Freeman, 2000; 378; Cohen and Uphoff, 2011; 35; Dryzek, 1990; 71

¹⁰¹⁷ Gaventa, 2006a; 13; Sanders, 1997; 356; Bohman and Rehg, 1997; xii; Hendriks, 2002a; 72; Stiefel and Wolfe; 2011; 20; Dryzek, 1990; 155; Cohen, 1997a; 68; Mansbridge, Bohman, Chamber et al, 2010; 66-67; Barber, 2003; 143; Young, 1996; 121; Elster, 1997; 4; Freeman, 2000; 375; Peters, 2005; 1

¹⁰¹⁸ Peters, 2005; 1; Steinmo, Thelen and Longstreth, 1992; 12

¹⁰¹⁹ Peters, 2005; 1

¹⁰²⁰ Bohman and Rehg, 1997; x; Gaventa, 2006a; 13; Cohen, 1997a; 81; Sanders, 1997; 354; Parkinson, 2003; 186; Johnston, 2011; 391; Dryzek, 1990; 120; Thompson, 2008; 498; Bessette, 1980; 104; Dryzek, 2001; 652

¹⁰²¹ Bohman and Rehg, 1997; x; Wolin, 1996; 37; Cohen, 1997a; 81; Gaventa, 2006a; 13; Sanders, 1997; 354; Held, 1987; 165 in Sanders, 1997; 355; Dryzek, 1990; 155

by those who govern them.¹⁰²² For these thinkers, direct ‘democracies were continually subject to tumult, disorder, and confusion.’¹⁰²³ The *economic theory of democracy*, which underlies social choice theory, suggests that political activity can be compared to market activity in both purpose and function.¹⁰²⁴ Here political parties are seen as ‘entrepreneurs who compete to sell their policies to a market of political consumers.’¹⁰²⁵ The *pluralist model of democracy* or *polyarchy* sees the political process as competition and bargaining among group interests - similar to the activity in the market place.¹⁰²⁶ Here interest groups define the public’s interests and state actors are seen as mediator and arbitrator between competing groups.¹⁰²⁷ This model assumes equal entry, open competition and fair bargaining among groups.¹⁰²⁸ In the pluralist view of democracy, participation and inclusion is to some degree expanded beyond elites. The competition between these groups results in an equilibrium that settles conflicts and ensures stability.¹⁰²⁹ These four theories argue that given the plurality of modern societies and the self-interest of citizens, there can be no such thing as a *common good*.¹⁰³⁰ From this perspective, societies are best governed by elites who are better equipped to

¹⁰²² Bessette, 1980; 104

¹⁰²³ Bessette, 1980; 104

¹⁰²⁴ Elster, 1997; 26; Bohman and Rehg, 1997; xi; Freeman, 2000; 374; Thompson, 2008; 498; Manin, 1987; 354; Peters, 2005; 13

¹⁰²⁵ Bohman and Rehg, 1997; xi; Freeman, 2000; 374; Manin, 1987; 355; Peters, 2005; 13

¹⁰²⁶ Dryzek, 1990; 162; Bohman and Rehg, 1997; xii; Hendriks, 2002a; 64; Cohen, 1997a; 68; Sanders, 1997; 373; Barber, 2003; 143; Stiefel and Wolfe; 2011; 20; Johnston, 2011; 391; Gaventa, 2006a; 29; Elster, 1997; 4; Manin, 1987; 355 More recently, *difference democrats* subscribe to a form of pluralism call *critical pluralism*, which sees competition among interest groups as necessary for the protection and advancement of diversity in politics and the interests of marginalised groups. (Hendriks, 2005b; 10; Benhabib, 1996; Young, 1992; 532 in Hendriks, 2002a; 64)

¹⁰²⁷ Hendriks, 2002a; 64; Hendriks, 2005b; 5

¹⁰²⁸ Cohen, 1997a; 71; Gaventa, 2006a; 29; Hendriks, 2005b; 5; Barber, 2003; 143; Stiefel and Wolfe; 2011; 20

¹⁰²⁹ Manin, 1987; 360; Hendriks, 2005b; 17

¹⁰³⁰ Bohman and Rehg, 1997; xi; Sanders, 1997; 355; Dryzek, 1990; 155; Freeman, 2000; 375

make rational decisions on behalf of the community.¹⁰³¹ Democracy is seen as an institutional arrangement where ‘individuals acquire the power to decide by means of a competitive struggle for the people’s vote.’¹⁰³² This leaves the public with the single participatory role of choosing between competing elites, which at the very least constrains the activities of leaders with the threat of being elected out of office.¹⁰³³

These views fit conveniently with Western democracy export and economic development efforts in the developing South during the period.¹⁰³⁴ These minimalist and elitist conceptions of democracy allowed Western state actors promoting democratisation to ignore economic and social equalities and to focus simply on election procedures.¹⁰³⁵ Western state actors promoted the formation of competing political parties despite the fact that only educated and well-off elites had opportunities to participate politically; that divisive competition among groups often clashed with local traditions; and despite the fact that political parties were invariably formed around ethnicity, further dividing the community.¹⁰³⁶ The pervasive idea during the 1960s concluded that inclusive political activity was dependent on economic growth, mass communications and occupation mobility; in other words ‘traditional’ societies must first be replaced with ‘modern’ ones.¹⁰³⁷ If public participation was encouraged at all, it was employed as a therapy to transform ‘traditional’ or ‘backward’ communities into citizens who were ready to manage the results of a predetermined development

¹⁰³¹ Bohman and Rehg, 1997; xi; Gaventa, 2006a; 13; Johnston, 2011; 391; Dryzek, 1990; 155

¹⁰³² Schumpeter, 1943; 269 in Barber, 2003; 142; Manin, 1987; 358

¹⁰³³ Bohman and Rehg, 1997; xi; Gaventa, 2006a; 13; Dryzek, 2001; 663; Johnston, 2011; 391; Dryzek, 1990; 120; Manin, 1987; 354; Bessette, 1980; 107

¹⁰³⁴ Stiefel and Wolfe; 2011; 20

¹⁰³⁵ Johnston, 2011; 391

¹⁰³⁶ Stiefel and Wolfe; 2011; 21

¹⁰³⁷ Cohen and Uphoff, 2011; 38; Stiefel and Wolfe; 2011; 20

process.¹⁰³⁸ This idea justified strong state actors and saw popular participation and the redistribution of political power as unnecessary luxuries until democracy and liberal markets were consolidated.¹⁰³⁹

Despite the dominance of democracy theories that focused on competition, self-interest and voting during this period, there were of course modern theorists who advocated for participatory and deliberative democracy prior to the deliberative turn – Jürgen Habermas (1962), Hannah Arendt (1958), John Dewey (1927) and John Stuart Mill (1859) to name the most important.¹⁰⁴⁰ These theorists argue that democracy is *more* rational when it provides opportunities for open, free, equal and informed policy debate and criticism that consider all perspectives.¹⁰⁴¹ Mill advocated “government by discussion” and the political inclusion of disenfranchised groups. He and Arendt asserted that public deliberation provides educational and personal development benefits for citizens.¹⁰⁴² Arendt distinguished what she called ‘communicative power’ - power that is expressed when people act together.¹⁰⁴³ For these theorists, open public debate tempers self-interests, broadens people’s perspectives and insists that people consider the interests of others; Arendt calls the result of this process “enlarged mentality”.¹⁰⁴⁴ In this way, it may be possible for citizens to

¹⁰³⁸ Stiefel and Wolfe; 2011; 22

¹⁰³⁹ Cohen and Uphoff, 2011; 38; Johnston, 2011; 391; Stiefel and Wolfe; 2011; 21

¹⁰⁴⁰ Dryzek, 2000; 2; Elster, 1998; 4; Gaventa, 2006a; 12; Bohman and Rehg, 1997; xii;

Conover, Searing, and Crewe, 2002; 21; Sanders, 1997; 372

¹⁰⁴¹ Dryzek and Niemeyer, 2008; 482; Freeman, 2000; 372; Dryzek, 1990; 10

¹⁰⁴² Elster, 1998; 4; Sanders, 1997; 350; Bohman and Rehg, 1997; xiii; Parkinson, 2003; 187;

Manin, 1987; 354; Dryzek, 1990; 38

¹⁰⁴³ Outhwaite, 2009; 139 Habermas ultimately uses this distinction in his theory of discursive democracy. The communicative power of the public sphere is distinct from the administrative power of the state. (Outhwaite, 2009; 139)

¹⁰⁴⁴ Arendt, 1961; Freeman, 2000; 383; Mansbridge, Bohman and Chambers et al, 2010; 74

discover a common good that considers and respects the basic rights and interests of all, including minorities.¹⁰⁴⁵

As for Habermas, he was developing his own, more critical, theories of participation and democracy. Habermas's *The Structural Transformation of the Public Sphere* was first published in 1962, but was not translated into English until 1989.¹⁰⁴⁶ In this, his first major book, Habermas traces the origins of our modern public sphere to 18th century Europe with the emergence of the *bourgeois public sphere*.¹⁰⁴⁷ During this time the relationship between state actors and the public shifts.¹⁰⁴⁸ As trade and industry grows, the role of state actors expand.¹⁰⁴⁹ This process initiates an interest among the public in the affairs of state actors and results in 'a sphere of criticism of public authority' among the newly educated and economically independent bourgeois.¹⁰⁵⁰ Here Habermas argues that public opinion is formed by public rationality and discourse in the public sphere and works to influence state policy.¹⁰⁵¹ However, over time, public opinion has come to be dominated by specialists, mass media and party activists.¹⁰⁵² In *Theory and Practice* (1963), Habermas argues that the 'scientisation' of politics excludes moral-political issues from political discourse by transforming them into technical issues; the scientisation of politics depoliticises and reduces the political realm.¹⁰⁵³ In *Legitimation Crisis* (1973), Habermas argues that - as the steering media of money and power of liberal

¹⁰⁴⁵ Freeman, 2000; 383; Dryzek, 1990; 119; Bohman and Rehg, 1997; xiii

¹⁰⁴⁶ Habermas, 1989

¹⁰⁴⁷ Habermas, 1989; 17; Outhwaite, 2009; 8; Dryzek, 1990; 38; Dryzek, 2000; 22

¹⁰⁴⁸ Habermas, 1989; 18; Outhwaite, 2009; 8

¹⁰⁴⁹ Habermas, 1989, 22; Outhwaite, 2009; 8

¹⁰⁵⁰ Habermas, 1989; 51; Outhwaite, 2009; 8; Dryzek, 1990; 38; Dryzek, 2000; 22

¹⁰⁵¹ Habermas, 1989; 28; Outhwaite, 2009; 7

¹⁰⁵² Habermas, 1989; 175, 244; Outhwaite, 2009; 9; Dryzek, 1990; 38; Dryzek, 2000; 23

¹⁰⁵³ Habermas, 1973; 255 in Outhwaite, 2009; 21

capitalist states encroach on social life - the economic system becomes primarily responsible for social integration and socialisation.¹⁰⁵⁴ As a result, economic crises simultaneously result in social crises.¹⁰⁵⁵ In order to avoid, or repress, these crises and to ensure legitimacy and stability, state actors are left with expanding and contradictory imperatives: continued accumulation for the capitalists on one hand and the expression of democratic values for the population on the other.¹⁰⁵⁶ Legitimation in modern liberal democracies is secured by formal political representation and a depoliticised public sphere which ensures mass loyalty while discouraging public participation.¹⁰⁵⁷ Class conflicts are routed into the political system where they become 'an institutionalized struggle over distribution'.¹⁰⁵⁸

It was also during this time that Habermas began developing his theory of communicative action, which ultimately became the foundation of today notions of deliberative democracy.¹⁰⁵⁹ Given his interest in 'the possibility of rational moral and political discourse in the public sphere' and his idea that emancipation requires unconstrained communication and understanding, Habermas turns his focus towards the ideas of intersubjectivity and mutual understanding.¹⁰⁶⁰ Habermas's *The Theory of Communicative Action* was first published in 1981; volume 1 was published in English in 1984 and volume 2 in

¹⁰⁵⁴ Habermas, 1975; 30; Outhwaite, 2009; 63-4; White, 1988; 112

¹⁰⁵⁵ Habermas, 1975; 30; Outhwaite, 2009; 63-4

¹⁰⁵⁶ Habermas, 1975; 36; White, 1988; 111; Outhwaite, 2009; 64; Dryzek, 2000; 22

¹⁰⁵⁷ Habermas, 1975; 36; Outhwaite, 2009; 64; White, 1988; 112

¹⁰⁵⁸ Habermas, 1979; 193 in Outhwaite, 2009; 64; White, 1988; 112

¹⁰⁵⁹ Outhwaite, 2009; 13; Dryzek, 1990; 19

¹⁰⁶⁰ Habermas, 1987a; 81-2; Outhwaite, 2009; 38 Dryzek argues that with the exception of the political implications of the colonisation of the lifeworld, Habermas's theory of communicative action is neither political or critical. For Dryzek, the theory of communicative action is a meta-philosophical theory not directed at a specific audience and not intended to facilitate their emancipation. (Dryzek, 1990; 19)

1987.¹⁰⁶¹ It is in these volumes that Habermas introduces many of the ideas ultimately used in deliberative democracy theory: the types of social action and rationality, discourse and validity-claims, the ideal speech situation, the consensus theory of truth, lifeworld and system, the colonisation of the lifeworld and new social movements.¹⁰⁶²

It was not until the late 1960s – accelerating after the Cold War - that the dominant conception of democracy began to turn from self-interest, voting and competition to an idea of democracy as egalitarian, inclusive, participatory and co-ordinated.¹⁰⁶³ This shift occurred because people had become dissatisfied and disillusioned with the results of the competitive non-participatory approach (e.g. the war in Vietnam); state actors had become interested in earning greater legitimacy; social movement activists began demanding greater power and the role of experts were increasingly questioned.¹⁰⁶⁴ During this time, authors (Arnstein, 1969; Pateman, 1970; Barber, 1984; Warren, 1992; Beetham, 1999) argued that authentic democracy *requires* ‘popular control over collective decision making’.¹⁰⁶⁵ For them, democracy is more than just occasional voting and citizens are entitled to participate in public affairs either through association in civil society, through stronger interactions between citizens and state actors or through direct democracy.¹⁰⁶⁶ Rather than seeing democracy as simply a set of rules, procedures and institutions, this ‘deepening democracy’ approach sees

¹⁰⁶¹ Habermas, 1984; Habermas, 1987a

¹⁰⁶² Outhwaite, 2009; 39, 67; Dryzek, 2000; 22

¹⁰⁶³ Bohman and Rehg, 1997; xii; Gaventa, 2006a; 12; Cohen and Uphoff, 2011; 40; Stiefel and Wolfe; 2011; 19

¹⁰⁶⁴ Gaventa, 2006a; 12; Cohen and Uphoff, 2011; 40; Bohman and Rehg, 1997; xii; Stiefel and Wolfe; 2011; 19

¹⁰⁶⁵ Beetham, 1999; 3 in Gaventa, 2006a; 12; Cohen and Uphoff, 2011; 40

¹⁰⁶⁶ Warren, 1992; 9; Beetham, 1999; 3; Johnston, 2011; 392; Gaventa, 2006a; 16; Bohman and Rehg, 1997; xiii

democracy as more; it sees it as equal and inclusive participation and autonomous self-determination for individuals and communities.¹⁰⁶⁷ Pateman saw democracy expanding through the workplace, bringing the idea of self-governance to an important arena in the lives of most adults.¹⁰⁶⁸ For Arnstein, participation enables those who have historically been excluded from political and economic processes to be deliberately included. Her eight rung *ladder of participation* illustrates the gradation of citizen power in public participation processes.¹⁰⁶⁹ While never actually using the term deliberative democracy, Barber's *Strong Democracy* calls for popular collective deliberation, reason, decision and action - many of the themes commonly associated with the deliberative democracy theory.¹⁰⁷⁰ Barber's strong democracy, as opposed to *thin* liberal democracy, revitalises citizenship by ensuring that all of the people govern themselves at least some of the time.¹⁰⁷¹ Barber asserts that politics are best dealt with by a community of free citizens who participate in an ongoing process of self-legislation transforming their private interests into public goods.¹⁰⁷²

The term *deliberative democracy* was used only a couple of times before 1990.¹⁰⁷³ It was first used by Joseph Bessette (1980) in his chapter *Deliberative Democracy: The Majoritarian Principle in Republican Government*.¹⁰⁷⁴ There Bessette argues that the framers of the US Constitution institutionalised representative legislatures in order to ensure 'collective

¹⁰⁶⁷ Johnston, 2011; 392; Gaventa, 2006a; 11; Bohman and Rehg, 1997; xiii

¹⁰⁶⁸ Pateman, 1970; Fung, 2004; 47

¹⁰⁶⁹ Arnstein, 1969; Cornwall, 2011; xiii

¹⁰⁷⁰ Barber, 2003; Dryzek, 1990; 124

¹⁰⁷¹ Barber, 2003; xxxiv; Dryzek, 1990; 124

¹⁰⁷² Barber, 2003; 132; Dryzek, 1990; 42

¹⁰⁷³ Dryzek, 2000; 2

¹⁰⁷⁴ Dryzek 2000; 12; Mansbridge, 2007; 259; Bohman and Rehg, 1997; xii; Hendriks, 2006; 491

reasoning about common concerns'.¹⁰⁷⁵ For Bessette, deliberation requires time – time to acquire experience, to consider information and arguments and to arrive at judgements about the common good.¹⁰⁷⁶ This means that representatives must deliberate on behalf of citizens who do not have the knowledge, experience, time, inclination or setting to deliberate for themselves and who are prone to spontaneous, uninformed and unreflective judgements anyway.¹⁰⁷⁷ In 1987, Manin argues that the real problem for a society based on individual liberty is the reconciliation of private interests with the common good.¹⁰⁷⁸ For him, deliberation - rather than a sum of the fixed predetermined will of individuals - makes public decisions legitimate.¹⁰⁷⁹ 'A legitimate decision does not represent the *will* of all, but is one that results from the *deliberation of all*.'¹⁰⁸⁰ In the end, however, Manin sees public deliberation as deliberation among political parties competing for votes in front of a universal audience of citizens who are persuaded to select the party that best represents their conception of the common good.¹⁰⁸¹ Citizens participate in public deliberations as an audience. With the exception of Habermas's public sphere, the original conceptions of public deliberation were certainly not participatory.

Then in the 1990s more democracy theorists began advocating for public participation in public deliberations.¹⁰⁸² In 1989, Joshua Cohen published an article where he defines legitimate democracy as 'an association that realizes

¹⁰⁷⁵ Bessett, 1980; 105; Mansbridge, 2007; 259

¹⁰⁷⁶ Bessett, 1980; 106

¹⁰⁷⁷ Bessett, 1980; 106

¹⁰⁷⁸ Manin, 1987; 351

¹⁰⁷⁹ Manin, 1987; 352

¹⁰⁸⁰ Manin, 1987; 352

¹⁰⁸¹ Manin, 1987; 359

¹⁰⁸² Dryzek, 2000; 2; Rosenberg, 2007; 1; Chambers, 2002; 99; Levine, Fung and Gastil, 2005; 280; Cornwall and Coelho, 2007; 4; Elster, 1998; 1; Hendriks, 2006; 491; Bohman and Rehg, 1997; xii

the ideal of free deliberation among equal citizens.¹⁰⁸³ Cohen then lays out what he calls the *ideal deliberative procedure*. This procedure sees legitimate deliberation as free, equal and reasoned, with the objective of reaching consensus or agreement and with a focus on the common good.¹⁰⁸⁴ In 1990, Dryzek drew on ‘a classical Aristotelian model of politics, participatory democracy, communicative action, practical reason and critical theory’ to develop his theory of *discursive democracy*.¹⁰⁸⁵ In this theory, Dryzek finds democracy in the participation, communicative rationality and discourse of the public sphere – rather than in the deliberations of state actors.¹⁰⁸⁶ Dryzek argues that modern politics is in crisis and he offers his critical theory of discursive democracy as a constructive alternative for politics, policy analysis, policy making and political science.¹⁰⁸⁷ For Dryzek, discursive institutions must be designed for ‘recurrent communicative interaction’ without hierarchy; outcomes must be based on good reasoned arguments rather than the authority

¹⁰⁸³ Cohen, 1989b; 26

¹⁰⁸⁴ Cohen, 1989b; 32

¹⁰⁸⁵ Dryzek, 1990; ix; Initially in 1990, Dryzek called his critical theory of democracy *discursive democracy*; he did not use the phrase *deliberative democracy* at all in that work. (Dryzek, 1990; Dryzek, 2000; v) By the time he had written his second book on his theory in 2000, writers had begun using the terms deliberative democracy and discursive democracy interchangeably - and deliberative democracy was used more often. Dryzek prefers the term discursive democracy, but despite his misgivings, he ultimately settles that deliberation and discourse may be used interchangeably. He also settles that deliberative democracy should be considered the more inclusive category. (Dryzek, 2000; vi) However, he maintains that we should consider two different strands of deliberative democracy, one derived from liberalism (*liberal constitutional deliberative democracy*) and one derived from critical theory (*discursive democracy*). (Dryzek, 2000; vi; Hendriks, 2006; 491) Some deliberative democrats challenge Dryzek’s attempts to link discursive democracy with deliberative democracy. (Fraser, 1992; Hendriks, 2009; Chambers, 2002; Mansbridge, 2007; 266) Fraser (1992) argues that discursive contestation is different than deliberation. She is concerned that the contestation of discourse might collapse into a ‘marketplace of ideas’ where the public conversation will be dominated by the strongest, loudest and best-resourced actors. (Fraser, 1992; 121-122; Hendriks, 2006; 494; Young, 1999; 153; Shapiro, 1999; 34-35)

¹⁰⁸⁶ Dryzek, 1990; 38; Hendriks, 2006; 491

¹⁰⁸⁷ Dryzek, 1990; 13 and 21; His audience are not only those dissatisfied with modern politics, but all members of political societies organised around instrumental rationality and liberalism. (Dryzek, 1990; 21)

of specific individual participants.¹⁰⁸⁸ Discursive institutions must be inclusive; no one with an interest in the outcome can be excluded.¹⁰⁸⁹ Rather than as representatives, individuals should participate as citizens and the deliberations should focus on their individual and collective needs.¹⁰⁹⁰

For the next 20 years many important theorists weighed in on the idea of deliberative democracy.¹⁰⁹¹ Although Habermas has been concerned with democracy, discourse and participation since *The Structural Transformation of the Public Sphere* (1962), he did not expand his theory of communicative action (1981) into a theory of discursive democracy until 1992 (first translated into English in 1996) with his major work *Between Facts and Norms*.¹⁰⁹² Habermas offers a rich model that considers the ‘interrelations between politics, morality and law.’¹⁰⁹³ In his theory, Habermas tries to transcend both the republican and liberal conceptions of democracy, which both see society as centred in the state – either as the mediator of private interests or as the institutionalisation of an ethical community.¹⁰⁹⁴ Unlike many liberals, for Habermas the function of constitutional rights is not simply to protect the self interests of citizens, but rather to ensure a space for their public participation and deliberation.¹⁰⁹⁵ However, discursive democracy rejects the republican notion of an ‘undifferentiated popular sovereignty’ and the communitarian reliance on a pre-

¹⁰⁸⁸ Dryzek, 1990; 41

¹⁰⁸⁹ Dryzek, 1990; 41

¹⁰⁹⁰ Dryzek, 1990; 43

¹⁰⁹¹ Some important ones: Benhabib, 1996; Bohman, 1996; Chambers, 1996, 2002, 2006; Cohen, 1997; Dryzek, 2000; Elster, 1997, 1998; Fischer, 2003; Fraser, 1992; Fung, 2003; 2004; Hendriks, 2002, 2005, 2006, 2009; Mansbridge, 1992, 1996, 1999, 2007; Young, 1990, 1992, 1996, 1997, 1999, 2000, 2001, 2003

¹⁰⁹² Dryzek, 2000; 20; Habermas, 1998; White, 1988; 126

¹⁰⁹³ Outhwaite, 2009; 147

¹⁰⁹⁴ Habermas, 1998; 26, 296; Benhabib, 1996b; 6; Outhwaite, 2009; 136

¹⁰⁹⁵ Habermas, 1998; 296; Dryzek, 2000; 26; Outhwaite, 2009; 136; Freeman, 2000; 414; Gutmann and Thompson, 1996; 17; Rehg, 1998; xxv-xxvii; Estlund, 1997; 184; Manin, Stein and Mansbridge, 1987; 343

existing tradition that restricts deliberative content.¹⁰⁹⁶ Distinct from liberal democracy, discursive democracy does not see politics as the aggregation of pre-defined privately conceived interests.¹⁰⁹⁷ Distinct from republican forms of democracy, social integration develops as part of participatory and deliberative politics.¹⁰⁹⁸ Habermas creates his theory of democracy as the ideal procedure for rational discussion and argumentation and public decision-making.¹⁰⁹⁹ It is in *Between Facts and Norms* that Habermas offers his two-track model of a deliberative system that will be discussed later in this chapter.¹¹⁰⁰ Rather than specifying a substantive concept of the good life, Habermas's discursive democracy offers a procedural concept for attaining that goal.¹¹⁰¹ Critics complain that Habermas's theory of discursive democracy is not a critical theory in that it offers legitimacy to many of the existing institutions (for example, rights, elections, parliaments) of the liberal state without arguing for increased democratisation.¹¹⁰²

In 1993, Rawls first published his theory of public reason and deliberation in *Political Liberalism*.¹¹⁰³ He revised and expanded the theory with his article 'The Idea of Public Reason Revisited' in 1997.¹¹⁰⁴ Both Habermas and Rawls accept as inevitable the notion that modern democracies are characterised by pluralism – diverse and sometimes conflicting views on morality, philosophy, religion, knowledge, truth and concepts of the good life even among reasonable

¹⁰⁹⁶ Dryzek, 2000; 26; Habermas, 1998; 297; Outhwaite, 2009; 54

¹⁰⁹⁷ Habermas, 1998; 299

¹⁰⁹⁸ Habermas, 1998; 296; Dryzek, 2000; 26

¹⁰⁹⁹ Habermas, 1998; 296; Outhwaite, 2009; 142

¹¹⁰⁰ Habermas, 1998; 308; Dryzek, 2001; 656; Hendriks, 2006; 496; Parkinson, 2003; 185

¹¹⁰¹ Outhwaite, 2009; 146

¹¹⁰² Dryzek, 2000; 25, 27; Outhwaite, 2009; 148

¹¹⁰³ Rawls, 2005a

¹¹⁰⁴ Rawls, 2005b; Dryzek, 2000; 14; Freeman, 2000; 399

people.¹¹⁰⁵ Rawls call this ‘the fact of reasonable pluralism’.¹¹⁰⁶ Reasonable people recognise and accept that other reasonable people sometimes hold comprehensive doctrines different from their own.¹¹⁰⁷ Rawls’s public reason wants to transcend this diversity among comprehensive doctrines with public reason based on free and equal participation and deliberation – guaranteed by constitutional rights and freedoms - aimed at the common good and founded on a *shared political conception of justice*.¹¹⁰⁸ Participants in the political arena should offer reasons in terms of a conception of the common good and in terms that reasonable people can reasonably be expected to accept, rather than in terms of individual or group interests and comprehensive doctrines.¹¹⁰⁹ Distinct from Habermas’s discursive theory which is justified as an epistemological search for rationality and truth, Rawls’s theory is justified as a moral requirement for political legitimacy and justice.¹¹¹⁰ Given the coercive nature of political decisions and the sovereignty of citizens, only those decisions based on reasons that all people subject to those decisions can reasonably be expected to accept can be considered legitimate.¹¹¹¹ Given the coercive nature of public decisions, Rawls restricts the use of public deliberation to

¹¹⁰⁵ Rawls, 2005a, 3, 63; Freeman, 2000; 379; Habermas, 1987a; 81-2

¹¹⁰⁶ Rawls, 2005a; 63, 145; Freeman, 2000; 399; Dryzek, 2000; 11

¹¹⁰⁷ Rawls, 2005b; 463; Freeman, 2000; 400-1;

¹¹⁰⁸ Rawls, 2005a; 9, 35; Freeman, 2000; 398-9; Cohen, 1997; 68; Dryzek, 2000; 14; Dryzek, 2001; 653; Benhabib, 1996a; 75; Cohen, 1989b; 30; Cohen, 1997; 72; Christiano, 1997; 262; Gaus, 1997; 205; Bohman and Rehg, 1997; xvii

¹¹⁰⁹ Rawls, 2005a; xlviii; Freeman, 2000; 383; Cohen, 1997; 68; Dryzek, 2000; 11 and 14; Dryzek, 2001; 653; Bohman and Rehg, 1997; xvi

¹¹¹⁰ Freeman, 2000; 378; Dryzek, 2000; 15

¹¹¹¹ Rawls, 2005a; 48-54; Freeman, 2000; 379

constitutional affairs and matters of 'basic justice'.¹¹¹² Rawls finds public deliberation primarily employed in courts and legislatures.¹¹¹³

Over the last forty years, popular participation has been more widely encouraged as part of development efforts in the underdeveloped Southern states.¹¹¹⁴ By this time, the notions of participation as therapy had been discredited and development efforts began focusing on 'appropriate technologies', 'local development' and the 'productive use of labour'.¹¹¹⁵ Practitioners became aware that project beneficiaries need to directly contribute to and benefit from development projects.¹¹¹⁶ For much of that time, local participation was encouraged as part of development projects.¹¹¹⁷ However, recently participation has worked to include citizens in local and state co-governance councils – either by holding open seats for the underrepresented (for example women, minorities and the poor) or by allowing local civil society groups to appoint representatives to local councils and committees.¹¹¹⁸ Important thinkers (Gaventa, 2006a; Cohen and Fung, 2004; McCoy and Scully, 2002) in the area of participatory governance see a split between their conceptions of democracy and the theory of deliberative democracy.¹¹¹⁹ For them, participatory governance emphasises inclusion in democratic processes, while deliberative democracy focuses on the quality of the public deliberation

¹¹¹² Rawls, 2005a; xlviii, 227-30; Freeman, 2000; 379; Dryzek, 2000; 11, 14; Dryzek, 2001; 653; Benhabib, 1996a; 75; Benhabib argues that Rawls deviates from the deliberative model by restricting the deliberative agenda. (Benhabib, 1996a; 76)

¹¹¹³ Rawls, 2005a; 231-40; Freeman, 2000; 398-9; Dryzek, 2000; 15

¹¹¹⁴ Gaventa, 2011; 253

¹¹¹⁵ Stiefel and Wolfe; 2011; 22

¹¹¹⁶ Cohen and Uphoff, 2011; 39

¹¹¹⁷ Gaventa, 2011; 253

¹¹¹⁸ Gaventa, 2011; 253; Gaventa, 2006a; 15; Cornwall and Coelho, 2007; Manor, 2004; Bohman and Rehg, 1997; xiii

¹¹¹⁹ Gaventa, 2006a; 17; Cohen and Fung, 2004; McCoy and Scully, 2002

and decision making.¹¹²⁰ The ideas of participatory governance is very much practitioner led, while deliberative democracy theory has, for the most part, been developed by political scientists.¹¹²¹

An important event for the advancement of the practical application of public participation and deliberation was the United Nations Conference on Environment and Development (UNCED) (aka Earth Summit, Rio Conference and Rio Summit) in June 1992.¹¹²² There attendees signed the Rio Declaration on the Environment and Development and launched the Local Agenda 21 (LA 21) program.¹¹²³ Six years later the Aarhus Convention expanded the ideas and commitments of the Rio Declaration.¹¹²⁴ The declarations, conventions and programmes assert that environmental issues and sustainable development are best handled with broad participation in public decision making.¹¹²⁵ State signatories agreed to provide opportunities for the public to participate in public decision-making; to ensure the use of Environmental Impact Assessments; to guarantee the public's rights of access to public information; to promote public awareness on environmental issues; and to ensure access to justice in

¹¹²⁰ Gaventa, 2006a; 17; Gaventa, 2007; xiv ; Cohen and Fung, 2004; McCoy and Scully, 2002

¹¹²¹ Cohen and Uphoff, 2011; 39

¹¹²² UNEP, 1992; Representatives of 172 states – including 108 heads of State – and representatives of nearly 2,400 Non-Government Organisations (NGOs) attended the 1992 Earth Summit. Other documents produced included the Convention on Biological Diversity, the Forest Principles and the Framework Convention on Climate Change, which ultimately led to the Kyoto Protocol. (UNFCCC) The UN's World Summit on Sustainable Development is planning a 20 year follow up to the Earth Summit in 2012, Rio+20.

¹¹²³ UNEP, 1992; Stringer, Scriciecu and Reed, 2009; 77; Principle 15 introduces the approach to the environment now known as the 'precautionary principle'. In this principle, states agree that a lack of scientific certainty is not a justification for the postponement of measures to prevent environmental degradation. Principle 16 reaffirms the 'polluter pay' approach to the costs of pollution. In Principle 13, states agree to develop national liability and compensation laws for victims of environmental damage. (UNEP, 1992)

¹¹²⁴ UNECE, 1998; The UNECE organised the conference in Aarhus, Denmark in June 1998.

¹¹²⁵ UNEP, 1992; UNDESA, 1992; UNECE, 1998; Stringer, Scriciecu and Reed, 2009; 77; The UN's Commission on Sustainable Development (CSD) manages Local Agenda 21 (LA 21). The Agenda specifically calls for states to encourage the participation of women, young people, indigenous people and local communities, business and industry, labour unions, NGOs, the poor, the elderly and the disabled.

environmental matters.¹¹²⁶ The Aarhus Convention claims that these rights promote accountability and transparency in decision-making, which strengthens the legitimacy of public decisions.¹¹²⁷ The Aarhus Conventions asserts that

*Improved access to information and public participation in decision-making enhance the quality and the implementation of decisions, contribute to public awareness of environmental issues, give the public the opportunity to express its concerns and enable public authorities to take due account of such concerns.*¹¹²⁸

DELIBERATIVE DEMOCRACY AND COMMUNICATIVE ACTION

This thesis draws on *Deliberative Democracy Theory* to develop the deliberative legitimacy standard that is used to critic the legitimacy claims of the RMGC EIA hybrid forums. Dryzek and others argue that deliberative democracy has its roots in classical politics and Habermas's communicative rationality; the theory of knowledge that legitimates and justifies deliberative democracy is Critical Theory.¹¹²⁹ Deliberative democracy is rooted in the Habermasian idea that communicative action counteracts the conditions of modernity - strategic rationality and colonisation of the lifeworld.¹¹³⁰

¹¹²⁶ UNEP, 1992; UNECE, 1998; 5; Stringer, Scricciu and Reed, 2009; 77; Okello and Beevers et. al., 2009; 217

¹¹²⁷ UNECE, 1998; 5; The EU and Romania signed the Aarhus convention at inception on 25 June 1998. Romania ratified the convention in July 2000 with Law 86/2000 and the EU approved it for European Community institutions in 2005 with European Council Decision 2005/370/EC.

¹¹²⁸ UNECE, 1998; 2; Okello and Beevers et. al., 2009; 217

¹¹²⁹ Dryzek, 1990; 13, 29; Elster, 1998; 1; Gaventa, 2006a; 17; Young, 1996; 122; Cohen, 1989; Hendriks, 2006; Freeman, 2000; 407; Mouffe, 1999; 746; Papadopoulos and Warin, 2007; 463; n17

¹¹³⁰ Habermas, 1987a; Elster, 1998; 1; Gaventa, 2006a; 17; Dryzek, 1990; 29

Habermas departs from Marx with his understanding of the foundation of all socio-cultural life.¹¹³¹ For Marx, work defines the powers and potentials that make humans unique and distinguishes us from other species.¹¹³² For Habermas *species being* for humans is defined by communicative action.¹¹³³ He sees individuals and societies shaping and determining themselves through work, but more importantly through interaction and communication.¹¹³⁴ Marx's political goal is towards non-alienating and non-exploitative labour.¹¹³⁵ Habermas's is a society of free and undistorted communication.¹¹³⁶

Habermas identifies three worlds to which humans relate: 'the objective world of physical things', 'the social world of roles and norms' and 'the subjective world of inner experiences'.¹¹³⁷ Each of these worlds requires its own sort of action. Relating to the objective world, actors employ *teleological* or *purposive* actions which are based on a purposive (means-end, cause-effect and goal-oriented) rationality.¹¹³⁸ For social world relations, actors employ *normatively regulated* actions that are driven by the moral-practical rationality (values, norms and expected behaviours) shared by the members of a social group.¹¹³⁹ *Dramaturgical* actions are based on a subjective rationality that is derived from an actor's personal experiences and involve the presentation of self.¹¹⁴⁰

¹¹³¹ Habermas, 1971; 42; Ritzer, 2008; 290

¹¹³² Ritzer, 2008; 49

¹¹³³ Habermas, 1970a; 91 in Ritzer, 2008; 290; Outhwaite, 2009; 16

¹¹³⁴ Habermas, 1970; 92 in Bernstein, 1990; 195; Chambers, 2002; 92; Ritzer, 2008; 290; Outhwaite, 2009; 16

¹¹³⁵ Ritzer, 2008; 290; Bernstein, 1990; 197

¹¹³⁶ Ritzer, 2008; 290; Bernstein, 1990; 197

¹¹³⁷ Habermas, 1984; 119; Outhwaite, 2009; 16, 68

¹¹³⁸ Habermas, 1984; 11; Outhwaite, 2009; 69

¹¹³⁹ Habermas, 1984; 50; Outhwaite, 2009; 69

¹¹⁴⁰ Habermas, 1984; 90; Outhwaite, 2009; 69

In addition to the actions performed in these three worlds, *communicative action* is the verbal or non-verbal interaction among actors seeking to reach mutual understanding and agreement.¹¹⁴¹ Communicative action is given by communicative rationality, which makes use of all three rationalities - purposive, subjective and moral-practical.¹¹⁴² This type of rationality benefits political decisions because it expands beyond logic, expertise and science to include all other forms of knowledge – normative, experiential and aesthetic – that are more historically and locationally relevant.¹¹⁴³ Communicative rationality and deliberative democracy privilege reason constructed from inter-subjective communication over that which is formed by individual cognition.¹¹⁴⁴ Communicative rationality is generated as actors seek mutual understanding and agreement about their current situation, their plan of action and the coordination of their actions.¹¹⁴⁵ While self-interest is a part of mutual understanding¹¹⁴⁶, the success of communicative action is not measured against some pre-determined goal and actors ‘pursue their individual goals under the condition that they can harmonise their plans of action.’¹¹⁴⁷

¹¹⁴¹ Habermas, 1984; 75; Habermas, 1987a; 2; Habermas, 1998; 18; Mansbridge, 2007; 253; Outhwaite, 2009; 16, 70, 69; Dryzek, 1990; 14; Dryzek, 2000; 22; Ritzer, 2008; 290; Outhwaite, 2009; 70

¹¹⁴² Habermas, 1984; 95; Dryzek, 1990; 14; Outhwaite, 2009; 46; Edwards, 2004; 116; Bernstein, 1990; 197; These claims are expressed as constative, regulative and experiential speech acts. (Outhwaite, 2009; 46) Each of the four forms of action and rationality inform and shape each other. (Outhwaite, 2009; 16; Bernstein, 1990; 204) In other words, historic forms of labour ‘exert a powerful *causal* influence on the nature and quality of symbolic interaction.’ (Bernstein, 1990; 197 *Italics in original*) Bernstein adds that Habermas’s goal of free and undistorted communication will not be possible without free, undistorted and creative labour. (Bernstein, 1990; 197)

¹¹⁴³ Healey, 1992; 150

¹¹⁴⁴ Dryzek, 1990; 14; Outhwaite, 2009; 68; Bernstein, 1990; 214; Healey, 1992; 150

¹¹⁴⁵ Habermas, 1984; 86; Habermas, 1987a; 27; Outhwaite, 2009; 69; Dryzek, 1990; 14

¹¹⁴⁶ Honneth and Hans, 1991; 241 in Outhwaite, 2009; 108

¹¹⁴⁷ Habermas, 1984; 285; Ritzer, 2008; 290; Dryzek, 1990; 14; Outhwaite, 2009; 45

Communicative action negates modernity's preoccupation with purposive rationality and counteracts the inappropriate use of purposive rationality – what Habermas calls instrumental and strategic rationality.¹¹⁴⁸ Appropriately employed, humans use purposive rationality to make sense of and to come to terms with external nature.¹¹⁴⁹ Interacting with, controlling or manipulating nature and objects, humans use purposive action for survival, self-interest, labour and the material interchange of society.¹¹⁵⁰ Based on an actor's empirical knowledge of objective reality (facts) and his/her predictions of outcomes, a purposive rational actor seeks the most effective means for achieving a goal.¹¹⁵¹ Purposive action is based on the technical human interest and its inherent telos is instrumental mastery.¹¹⁵²

Actors who appropriately employ purposive rationality consider 'a *rationality of choice* in setting ends selected in accord with values.'¹¹⁵³ However, actors employing *instrumental rationality* are only concerned with the effective means toward an unreflected goal; preference is given to means (technology and efficiency) rather than to ends.¹¹⁵⁴ Setting valued goals for a purposive action is

¹¹⁴⁸ Dryzek, 1990; 4; Outhwaite, 2009; 107; Dryzek argues that many of those who study society – economists, political scientists and some sociologists – assume that a form of rationality based on a knowledge of facts, selected goals and the most effective means for realising those goals drives *all* human behaviour.

¹¹⁴⁹ Habermas, 1984; 11; Outhwaite, 2009; 16; Weber called this form of rationality *formal rationality*. (Ritzer, 2008; 283)

¹¹⁵⁰ Habermas, 1984; 10; Chambers, 2002; 92; Ritzer, 2008; 289; Bernstein, 1990; 193; Outhwaite, 2009; 68

¹¹⁵¹ Habermas, 1970a; 91-2 in Bernstein, 1990; 193; Ritzer, 2008; 283; Outhwaite, 2009; 68; Dryzek, 1990; 3; Dryzek, 2000; 22

¹¹⁵² Habermas, 1984; 11; Bernstein, 1990; 195

¹¹⁵³ Habermas, 1984; 170 Italics in original

¹¹⁵⁴ Habermas, 1984; 171; Outhwaite, 2009; 16; Ritzer, 2008; 290 Kincheloe and McLaren, 2000; 282; Dryzek, 2000; 22 Edwards, 2004; 115; Outhwaite, 2009; 16; Weber and Horkheimer called this form of rationality *subjectively purposive-rational* action. (Outhwaite, 2009; 70; Dryzek, 1990;9) This form of rationality is also sometimes called technical rationality. (Kincheloe and McLaren, 2000; 282) Oftentimes instrumental rationality and purposive rationality are used synonymously. (McCarthy, 1984; xxiii)

ultimately a normatively regulated action, driven by moral-practical rationality.¹¹⁵⁵ Instrumental rationality skips this step.

For Habermas, *strategic rationality* refers to a situation with 'at least two goal-acting subjects who achieve their ends by way of orientation to, and influence on, the decisions of other actors.'¹¹⁵⁶ In this case, success is dependent not only on physical objects, but also on the decisions of other actors.¹¹⁵⁷ Without communication among actors, rational behaviour must be based on a positivist view of individuals and society. A positivist approach objectifies humans and sees individuals and societies as passive entities governed by complex, but fixed and observable laws.¹¹⁵⁸ Without mutual understanding, strategic rationalists - working to satisfy their own self-interest - must develop strategies to control, manipulate and sometimes deceive other actors.¹¹⁵⁹ Without communication, a rational actor must create strategies for relating to others based on conditional predictions, analytic knowledge and deduction based on technical rules.¹¹⁶⁰

Purposive rationality has given us the technology and material wealth to free humans from harsh living conditions and to create an environment for political and civic rights and freedoms.¹¹⁶¹ It is important to highlight that Habermas does not belittle this type of rationality; purposive rationality is important for human survival and quality of life.¹¹⁶² However, purposive rationality and in

¹¹⁵⁵ Held, 1980; 170

¹¹⁵⁶ Habermas, 1984; 88; Outhwaite, 2009; 69; Ritzer, 2008; 290

¹¹⁵⁷ Habermas, 1984; 88

¹¹⁵⁸ Held, 1980; 161; Ritzer, 2008; 18, 282

¹¹⁵⁹ Habermas, 1984; 294; Outhwaite, 2009; 45

¹¹⁶⁰ Habermas, 1970a; 91-2 in Bernstein, 1990; 193

¹¹⁶¹ Dryzek, 1990; 5; White, 1988; 125

¹¹⁶² Bernstein, 1990; 194; Outhwaite, 2009; 20; White, 1988; 125

particular instrumental and strategic rationality become repressive when instead of focusing on physical objects – like a potter with his clay or a carpenter with her tools - rationality works to control and manipulate humans as objects.¹¹⁶³

Rather, in addition to claims of objective truth and effectiveness, coordinated actions must also be based on claims of rightness or appropriateness in relation to a legitimate normative context.¹¹⁶⁴ Here, norms can be criticised and defended based on whether an action is consistent with a particular norm, whether the norm is legitimate within a given context or whether the norm itself is justified.¹¹⁶⁵ The validity of social norms is grounded in intersubjectively derived and understood intentions and obligations.¹¹⁶⁶ While normative claims are not considered as objectivist proof, neither are they treated as ‘arbitrary and idiosyncratic’; actors offering normative judgements can be asked to defend their propositions with reasons.¹¹⁶⁷

Deliberative democrats see that communicative action offsets the political repression caused by instrumental and strategic rationality.¹¹⁶⁸ Instrumental and strategic rationality are essentially coercive, technocratic, exclusive and hierarchical.¹¹⁶⁹ An instrumentally rationalised society is antidemocratic; instrumental rationality reduces a sense of self and community and

¹¹⁶³ McCarthy, 1984; xxiii

¹¹⁶⁴ Habermas, 1984; 16; McCarthy, 1984; xv; Outhwaite, 2009; 49

¹¹⁶⁵ Habermas, 1984; 103-5; Outhwaite, 2009; 70; Habermas makes clear that truth claims based on cultural values do not transcend local boundaries in the way that truth and rightness do. Values are located within borders of the lifeworld of a specific social group. (Habermas, 1984; 42)

¹¹⁶⁶ Habermas, 1970a; 92 in Bernstein, 1990; 195

¹¹⁶⁷ Habermas, 1984; 16; Dryzek, 1990; 15

¹¹⁶⁸ Dryzek, 2000; 148

¹¹⁶⁹ Chambers, 2002; 93; Dryzek, 1990; 4

concentrates and centralises political power.¹¹⁷⁰ Dryzek argues that instrumentalised communities are subject to totalitarian appeals offering security, conformity and objective norms.¹¹⁷¹ Like communicative action, the aims of public deliberations are mutual understanding and agreement through language.¹¹⁷² This means that the rationality of public deliberations must draw simultaneously and equally on objective, normative and subjective claims. Political interaction, and the aim of mutual understanding, is achieved through conversation and argumentation.¹¹⁷³ Political actors deliberate to reach mutual understanding and agreement about their current situation, their normative aims and their plans of action.

Communicative action relies on a shared contextual background against which people interact and communicate; Habermas calls this the *lifeworld*.¹¹⁷⁴ The lifeworld contains the accumulated knowledge, interpretations, social relations norms and communicative competences of past and current generations.¹¹⁷⁵ Social actors draw on these meanings to make sense of our physical, social and subjective worlds.¹¹⁷⁶ The lifeworld must exist for communication among actors to be possible; it co-ordinates social actions.¹¹⁷⁷ It is through communicative action in the lifeworld that societies reproduce (renew and

¹¹⁷⁰ Dryzek, 1990; 5

¹¹⁷¹ Dryzek, 1990; 4

¹¹⁷² Habermas, 1998; 325; Hendriks, 2006; 492; Thompson, 2008; 499

¹¹⁷³ Outhwaite, 2009; 46

¹¹⁷⁴ Habermas, 1987a; 117-150; Chambers, 2002; 92; Ritzer, 2008; 224; Held, 1980; 166;

Dryzek, 1990; 20; Outhwaite, 2009; 84; Dryzek, 2000; 22

¹¹⁷⁵ Habermas, 1987a; 314; Chambers, 2002; 92; Outhwaite, 2009; 128; Held, 1980; 166;

Ritzer, 2008; 538

¹¹⁷⁶ Habermas, 1984; 13; Habermas, 1987a; 204; Chambers, 2002; 92; Outhwaite, 2009; 84

¹¹⁷⁷ Habermas, 1987a; 152; Outhwaite, 2009; 86; Ritzer, 2008; 538

transmit knowledge), integrate (stabilise social solidarity) and socialise (form personal identities) themselves.¹¹⁷⁸

The knowledge and practical norms contained in the lifeworld are usually taken for granted and go unquestioned.¹¹⁷⁹ *Discourse* begins when – during the course of reaching mutual understanding – actors realise they do not agree on something; in other words, the background consensus of the lifeworld is called into question.¹¹⁸⁰ Actors use discourse, an argumentative procedure, to propose, accept, reject or counter validity-claims.¹¹⁸¹ Claims to truth are ‘analysed, tested and evaluated’ through argument.¹¹⁸² Claims must be validated through discourse when one of the following four aspects of the claim is questioned: its comprehensibility, its propositional truth, its rightness or the sincerity of its speaker.¹¹⁸³ Actors use discourse as part of the interactive aim

¹¹⁷⁸ Habermas, 1987a; 137; Outhwaite, 2009; 84; Dryzek, 1990; 20; Chambers, 2002; 92; Dryzek, 1990; 20; These lifeworld processes correspond to the ‘structural components of the lifeworld: culture, society, person’. (Habermas, 1987a; 137; Outhwaite, 2009; 84; Ritzer, 2008; 538)

¹¹⁷⁹ Bernstein, 1990; 210

¹¹⁸⁰ Habermas, 1984; 2, 333; Bernstein, 1990; 210; Outhwaite, 2009; 49; Rehg, 1998; xiv; Habermas distinguishes various types of discourses. A *hermeneutic* discourse raises claims of interpretation. (Outhwaite, 2009; 41) A *theoretical* discourse is concerned with the validity of empirical claims, explanations and predictions. (Outhwaite, 2009; 41; Habermas, 1984; 18) A *practical* discourse examines claims to norms of action. (Habermas, 1984; 19; Outhwaite, 2009; 41) Practical discourse considers the question “What ought we to do?” (Habermas, 1998; 158) In *Between Facts and Norms* (1998), Habermas adds the idea of a *pragmatic* discourse that works to translate ‘consensus into binding decisions capable of implementation’. (Dryzek, 2000; 25; Outhwaite, 2009; 140) A theoretical discourse is grounded in the interpreted experiences of a set of observers, while a practical discourse is founded on the ‘interpreted needs and wants of those affected by the outcome’. (Habermas, 1984; 19) A theoretical discourse may be employed to reach mutual understanding and consensus about the facts and predicted future of a given situation, while a practical discourse is employed to reach understanding and consensus for plans of action. However, it is important to highlight that a practical discourse cannot be driven solely by the application of theoretical knowledge without distorting human social life and the idea of communicative action. (Bernstein, 1990; 219; Habermas, 1984; 19)

¹¹⁸¹ Habermas, 1984; 24; Outhwaite, 2009; 128; Bernstein, 1990; 210; Dryzek, 1990; 54 Thus, this idea of discourse is distinct from Foucault’s idea of discourse. (Dryzek, 1990; 8)

¹¹⁸² Habermas, 1973; 18 in Bernstein, 1990; 214

¹¹⁸³ Habermas, 1984; 21-3; Bernstein, 1990; 211; Habermas, 1987b; 314 in Outhwaite, 2009; 128; Ritzer, 2008; 292 Outhwaite argues that calls to question the compensability of a claim do not test the validity of the claim, but work to ensure the success of the claim. (Outhwaite, 2009; 128)

to achieve mutual understanding and communicatively rational consensus.¹¹⁸⁴

This is not to deny that any given consensus resulting from discourse may actually be mistaken; this means that the results of a discourse must always remain open to additional testing and criticism.¹¹⁸⁵

Habermas is interested in the rationalisation of the lifeworld.¹¹⁸⁶ Rather than blindly accepting ascribed conformity, domination and traditional values and norms, rationality would be brought to the lifeworld through thoughtful mutual understanding and agreement.¹¹⁸⁷ Rationalisation of the lifeworld and the removal of restrictions on communication result in emancipation.¹¹⁸⁸ 'Subjects can coordinate their actions through talk rather than unthinking compliance with norms.'¹¹⁸⁹ Interacting actors are able to reconstruct the shared lifeworld through discourse.¹¹⁹⁰ Through increased communicative action, a liberated lifeworld increases 'society's *steering capacity* and the differentiation [and liberation] of culture, society and personality.'¹¹⁹¹ This means that less shared knowledge and practice can be taken for granted and social integration, reproduction and socialisation depends more of the discourse, interpretation and agreement of the actors themselves.¹¹⁹² Deliberative democrats see opportunities for political emancipation in political discourse and the rationalisation of the lifeworld.

¹¹⁸⁴ Habermas, 1984; 130; 136; Outhwaite, 2009; 40; Dryzek, 1990; 38

¹¹⁸⁵ Habermas, 1984; 11; Bernstein, 1990; 211, 218; Kincheloe and McLaren, 2000; 289; Dryzek, 1990; 32

¹¹⁸⁶ Habermas, 1987a; 117; Ritzer, 2008; 538

¹¹⁸⁷ Habermas, 1987a; 77; Dryzek, 1990; 20; Outhwaite, 2009; 74; Ritzer, 2008; 291; Dryzek, 1990; 20

¹¹⁸⁸ Habermas, 1987a; 359; Ritzer, 2008; 291

¹¹⁸⁹ Dryzek, 1990; 12; Ritzer, 2008; 539

¹¹⁹⁰ Habermas, 1987a; 145; Dryzek, 1990; 12;

¹¹⁹¹ Habermas, 1987a; 152; Outhwaite, 2009; 86; Ritzer, 2008; 540

¹¹⁹² Habermas, 1987a; 145; Outhwaite, 2009; 74

Deliberative democracy's notions of ideal deliberations are rooted in the communicative rationality's counterfactual ideal of undistorted communication – the *ideal speech situation*.¹¹⁹³ In a discursive situation, all affected actors must have equal opportunities and competencies to present and defend propositions without coercion.¹¹⁹⁴ The ideal speech situation requires that the 'co-operative search for truth is the only permissible motive'.¹¹⁹⁵ The ideal speech situation ensures that discursive arguments are based on the 'unforced force of the better argument'.¹¹⁹⁶ Dryzek argues that, in reality, the ideal speech situation does not and cannot exist.¹¹⁹⁷ However, Habermas argues that all human conversation both presupposes and anticipates the ideal speech situation.¹¹⁹⁸ And as a counterfactual, concrete situations can be compared to the ideal speech situation to assess the legitimacy of the discursive outcome.¹¹⁹⁹

Consensus that results from an ideal speech situation - whether it is an empirical, normative or subjective claim - has a rational quality; decisions, preferences, attitudes or interests that are formed by consensus can be considered rational.¹²⁰⁰ The ideal speech situation is a procedural standard; it offers no substantive criteria for the values to be pursued in discourse.¹²⁰¹ Habermas's *consensus theory of truth* asserts that those statements on which all actors would agree - if the statements were discussed in an inclusive, equal

¹¹⁹³ Habermas, 1984; 25-6; Ritzer, 2008; 290; Dryzek, 1990; 36; Outhwaite, 2009; 39

¹¹⁹⁴ Habermas, 1984; 26; Dryzek, 1990; 15; Ritzer, 2008; 290; Bernstein, 1990; 212; Outhwaite, 2009; 39; Geuss, 1991; 65; Dryzek, 2000; 22

¹¹⁹⁵ Habermas, 1975:107-8; Ritzer, 2008; 292; Habermas, 1973 in Bernstein, 1990; 214

¹¹⁹⁶ Habermas, 1998; 305; Dryzek, 1990; 15; Ritzer, 2008; 292; Bernstein, 1990; 212; Outhwaite, 2009; 39

¹¹⁹⁷ Dryzek, 1990; 36; Geuss, 1991; 85; Bernstein, 1990; 212; Outhwaite, 2009; 39

¹¹⁹⁸ Habermas, 1984; 25; Bernstein, 1990; 210; Outhwaite, 2009; 39; Geuss, 1991; 66

¹¹⁹⁹ Habermas, 1984; 42; Geuss, 1991; 85; Bernstein, 1990; 212

¹²⁰⁰ Habermas, 1984; Habermas, 1987b, 29; Dryzek, 1990; 36; Geuss, 1991; 66; Ritzer, 2008; 292

¹²⁰¹ Habermas, 1984; 25; Dryzek, 1990; 17

and uncoerced discourse for an indefinite period of time – can be considered to be true.¹²⁰² Empirical statements are the most likely to unproblematically result in widespread intersubjective agreement.¹²⁰³ Negative interpretations of Habermas's theory of communicative action argue that it denies the possibility of rational irreducible disagreement; it imagines an impossible utopian community consisting of actors in the ideal speech situation and reaching full consensus; or even that the theory works to suppress conflict.¹²⁰⁴ As with the ideal speech act, Habermas asserts that actors participating in discourse must anticipate at least the possibility of consensus; 'all speech is oriented toward the idea of truth'.¹²⁰⁵ Deliberative democracy considers Habermas's ideal speech situation and, at least initially, his consensus theory of truth as the counterfactuals from which political discourse and the results of political discourse can be assessed.¹²⁰⁶

In addition to the lifeworld, Habermas proposes that 'social actions are also coordinated by external *norm-free* systems'.¹²⁰⁷ For Habermas, the two most important system structures are the state and the market.¹²⁰⁸ While systems have their roots in the lifeworld, they ultimately develop their own structural characteristics.¹²⁰⁹ Initially, system and the lifeworld share a dialectical relationship – they both limit and cultivate each other.¹²¹⁰ However as system structures evolve, they become more distant from the lifeworld, more self-

¹²⁰² Habermas, 1984; 119; Geuss, 1991; 65; Ritzer, 2008; 292; Outhwaite, 2009; 26, 37

¹²⁰³ Habermas, 1984; 113; Geuss, 1991; 89

¹²⁰⁴ Dryzek, 1990; 15

¹²⁰⁵ Habermas, 1970b; 372 in Bernstein, 1990; 211; Outhwaite, 2009; 27; Geuss, 1991; 66

¹²⁰⁶ Habermas, 1984; 42; Bernstein, 1990; 214

¹²⁰⁷ Habermas, 1987a; 118; Outhwaite, 2009; 86; Ritzer, 2008; 540; Chambers, 2002; 92; Dryzek, 2000; 22

¹²⁰⁸ Habermas, 1984; 216; Ritzer, 2008; 538; Chambers, 2002; 92; Edwards, 2004; 116

¹²⁰⁹ Habermas, 1984; 270; Ritzer, 2008; 538

¹²¹⁰ Habermas, 1987a; 154; Ritzer, 2008; 540; Chambers, 2002; 92; Outhwaite, 2009; 86

sufficient, more self-regulated.¹²¹¹ While the lifeworld is reproduced by communicative rationality and integrated through mutual understanding, systems are reproduced by instrumental rationality and integrated through automatic or inconspicuous co-ordination of action.¹²¹² While systems - like the state and the market - rely on communicative processes, they rely more on formal processes, policies, regulations and laws to justify their actions; 'there is no *necessity* for achieving consensus by communicative means.'¹²¹³ As they grow in power these structures have less to do with communicative action and actually work to limit or replace it.¹²¹⁴

For Habermas, modernity is characterised by the increased differentiation and rationality of the lifeworld and system.¹²¹⁵ This modern consciousness liberates the lifeworld from unreflected conformity and constraint.¹²¹⁶ However, as the demands on communicative action grow and the system becomes more complex, the capacities of lifeworld are overwhelmed.¹²¹⁷ The differentiated lifeworld 'seems to shrink to a subsystem.'¹²¹⁸ The lifeworld and communicative rationality are marginalized by system structures.¹²¹⁹ Because of the fragmentation of the modern lifeworld, society cannot 'comprehend the intrusion

¹²¹¹ Habermas, 1984; 141; Ritzer, 2008; 538; Outhwaite, 2009; 62; Edwards, 2004; 116

¹²¹² Habermas, 1987a; 84, 396; Ritzer, 2008; 540; Chambers, 2002; 92; Dryzek, 1990; 20; Outhwaite, 2009; 84, 90, 104

¹²¹³ Habermas, 1987a; 301; Outhwaite, 2009; 89, 94

¹²¹⁴ Ritzer, 2008; 538; Outhwaite, 2009; 89

¹²¹⁵ Habermas, 1987a; 355; Outhwaite, 2009; 88; Ritzer, 2008; 563; Dryzek, 1990; 80

¹²¹⁶ Habermas, 1984; 74; Dryzek, 1990; 12; Outhwaite, 2009; 74; White, 1988; 125

¹²¹⁷ Habermas, 1987a; 186; Ritzer, 2008; 540; Outhwaite, 2009; 74;

¹²¹⁸ Habermas, 1987a; 173; Outhwaite, 2009; 88

¹²¹⁹ Habermas, 1987a; 173; Outhwaite, 2009; 88

of system imperatives'.¹²²⁰ Habermas calls this process the *colonisation of the lifeworld*.¹²²¹

In the case of late capitalist modernity, economic and state administrative systems, and their instrumental rationality, have come to dominate the lifeworld and its practical reason.¹²²² They begin to exercise more steering capacity over the lifeworld. Instead of the medium of communicative action coordinating action, the state (through its steering medium of power) and the market (through its steering medium of money) coordinates social action.¹²²³ The welfare state protects liberal rights and freedoms, but it also threatens the ability of people to critically, independently and democratically determine and shape our collective lives.¹²²⁴ Class conflict no longer dominates social relations in modern welfare states because citizens see themselves as individual employees, private consumers and public clients.¹²²⁵ The system inconspicuously works to restrict, suppress, distort and instrumentalise individuals and social interaction resulting in a form of false ideology.¹²²⁶ Habermas describes this process as *structural violence* exercised on communicative action and mutual understanding.¹²²⁷ The bureaucratisation, scientisation and commercialisation of society result in a loss

¹²²⁰ Habermas, 1987a; 355; Outhwaite, 2009; 97; Ritzer, 2008; 541; Dryzek, 1990; 5

¹²²¹ Habermas, 1987a; 355; Outhwaite, 2009; 97; Ritzer, 2008; 224; Dryzek, 1990; 5; Dryzek, 2000; 22; White, 1988; 111

¹²²² Habermas, 1981; 33; Habermas, 1987a; 154; Habermas, 1987b; 315 in Outhwaite, 2009; 129; Ritzer, 2008; 563; Outhwaite, 2009; 74; Dryzek, 1990; 12; Chambers, 2002; 92; Bernstein, 1990; 188; Kincheloe and McLaren, 2000; 282; Edwards, 2004; 115

¹²²³ Habermas, 1987a; 154; Ritzer, 2008; 537, 541; Outhwaite, 2009; 88; Chambers, 2002; 92; Dryzek, 1990; 5; Bernstein, 1990; 188; Edwards, 2004; 115-6

¹²²⁴ Habermas, 1987a; 322; White, 1988; 125

¹²²⁵ Habermas, 1987a; 348-51; Outhwaite, 2009; 97; Habermas argues that the state and economy accomplish this by socialising a society devoted to consumption and loyal to the benefits of state. (Habermas, 1987a; 318-9; Outhwaite, 2009; 94; Chambers, 2002; 93)

¹²²⁶ Habermas, 1987a; 187; Outhwaite, 2009; 90; Ritzer, 2008; 541; Dryzek, 1990; 12

¹²²⁷ Habermas, 1987a; 187; Outhwaite, 2009; 90; Ritzer, 2008; 541

of meaning and freedom – Weber’s *iron cage* imprisoning human existence.¹²²⁸ We not only confuse moral-practical rationality with purposive rationality, but we instinctively apply technical solutions to practical issues.¹²²⁹ Instrumental rationality reduces all rationality to scientific-technological rationality – limiting the field of solutions for social issues and depoliticising much of the political realm.¹²³⁰ The lifeworld becomes culturally impoverished as lifeworld differentiation (science, technology, morality, art and law) facilitates the development of expert cultures – suppressing individual initiative and creativity.¹²³¹

To illustrate his notion of the colonisation of the lifeworld, Habermas analyses the growth of law as an exemplar of the ‘*juridification* of communicative structures spheres of action’.¹²³² Habermas describes the expansion and deepening of the sphere of law - impacting more areas of life in greater detail and encroaching on mutual understanding and consensus in the lifeworld.¹²³³ Once the steering media of money and power are established and institutionalised through law, automatic media-guided interactions no longer even require instrumental rationality; only an automatic functional form of reason is required.¹²³⁴ These extensions of law have a tendency to create dependencies between the public client and the state; rather than relying on communicative action to resolve their local or family disputes, people rely more

¹²²⁸ Habermas, 1987a; 318; Ritzer, 2008; 541; Outhwaite, 2009; 94; Dryzek, 1990; 4; Dryzek, 2000; 22; Edwards, 2004; 116

¹²²⁹ Habermas, 1973; 255 in Bernstein, 1990; 187

¹²³⁰ Habermas, 1970a; 75 in Bernstein, 1990; 188; Held, 1980; 170

¹²³¹ Habermas, 1987a; 355; Outhwaite, 2009; 95; Ritzer, 2008; 541; Dryzek, 1990; 12

¹²³² Habermas, 1987a; 334; Outhwaite, 2009; 97, 99; White, 1988; 112

¹²³³ Habermas, 1987a; 359; Outhwaite, 2009; 98

¹²³⁴ Habermas, 1987a, 258; Outhwaite, 2009; 113

and more on the state – further curbing the inclination of the public to engage in cooperative social and political action.¹²³⁵

Habermas sees *new social movements* as the protectors of the lifeworld from the encroachment of the system.¹²³⁶ Rather than being sparked by ‘problems of distribution’, new social movements are concerned with defending threatened or initiating new ways of life.¹²³⁷ By reacting against the colonisation of the lifeworld, these associations are creating new spaces for autonomous social integration, socialisation and public deliberation.¹²³⁸

It cannot be denied that modern societies enjoy enormous advantages from system rationalisation.¹²³⁹ The specialisation of certain activities – art, law, science – has led to important increases in knowledge.¹²⁴⁰ The rights and freedoms protected by the state offers the possibility of communicative action in civil and political arenas.¹²⁴¹ However, these benefits come at the price of a flourishing lifeworld.¹²⁴² Habermas does not hold much hope that the steering media of modern democracies can be completely switched over from money and power to participation.¹²⁴³ ‘The most we can reasonably aim at is the “defensive re-steering” of the neo-capitalist economy and the interventionist state.’¹²⁴⁴ Dryzek argues that instrumental rationality ‘will always be with us’. However, the domain of instrumental rationality should be limited – or indeed

¹²³⁵ Habermas, 1987a; 363; White, 1988; 112; Outhwaite, 2009; 98

¹²³⁶ Habermas, 1987a; 392; White, 1988; 123; Outhwaite, 2009; 104; Dryzek, 2000; 22

¹²³⁷ Habermas, 1987a; 392; Habermas, 1981; 33 in White, 1988; 123; Outhwaite, 2009; 104

¹²³⁸ White, 1988; 124

¹²³⁹ Habermas, 1987b; 338 in Outhwaite, 2009; 128; Ritzer, 2008; 563

¹²⁴⁰ Habermas, 1987b; 340 in Outhwaite, 2009; 129

¹²⁴¹ Chambers, 2002; 93; Dryzek, 1990; 12; Bernstein, 1990; 199

¹²⁴² Ritzer, 2008; 563

¹²⁴³ Habermas, 1987a; 261; Outhwaite, 2009; 114

¹²⁴⁴ Habermas, 1987a; 261; Outhwaite, 2009; 114; White, 1988; 126

reduced - in order to restore the proper balance between the lifeworld/system dialectic.¹²⁴⁵ With the proper balance the two domains can mutually enrich and enhance each other.¹²⁴⁶ Dryzek argues that communicative action is at the heart of deliberative democracy; it can destroy privilege and hierarchy and emancipate us from the colonisation of the lifeworld by state and capital.¹²⁴⁷ Authentic democratic participation can transform individuals to become able to recognise and oppose domination.¹²⁴⁸ The aim of Dryzek's discursive democracy is to not only to protect the lifeworld against further colonisation by the system, but to 'conduct a counteroffensive by taking discursive rationality to the heart of the "enemy's" domain.'¹²⁴⁹

The concept of deliberative democracy remains contested, mostly because the theory has been broadened to include both deliberative and discursive ideas and to include both formal institutional forums and public participation.¹²⁵⁰ Certainly, deliberative democracy begins with public concerns and the use of non-coercive, equal and inclusive collective communications to frame, analyse and resolve those issues.¹²⁵¹ While Rawls argues that deliberation can be conducted by a solitary thinker, in general, deliberation is thought to be interactive and is often characterised by argument, debate and contestation.¹²⁵² Public deliberations work to find solutions that are more informed, fairer and

¹²⁴⁵ Dryzek, 1990; 9; Ritzer, 2008; 542

¹²⁴⁶ Ritzer, 2008; 542

¹²⁴⁷ Dryzek, 1990; 13, 38

¹²⁴⁸ Dryzek, 2000; 21

¹²⁴⁹ Dryzek, 1990; 21

¹²⁵⁰ Hendriks, 2006; 491

¹²⁵¹ Dodge, 2009; 228; Dryzek, 2000; 11; Habermas, 1998; 299; Metze, 2009; 244; Mansbridge, 1999; 212; Hendriks, 2009; Rawls, 2005a; Young, 1996; 121; Gastil and Keith, 2005; 3

¹²⁵² Rawls, 2005b; 445; Dryzek, 2000; vi, 15; Bonner, Carlitz, et al, 2005; 143; Hendriks, 2009; Habermas, 1998

mutually acceptable.¹²⁵³ In general, during deliberation actors exchange information and reflect on and discuss issues, interests and possible solution proposals.¹²⁵⁴ Ultimately, actors reach some conclusion.¹²⁵⁵ The assumption here is that free, inclusive, fair, mutually respectful, informed, reasonable and public collective deliberation results in better outcomes for all those subject to the decision.

Modern complex and plural societies require a more open participatory and deliberative form of democracy.¹²⁵⁶ Whether the intention is to reach agreement or understanding, deliberation across difference can result in more informed publics and in fairer and more rational outcomes.¹²⁵⁷ Democratic rights and freedoms have not been enough.¹²⁵⁸ Even with these safeguards, minorities of democratic regimes are often excluded and sometimes oppressed; inequalities in the ability to influence public decisions continue to exist – especially between economic forces and everyone else.¹²⁵⁹ Public deliberation is seen as necessary because of an increased lack of trust in the motives and abilities of democratic institutions, experts and large organisations.¹²⁶⁰ Public deliberation holds the potential to improve the civic culture and create a sense

¹²⁵³ Mendonça, 2009; 211; Connelly, 2009; 185; Hendriks, 2006; 491; Carson and Hartz-Karp, 2005; 122; Lukensmeyer, Goldman and Brigham, 2005; 154; Levine, Fung and Gastil, 2005; 273

¹²⁵⁴ Dryzek, 2000; Hendriks, 2009; Hendriks, 2006; 492; Habermas, 1998

¹²⁵⁵ Hendriks, 2006; 492

¹²⁵⁶ Dryzek, 2000; 58, 173; Rehg, 1998; Habermas, 1998; Rawls, 2005a; lviii, 441; Rosenberg, 2007; 2; Cohen, 1997; 72; Chambers, 2002; 100; Gastil and Keith, 2005; 15; Benhabib, 1996a; 73; Fishkin and Farrar, 2005; 76

¹²⁵⁷ Gastil and Keith, 2005; 16; Melville, Willingham, and Dedrick, 2005; 51; Dryzek, 2000; 72; Barber, 2003; 120; Young, 1996; 120; Button and Ryfe, 2005; 25; Cornwall and Coelho, 2007; 2; Soneryd and Weldon, 2003; 22

¹²⁵⁸ Chambers, 2002; 97

¹²⁵⁹ Dryzek, 2000; 17, 21; Benhabib, 1996a; 77; Rosenberg, 2007; 4; Chambers, 2003; 99; Sokoloff, Steinberg and Pyser, 2005, 193

¹²⁶⁰ Habermas, 1998; 328; Button and Ryfe, 2005; 26; Lukensmeyer, Goldman and Brigham, 2005; 156; Gaventa, 2007; xi; Cornwall and Coelho, 2007; 4; Sokoloff, Steinberg and Pyser, 2005, 193; Dryzek, 2000; 165; Rosenberg, 2007; 1; Connelly, 2009; Rehg, 1998; Stringer, Scricciu and Reed, 2009; 77

of community for modern societies.¹²⁶¹ With public participation and deliberation individuals can assert their identities, protect their interests and communicate across difference.¹²⁶²

DELIBERATIVE VENUES

In 1999, Jane Mansbridge first introduced the idea of a deliberative system – a system of independent and interrelated deliberative venues.¹²⁶³ It is in the deliberative system where society forms and coalesces around public opinion and ultimately reaches public decisions. A strong deliberative system includes a variety of discursive and deliberative and public and private venues that encourage ‘communicative practices that foster critical, public reflection’.¹²⁶⁴ Mansbridge argues that a strong deliberative system includes many types of political talk in all sorts of formal and informal venues:

*talk among formal and informal representative in designated public forums, talk back and forth between constituents and elected representatives or other representatives in politically oriented organizations, talk in the media, talk among political activists, and everyday talk in formally private spaces about things the public ought to discuss.*¹²⁶⁵

In 2006, Hendriks classifies the types of political talk and venues into two spheres – the micro and macro spheres – based on scale, formality and who

¹²⁶¹ Lukensmeyer, Goldman and Brigham, 2005; 156; Melville, Willingham, and Dedrick, 2005; 40; Gastil and Keith, 2005; 6, 15, 17; Button and Ryfe, 2005; 30; Chambers, 2003; 98; Charles, Sokoloff and Satullo, 2005; 61; Barber, 2003; Fishkin and Farrar, 2005; 76; Cornwall and Coelho, 2007; 4

¹²⁶² Dryzek, 2000; 174; Benhabib, 1996a; 73

¹²⁶³ Mansbridge, 1999; 211

¹²⁶⁴ Hendriks, 2006; 499; Gutmann and Thompson, 1996; 6, 37, 42

¹²⁶⁵ Mansbridge, 1999; 211

participates.¹²⁶⁶ The micro sphere contains the more formal and procedurally rigorous venues and the macro sphere includes ‘the messy and informal deliberation in the public sphere’.¹²⁶⁷ My contribution draws on these two ideas of the deliberative system and further classifies and defines the micro and macro spheres into five venue types. I argue that it is necessary to distinguish Hendriks’s deliberative spheres deeper, because the deliberative legitimacy standards for the various venues within each sphere are different.¹²⁶⁸ The deepening of the notion of the deliberative system is necessary for me to develop the deliberative legitimacy standard that is used in this thesis to critic the legitimacy claims of the series of hybrid forums employed as part of the RMGC Environmental Impact Assessment (EIA) process.

I distinguish deliberation venues by format, outcome, who participates and how they participate. I have identified three types of micro forums based on participant actor type – *institutional*, *associational* and *hybrid*.¹²⁶⁹ I distinguish two types of macro arenas based on discourse transmission type – what Mansbridge calls *everyday talk*¹²⁷⁰ and, what Habermas refers to as the *abstract public sphere*, but I call *broadcasted discourse*.¹²⁷¹ This description of the deliberative system is used, in Chapter 9, to analyse the deliberative system

¹²⁶⁶ Hendriks, 2006; 486-7; 491; Hendriks, 2002b in Parkinson, 2004; 380

¹²⁶⁷ Hendriks, 2006; 486; Hendriks, 2009; 176; Gastil and Levine, 2005, Rosenberg, 2007; 3; Dryzek, 1990, 2000; Dodge, 2009; Rosenberg, 2007; 3; Benhabib, 1996; Habermas, 1998; Mansbridge, 1999; 211

¹²⁶⁸ Shapiro, 1999; 33

¹²⁶⁹ This way of distinguishing micro forums is slightly different from the approached used by Hendriks. Based on her diagram, what I call institutional forums, she calls *micro discursive spheres*. What Hendriks calls *macro discursive spheres*, I call broadcasted discourse. What I call hybrid forums, she calls *mixed discursive spheres*. (Hendriks, 2006; 500) Hendriks allows civil society participation with the state in her *micro discursive spheres*. I argue that any forum with more than one type of participant actor (state, civil society, individual citizen, commercial, expert) is a hybrid forum.

¹²⁷⁰ Mansbridge, 1999

¹²⁷¹ Habermas, 1998; 307

that has formed around the zoning and project authorisation decisions for the proposed Roşia Montană Gold Corporation (RMGC) gold mining project.

Deliberation in the macro discursive arena is often less formal, less structured, less regulated and more spontaneous.¹²⁷² The interaction in this arena is open and individuals do not need to be eligible or invited to participate.¹²⁷³ Public discourse does not use regulated procedure to initiate it; to reproduce concepts or to reach conclusions.¹²⁷⁴ Sometimes macro discourses are conducted face-to-face (e.g., everyday talk) and other times they are less personal (e.g., broadcasted discourse).¹²⁷⁵ Discourse can be self-interested, unruly, impassioned, ideological, spontaneous and contentious.¹²⁷⁶ It is here where opinions, values and ideas emerge, take shape, are contested and crystallise.¹²⁷⁷ It is in the macro discursive arena where new social movements usually conduct their battle against the colonisation of the lifeworld.¹²⁷⁸ The orientation in the discursive arena may be collaborative within groups and competitive between opposing discourses.¹²⁷⁹

The public sphere actively participates in political discourse in the macro discursive arena. The public sphere cannot be considered an institution or an organization.¹²⁸⁰ Habermas calls the public sphere and its discourse,

¹²⁷² Habermas, 1996; 307; Hendriks, 2006; 487, 494; Benhabib, 1996a; Dryzek, 1990, 2000; Mansbridge, 1999; 227

¹²⁷³ Hendriks, 2006; 487; Cohen and Arato, 1992; ix

¹²⁷⁴ Hendriks, 2009; 176; Hendriks, 2006; 494

¹²⁷⁵ Hendriks, 2006; 494

¹²⁷⁶ Dryzek, 2000; vi; Bessette, 1980; 106; Benhabib, 1996a; 77; Hendriks, 2006; 494

¹²⁷⁷ Cohen and Arato, 1992; ix; Hendriks, 2006; 502

¹²⁷⁸ Dryzek, 1990; 49

¹²⁷⁹ Dryzek, 2000; vi; Hendriks, 2006; 494

¹²⁸⁰ Habermas, 1998; 360

constituted by ordinary language, a 'wild complex' that resists organization.¹²⁸¹ The public sphere sits as an 'intermediary structure' between the political system (the state) and the private sectors.¹²⁸² Despite the possible differentiation of public spheres, the boundaries of partial public spheres remain overlapping, temporal and fluid.¹²⁸³ Some discourses exist independent of others; some are associated with other discourses and some discourses compete directly.¹²⁸⁴ Partial publics allow excluded groups to create their own deliberative spaces on their own terms.¹²⁸⁵ There they can challenge and rethink the discourses that dominate and repress them.¹²⁸⁶ For Benhabib the discursive arena is a:

*public conversation [...] of mutually interlocking and overlapping networks and associations of deliberation, contestation and argumentation.*¹²⁸⁷

The outcome of competing discourses in the macro discursive arena is public opinion and influence.¹²⁸⁸ Habermas calls this the *opinion-formation* part of the deliberative system.¹²⁸⁹ Given its unstructured and unregulated character, the macro discursive arena cannot result in binding public decision.¹²⁹⁰ Habermas describes the public sphere as a network for communicating information, points

¹²⁸¹ Habermas, 1998; 307; Hendriks, 2006; 494

¹²⁸² Habermas, 1998; 374; Chambers, 2002; 96

¹²⁸³ Habermas, 1998; 307; Dryzek, 2000; 18; Hendriks, 2006; 493

¹²⁸⁴ Dryzek, 2000; 51

¹²⁸⁵ Benhabib, 1996a; 83; Fraser, 1992; 123

¹²⁸⁶ Benhabib, 1996a; 84; Fraser, 1992; 123

¹²⁸⁷ Benhabib, 1996a; 74 emphasis in original; Hendriks, 2006; 493

¹²⁸⁸ Hendriks, 2006; 487, 494; Hendriks, 2009; 176; Habermas, 1996; 307; Benhabib, 1996a; Dryzek, 1990; Dryzek, 2000; 56; Mansbridge, 1999; 227; Dryzek and Niemeyer, 2008; Cohen, 1996; 190

¹²⁸⁹ Habermas, 1998; 299; White, 1988; 126; Outhwaite, 2009; 135; Dryzek, 2000; 25

¹²⁹⁰ Habermas, 1998; 307, 359; Fraser, 1992; 134; Dryzek, 2000; 56; Hendriks, 2006; 493; Hendriks, 2009; 176; Mansbridge, 1999; 227; Dryzek and Niemeyer, 2008; Cohen, 1996; 190

of view, attitudes and opinions.¹²⁹¹ Rather than an aggregate of individual opinions and interests, communications are ‘filtered and synthesized’ and coalesced into bundles of public opinions.¹²⁹² Through the process of shared communications, the individual preferences and attitudes of participants are transformed into public opinion.¹²⁹³ Dryzek describes public opinion as ‘the provisional outcome of the contestation of discourses’¹²⁹⁴ It is in the discursive arena where the public sphere can create urgency in the minds of policy makers by threatening public instability unless issues are addressed.¹²⁹⁵

Public opinion is formed discursively - supported by constitutional rights and freedoms - in civil society associations and the public sphere and it generates influence.¹²⁹⁶ Public discourse is not limited by state boundaries or formal jurisdictions and may be the only arena for settling transboundary issues.¹²⁹⁷ The generation and reproduction of public discourses is decentralised and dispersed.¹²⁹⁸ The ability to participate in the discursive arena is widely distributed and allows for the amplification of minority voices.¹²⁹⁹ Democracy requires the contestation of discourses to challenge hegemonic viewpoints around policy issues and solutions.¹³⁰⁰ Particular discourses emerge and grow while they are important and then disappear when their subject matter loses its

¹²⁹¹ Habermas, 1998; 360; Benhabib, 1996a; 80

¹²⁹² Habermas, 1998; 360; Mansbridge, 1999; 211; Chambers, 2002; 96

¹²⁹³ Habermas, 1998; 362; Mansbridge, 1999; 212; Mansbridge compares the production of public opinion to the market; collective results are produced ‘through the combined and interactive effects of relatively isolated individual actions.’ (Mansbridge, 1999; 212)

¹²⁹⁴ Dryzek, 2001; 659, 660, 666

¹²⁹⁵ Dryzek, 2000; 101

¹²⁹⁶ Dryzek, 2000; 18, 25; Outhwaite, 2009; 143

¹²⁹⁷ Dryzek, 2000; 159

¹²⁹⁸ Dryzek, 2000; 51

¹²⁹⁹ Dryzek, 2000; 168

¹³⁰⁰ Dodge, 2009; 227

urgency.¹³⁰¹ While some individuals can sometimes make important shifts in the contestation of discourses - notably through the use of rhetoric - discourse is usually and ultimately detached from individual identities.¹³⁰² For Dryzek, these characteristics make discursive democracy more democratic and more transnational.

Habermas's public sphere is rooted in a robust civil society - the network of autonomous and self-constituted formal and informal voluntary associations.¹³⁰³ The public sphere and civil society are considered separate and distinct from the state and economy; their orientation toward the state is often critical, confrontational and oppositional.¹³⁰⁴ Civil society is often thought to include associations like, churches, interest groups, social movements, clubs, universities, professional organisations, political parties¹³⁰⁵, individual citizens and public communication institutions.¹³⁰⁶ Although a *part* of the sociological world, civil society is distinguished from it as those institutionalized nongovernmental and noneconomic 'relations of conscious association, of self-organization and organized communication.'¹³⁰⁷ Civil society associations

¹³⁰¹ Dryzek, 2000; 160

¹³⁰² Dryzek, 2000; 78

¹³⁰³ Habermas, 1998; 359; Chambers, 2002; 98; Rehg, 1998; xxxii;

¹³⁰⁴ Dryzek, 2000; 22-3, 81; Cohen and Arato, 1992; x, 20; Hendriks, 2006; 488; Habermas, 1998; 299; Young, 2000; 158; Chambers, 2002; 90; For Cohen and Arato, civil society associations become antagonistic when economic and political actors work to insulate themselves and their decisions from the influence of civil society associations and the public. (Cohen and Arato, 1992; x) For Gaventa, civil society activists primarily serve as watchdog, as 'an additional check and balance on government behaviours. (Gaventa, 2007; xiii) Fung and Wright and Hendriks argue that, while not necessarily a countervailing power against the state, many associations have become accustomed to working from a competitive rather than a collaborative approach. (Fung and Wright, 2003; Hendriks, 2009)

¹³⁰⁵ Mansbridge, 1996; 57

¹³⁰⁶ Hendriks, 2006; 287; Chambers, 2002; 91 Dryzek says that private life is normally excluded from civil society; although, Cohan and Arato include the intimate sphere, especially the family. (Dryzek, 2000; 23; Cohen and Arato, 1992; xi; Chambers, 2002; 90) Those organisations that seek state power (for example, political parties) are often excluded from civil society. (Cohan and Arato, 1994; Rawls, 2005a; Habermas, 1998; Dryzek, 2000; Young, 2000; 163)

¹³⁰⁷ Cohen and Arato, 1992; x

emerge from the private sphere and constitute themselves and draw their support from within the public sphere.¹³⁰⁸

Civil society associations play an important role in the critical political and social opinion formation of the public sphere.¹³⁰⁹ Habermas calls the political public sphere a *warning system* that amplifies the pressures of social problems, identifies possible solutions and must convincingly frame it all in a way that state actors will deal with them.¹³¹⁰ Civil society and social movement organisations are often the first to perceive and detect social issues for public consideration.¹³¹¹ The public sphere requires the communication channels of civil society associations and responsible mass media to amplify and transmit these experiences and issues into the public sphere and to state actors.¹³¹² Civil society activists highlight relevant issues, critic discourses, provide pertinent information, draw on counterculture knowledge and expertise and propose alternative solutions and approaches.¹³¹³ This process organises and institutionalises interest identification, agenda setting, issue framing and problem-solving discourses within the substantive public spheres.¹³¹⁴ While not seeking direct political or economic control or power, civil society activists work through the unconstrained communication of the public sphere to generate influence in these realms.¹³¹⁵ Civil society actors can gain political influence either directly, by influencing the administration, or, indirectly by mobilising

¹³⁰⁸ Habermas, 1998; 369

¹³⁰⁹ Cohen and Arato, 1992; Habermas, 1998; Chambers, 2002; 98

¹³¹⁰ Habermas, 1998; 359; Dodge, 2009; 228

¹³¹¹ Rehg, 1998; xxxii

¹³¹² Habermas, 1998; 367; Rehg, 1998; xxxii; Hendriks, 2006; 494; Benhabib, 1996; Dryzek, 1990, 2000

¹³¹³ Habermas, 1998; 372

¹³¹⁴ Habermas, 1998; 367

¹³¹⁵ Cohen and Arato, 1992; ix; Hendriks, 2006; 491; Cohen, 1996; 190

public opinion first and applying pressure on state institutions to implement certain policies.¹³¹⁶

Civil society organisations work in a dual orientation in the public sphere; as they work to influence the political and economic spheres within their substantive discourses, they also reproduce and enlarge the functions of civil society in general and the public sphere.¹³¹⁷ Cohen and Arato call the attempts by civil society associations to substantively influence public opinion and will-formation, their 'offensive' orientation.¹³¹⁸ 'Defensively', civil society actors work to reform political processes, expand rights and mobilise publics.¹³¹⁹ Even offensive actions work to revitalise and enlarge civil society and the public sphere generally.¹³²⁰

While I agree that the public sphere and civil society must be considered distinct from the state, I argue that corporate and state actors also participate in the macro discursive arena. This argument is consistent with Habermas's notion of the colonisation of the lifeworld. It is largely through the macro broadcasted discursive arena that state actors attempt to justify its political outcomes to the

¹³¹⁶ Cohen and Arato, 1992; 531; Habermas, 1998; Dodge, 2009; Hendriks, 2006; 491; Cohen, 1996; 190

¹³¹⁷ Habermas, 1998; 370; Dryzek, 2000; Dodge, 2009; Cohen and Arato, 1992; Chambers, 2002; 98; Hendriks, 2006; 494; Cornwall and Coelho distinguish civil society actors who act as public service providers. (Cornwall and Coelho, 2007; 6) Public Service NGOs do not hold the dual orientation held by rights based organisations. (Habermas, 1998; Dryzek, 2000; Dodge, 2009; Cohen and Arato, 1992; Chambers, 2002; 98) In particular, public service NGOs do not typically work in the defensive orientation – reforming and expanding democratic principles. (Cohen and Arato, 1992; 531; Chambers, 2002; 98; Cornwall and Coelho, 2007; 6) These groups that contract with the state to provide public services blur the boundaries between state and civil society, raising questions about their autonomy and accountability. (Cornwall and Coelho, 2007; 6) Rather than advocating on behalf of a particular population or interest - usually in opposition to the state - public service NGOs provide services for specific clientele usually in cooperation or in a contractual relationship with the state. (Cornwall and Coelho, 2007; 6; Coelho, 2007; 38) Often, services are provided by young volunteers – resulting in the provision of low cost and potentially unaccountable public services.

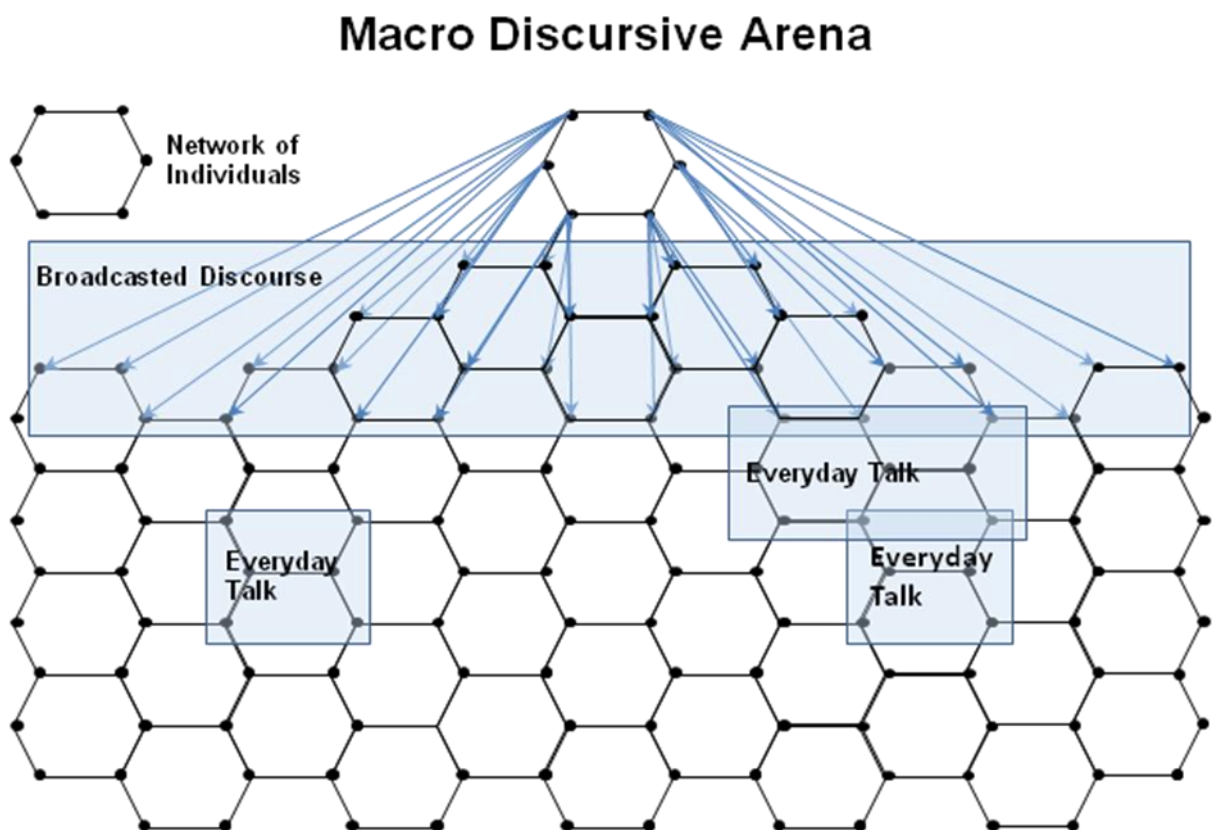
¹³¹⁸ Cohen and Arato, 1992; 531; Chambers, 2002; 98; Dryzek, 2000; 102

¹³¹⁹ Cohen and Arato, 1992; 531; Chambers, 2002; 98; Dryzek, 2000; 102

¹³²⁰ Habermas, 1998; 370

public sphere. Both corporate and state actors work in the macro discursive arena to influence political public opinion. Participants of the macro arena include individuals, civil society actors, the media, economic actors and, I argue, state actors.¹³²¹

I differentiate two forms of discourse in the public sphere – everyday talk and broadcasted discourses. Based on Benhabib’s concept of overlapping networks of public deliberation and argumentation, I have created a diagram that maps these forms of discourse.¹³²²



¹³²¹ Mansbridge, 1999; 212; In Hendriks’s model, civil society, the media and corporate actors participate in the macro discursive sphere. (Hendriks, 2006; 500)

¹³²² Benhabib, 1996a; 74 Hendriks, 2006; 493; Habermas, 1998; 307; Dryzek, 2000; 18

Mansbridge identifies a type of political discourse she calls *everyday talk*.¹³²³ Everyday talk happens in informal, small, face-to-face and two-way communicative groups – although everyday talk can also happen by email exchanges, telephone or via social media.¹³²⁴ Associations can include family members, friends, colleagues, neighbours and strangers and can form in places like the workplace, around the kitchen table, at the pub or the coffee house.¹³²⁵ Given the voluntary and sometimes temporary nature of this form of association, members are likely to share more similarities among themselves than they share with the larger public sphere. Everyday talk, like all macro level discourse, is cross jurisdictional – it does not depend on political borders.¹³²⁶ For Mansbridge, it is with everyday talk that people come to understand their individual and collective political interests.¹³²⁷ People use everyday talk to weed out and discard bad ideas, test ideas against reality, pick up and develop good ideas and even change behaviours.¹³²⁸ While individuals within the group may be intersubjectively influenced, this form of discourse is not necessarily intended to influence the broader public or to result in binding public agreement.¹³²⁹ However, everyday talk ultimately contributes to public opinion; ‘often everyday talk produces collective results the way a market produces collective results, through the combined and interactive effects of relatively isolated individual actions’.¹³³⁰ The shared practice of everyday communication

¹³²³ Mansbridge, 1999; Hendriks, 2006; 497

¹³²⁴ Hendriks, 2006; 494

¹³²⁵ Mansbridge, 1999; 212; Habermas, 1998; 307; Dryzek, 2001; 663

¹³²⁶ Dryzek, 2001; 663

¹³²⁷ Mansbridge, 1999; 211

¹³²⁸ Mansbridge, 1999; 211; Thompson, 2008; 502

¹³²⁹ Mansbridge, 1999; 213; Hendricks, 2006; 498

¹³³⁰ Mansbridge, 1999; 212; Hendriks, 2006; 499

and controversy can actually play a more significant role than the media in structuring public opinion.¹³³¹

Broadcasted discourse is distinct from everyday talk in that it is often conducted through one-way communication and it works to reach a larger audience. Some examples of broadcasted discourse include speeches, interviews, press releases, press conferences, information campaigns, public demonstrations, strikes, boycotts, blockades, vigils, picketing, sit-ins and acts of civil disobedience.¹³³² In addition, some people participate in broadcasted discourse by walking in marches, artistic performances or attending festivals. By definition and intent, broadcasted discourse is public. Broadcasted discourse may be less structured and formal than micro deliberative forums, but it does require some planning and coordination to be effective. Associations that initiate broadcasted discourse use broadcast methods to provide information, raise awareness, obtain a hearing, mobilise public opinion and change behaviours.¹³³³ Obviously civil society organisations and social movements initiate broadcasted discourse, but economic and state actors also employ this form of discourse in order to ensure that their arguments about public decisions reach and influence the public sphere.¹³³⁴ Broadcasted discourse has two types of participants – the voluntary associations who initiate the broadcast and express their arguments (active deliberators) and the audience (passive deliberators). Because it is one-way communication the audience cannot respond with questions or argument or seek clarification. It is difficult for the

¹³³¹ Habermas, 1998; 362

¹³³² Hendriks, 2006; 494; Dryzek, 2000; 26

¹³³³ Dryzek, 2000; 23; Hendriks, 2006; 494

¹³³⁴ Shapiro, 1999; 34-5; Hendriks, 2006; 500

broadcasters to recognise communication mistakes, provide clarification, present complex arguments or build relationship. The one-way nature of broadcasted discourse makes it difficult - if not impossible - to achieve mutual understanding and agreement that addresses mutual needs. Rather broadcasted discourse seeks to influence, often simultaneously, public opinion and to mobilise the actions of social, economic and state actors.¹³³⁵ Ultimately, a shift in public opinion may result in the redirection of decisions by state actors, economic actors and even the private decisions of individuals.¹³³⁶

Effective participation in broadcasted discourse requires a certain amount of resources, credibility and media interest and sympathy.¹³³⁷ Political actors rely on an effective broadcasting media to provide information, channel communications and mobilise public interest and participation.¹³³⁸ The media makes decisions about the selection and perspectives of the topics and stories it presents.¹³³⁹ Habermas complains that, today, professional standards are not sufficiently regulating this 'power of the media'.¹³⁴⁰ He argues that professionally produced content is 'fed', by deliberative actors, to media outlets through press releases, news conferences and public relations campaigns.¹³⁴¹ Smaller groups of collective actors 'normally have fewer opportunities to influence the content and views presented by the media.'¹³⁴² At the same time,

¹³³⁵ Habermas, 1998; 383

¹³³⁶ Dryzek, 2000; 102, 130; Benhabib, 1996a; 84; Mansbridge, 2007; 266; Mansbridge, 1999; 213; Gastil and Keith, 2005; 3; Dodge, 2009; Habermas, 1998

¹³³⁷ Dryzek, 2000; 131; Hendriks, 2006; 489; Dryzek, 2000; 131

¹³³⁸ Rehg, 1998; xxxi; Habermas, 1998; 307

¹³³⁹ Habermas, 1998; 376

¹³⁴⁰ Habermas, 1998; 376

¹³⁴¹ Habermas, 1998; 376

¹³⁴² Habermas, 1998; 377

Habermas argues that mass media frees communication from the 'spatiotemporally' restrictions and allows the emergence of public spheres.¹³⁴³

Compared to discursive arenas, deliberative forums are typically more formal and structured and often follow procedural rules and agendas.¹³⁴⁴ Micro deliberative forums are typically conducted interactively and face-to-face¹³⁴⁵ – although participants sometimes use and publish documents, agreements, emails, letters, diagrams and maps. A relatively small number of participants are invited or eligible to participate in individual micro forums – hence the name micro.¹³⁴⁶ Face-to-face two-way deliberation allows for argumentation; increased learning; an efficient exchange of information; confirmed agreement or conflict; questioning and clarification; the correction of mistakes and miscommunications; relationship building and spontaneous issue reframing. Forum deliberation is usually thought to be calm, sedate and reasoned argument.¹³⁴⁷ Although some micro forums invite expert presenters, all forum members are considered active, rather than passive, deliberators. 'Free and equal participants come together to decide on an agenda, reason and argue together and settle on an outcome.'¹³⁴⁸

Historically, deliberative democracy began with one type of micro deliberative forum – state *institutionalized forums* such as local councils, parliaments, bureaucracies and courts.¹³⁴⁹ In *associational forums*, voluntary associations constitute themselves, form solidarities, develop strategy, implement plans and

¹³⁴³ Habermas, 1987b; 390 in Outhwaite, 2009; 103

¹³⁴⁴ Hendriks, 2006; 491

¹³⁴⁵ Mansbridge, 1999; 212; Fung, 2004; 52

¹³⁴⁶ Hendriks, 2006; 492

¹³⁴⁷ Dryzek, 2000; vi; Bessette, 1980; 106

¹³⁴⁸ Hendriks, 2006; 492; Bessette, 1994; Cohen, 1997; Elster, 1997

¹³⁴⁹ Habermas, 1998; Rawls, 2005a; Bessette, 1994

form alliances.¹³⁵⁰ Today, deliberative democrats are more likely to analyse public participation in deliberative *hybrid forums*¹³⁵¹, which can bring together a diversity of actors including individual citizens, experts, civil society activists, and economic and state actors.¹³⁵²

Participation in micro deliberative forums is typically based on association. In any deliberative system, I distinguish between two types of association – jurisdictional and voluntary. Jurisdictional associations are associations of individuals who reside within a particular geographical political boundary and who therefore share certain interdependences.¹³⁵³ Rawls refers to jurisdictional association when he speaks of a set of citizens within a structure of society that ‘enter by birth and exit only by death’.¹³⁵⁴ And Young refers to jurisdictional association as ‘people being thrown together, finding themselves in geographical proximity and economic interdependence’.¹³⁵⁵ Members of jurisdictional associations are typically represented by elected or appointed individuals (state actors) who participate, deliberate and make binding decisions on their behalf in institutional forums.¹³⁵⁶ Hybrid forums are also typically formed around jurisdictional association.¹³⁵⁷ Voluntary associations are associations of individuals who volunteer to be members of the association based on a shared worldview, aim, identify, interest or value. Examples of voluntary associations include opposition political parties, social movements,

¹³⁵⁰ Cohen and Rogers, 1995; Mansbridge, 1992

¹³⁵¹ Dodge, 2009; 226; Parkinson, 2003; 183

¹³⁵² Hendriks, 2006; 486; Hendriks, 2009

¹³⁵³ Young, 1996; 126

¹³⁵⁴ Rawls, 2005b; 445

¹³⁵⁵ Young, 1996; 126

¹³⁵⁶ Freeman, 2000; 397

¹³⁵⁷ Hendriks, 2006; 501

interest groups, religious organisations and even businesses.¹³⁵⁸ Voluntary associations are autonomous associations, independent from the state. Members of voluntary associations attempt to influence public opinion and public decisions either through participation in the broadcasted discursive arena or hybrid forums.¹³⁵⁹ The membership of jurisdictional associations is often diverse, while the membership of voluntary associations is typically more homogeneous. Voluntary associations may be structured democratically or more authoritatively and hierarchically. Depending on the size and democratic nature of the voluntary association, the entire membership may participate in associational decision making, or in less democratic voluntary associations, the membership may be represented by a select group of deliberative participants. Jurisdictional associations often relate to one another in a hierarchical way – local, county, regional, state and trans-boundary. Voluntary associations often relate within networks.¹³⁶⁰

Here I argue that there are two types of voluntary associations – economic and civil society. Economic actors form and participate in associational forums within the workplace and professional societies. This is not to suggest that economic actors should be considered part of civil society. Economic actors typically work to generate profits and to strategically influence public decisions in a way that meets their substantive needs; they do not share the dual orientation pursued by civil society actors – especially the defensive orientation to expand rights and mobilise publics. However, both commercial and civil

¹³⁵⁸ Benhabib, 1996a; 73; Mansbridge, 1999; 213; Gutmann and Thompson, 1996; 12; Fung, 2004; 52; Habermas, 1998; 175

¹³⁵⁹ Habermas, 1998; 175

¹³⁶⁰ Dryzek, 2000; 134; Dodge, 2009; 228

society workplaces can be organised as hierarchical or egalitarian¹³⁶¹, authoritarian or democratic, domestic or transnational, strategic or communicative.¹³⁶² Members of commercial associations, just like those of civil society associations, may withdraw into safe spaces to deliberate among themselves and to form identities and solidarity, to create strategy and to coordinate action.

Originally, deliberative theory found public deliberation and reason in official democratic forums – legislative assemblies, executive offices and the courts.¹³⁶³ Bessette (1980) focuses on legislative deliberation; Rawls (2005) highlights the use of public reason in the courts (especially the American Supreme Court) and Fischer (2003) finds deliberation in bureaucracies.¹³⁶⁴ The deliberations that occur in courts, parliaments and bureaucracies are obviously very different from one another; for example, the content of court deliberations is constrained around the law and court deliberations are much more procedurally rigorous compared to bureaucratic and parliamentary deliberations. What distinguishes institutional forums from other micro sphere forums is that membership in institutional forums is always based on political jurisdiction, is usually representative and is usually restricted to public officials. State actors are either elected or appointed to sit in these forums. Typically, these forums are not open to non-state actors; important exceptions are legislative committees that invite witness testimony, administrative appeals and the courts that consider

¹³⁶¹ For Dryzek, Greenpeace is an example of a hierarchical civil society association. (Dryzek, 2000; 100)

¹³⁶² Mansbridge, 2007; 253; Young, 2000; 180; Dryzek, 2000; 100, 133; Pateman, 1970; Chambers, 2002; 105; Hendriks, 2006; 495; Gutmann and Thompson, 1996; 358

¹³⁶³ Habermas, 1998; Rawls, 2005a; Bessette, 1980; Dodge, 2009; Hendriks, 2006; 492; Elster, 1998; Young, 1996; 121; Mansbridge, 1999; 227

¹³⁶⁴ Habermas, 1998; Rawls, 2005a; Bessette, 1994; Benhabib, 1996a; 77; Dryzek, 2000; 56; Gutmann and Thompson, 1996; 40; Hendriks, 2006; 497

claims from plaintiffs, defendants, legal representatives, witnesses and juries. These deliberations are often procedurally formal with strict rules of order. Deliberations in institutional forums like the courts often end with a written description of the arguments considered, accepted and rejected in the forum.

Decisions reached during institutional forums are by definition public and are usually binding.¹³⁶⁵ The function of the state subsystem is to make, enforce and implement its collective will-formation.¹³⁶⁶ The state is the subsystem of democratically elected public officials, and their appointees, who are accountable to their voters and who are legally authorized to make collective, binding and enforceable decisions.¹³⁶⁷ Habermas argues that the public sphere must delegate its decision-making powers to legally elected assemblies - who deliberate and make collective decisions on their behalf - because binding deliberation and decision making must take place face-to-face and not all citizens can practically participate.¹³⁶⁸ Habermas calls this the *parliamentary principle*.¹³⁶⁹

Both Habermas and Rawls argue that, the forms of communication used in institutional forums must be restricted to public reason.¹³⁷⁰ Public officials must be able to publically explain and justify their arguments and decisions with public reason.¹³⁷¹ While Habermas sees public reason as a process oriented toward the search for rationality and truth, Rawls sees public reason as a set of principles - 'a family of reasonable political conceptions of justice' that are

¹³⁶⁵ Hendriks, 2006; 493; Habermas, 1998; Rawls, 2005a; Dryzek, 2000

¹³⁶⁶ Habermas, 1998; 134; Rawls, 2005a; Dryzek, 2000

¹³⁶⁷ Habermas, 1998; 175; Rehg, 1998; Dryzek, 2000

¹³⁶⁸ Habermas, 1998; 170, 316

¹³⁶⁹ Habermas, 1990; 88; Habermas, 1998; 17, 170

¹³⁷⁰ Habermas, 1998; 307; Rawls, 2005b; 443

¹³⁷¹ Rawls, 2005a; 48; 216

shared by free and equal citizens.¹³⁷² Because the judiciary must base their decisions on the constitution, statute and precedent - as well as on shared reasonable political conceptions - Rawls sees them as the 'exemplar of public reason.'¹³⁷³ Dryzek admits that members of the court are professional experts in public reason.¹³⁷⁴ However, he argues that the judiciary is not a democratic body, because its members are appointed and not accountable to the public.¹³⁷⁵

Dryzek complains that institutional deliberation is constrained by state imperatives like 'the need to keep domestic peace, respond to external threats, prevent capital flight, and raise revenues'.¹³⁷⁶ State imperatives are those functions that the government must perform if it is to maintain stability and continuity.¹³⁷⁷ State imperatives work to constrain and limit decisions options by public officials - limiting the possibility of public participation and influence by the public sphere or civil society activists and therefore limiting democracy.¹³⁷⁸

Members of formal and informal voluntary associations deliberate internally and with members of other associations to constitute and mobilise themselves, to construct meanings, to generate solidarity, align on interests, to experiment with ideas, to develop strategy, to share information and resources and coordinate action.¹³⁷⁹ Deliberation in associational forums includes the recruitment of members, attempts to raise funds and the internal sharing of information. Contributions and investments provide the resources needed to fulfil an

¹³⁷² Rawls, 2005a; I; Freeman, 2000; 378; Dryzek, 2000; 15

¹³⁷³ Rawls, 2005a; 216

¹³⁷⁴ Dryzek, 2000; 15

¹³⁷⁵ Dryzek, 2000; 15

¹³⁷⁶ Dryzek, 2000; 83, 171

¹³⁷⁷ Dryzek, 2000; 83

¹³⁷⁸ Dryzek, 2000; 94

¹³⁷⁹ Mansbridge, 1996; 58; Cornwall and Coelho, 2007; 18; Mansbridge, 1999; 212; Gutmann and Thompson, 1996; 40, 113; Dryzek, 2000; 77, 134; Hendriks, Dryzek and Hunold, 2007; 369

association's mission and strengthen the position and credibility of the association in the eyes of the public and of public authorities. What I call associational forums are consistent with Mansbridge's idea of 'protected enclaves'¹³⁸⁰ and somewhat consistent with Fraser's concept of 'subaltern counterpublics'¹³⁸¹. Associational forums are the relatively formal and structured private or semi-private meetings within an association or among associations when forming alliances.¹³⁸² Associational forums are distinct from participation in the macro discursive arena. Voluntary associations participate in the broadcasted discourse arena to interact with and mobilise the public sphere; voluntary associations participate in associational forums to constitute themselves, discuss ideas and create plans.¹³⁸³ Intra-associational decisions are often binding and depending on the scale of membership, participation in deliberations may be fully inclusive rather than representative.¹³⁸⁴ The participants of individual associational forums are likely more homogenous than the general public sphere – this means that reason can be based on shared aim, values, ideals and interests and a notion of the good life. While the associational deliberations may include a variety of perspectives and interests and may sometimes be characterised by misunderstandings and conflict¹³⁸⁵, given the shared aims and voluntary nature of association, the approach of associational deliberations are ultimately collaborative. These 'protected

¹³⁸⁰ Mansbridge, 1996; 57; Mansbridge, 1999; 219

¹³⁸¹ Fraser, 1992; 124; Benhabib, 1996a; 83

¹³⁸² Young, 1996; 121

¹³⁸³ Mansbridge, 1996; 57

¹³⁸⁴ Mansbridge, 1999; 213, 227; Parkinson, 2003; 190

¹³⁸⁵ Dryzek, 2000; 135

enclaves' are relatively safe spaces for members with shared interests to withdraw and regroup, build solidarity, form alliances and develop identities.¹³⁸⁶

Different voluntary associations form alliances or networks when they share a common aim and decide that they would commonly benefit from joint action.¹³⁸⁷

Networks of associations are usually organised from the bottom-up with no central leadership or hierarchy.¹³⁸⁸ Within networks a variety of experiences, knowledge and perspectives – often from very different places and cultures – must be considered and negotiated through deliberations.¹³⁸⁹ The results of these inter-associational deliberations are often not binding. These features of allied association - diversity, voluntary association and the absence of central leadership – mean that networks of associations are more open, respectful, egalitarian and competent.¹³⁹⁰ Given their variety, Dryzek argues that they these networks tend to produce surprisingly 'coherent' narratives.¹³⁹¹

For a forum to be a hybrid forum it must include representatives from more than one type of political actor: public officials (elected or appointed), civil society activists, citizens (experts, stakeholders, lay) and economic actors.¹³⁹² While most deliberative democrats want deliberations to be informed by expert arguments, they are simultaneously looking to extend participation in public decision making beyond the judgements of experts and technocrats to include other institutions, associations, activists and individual citizens - especially

¹³⁸⁶ Mansbridge, 1996; 57, Fraser, 1992; 124; Cornwall and Coelho, 2007; 23

¹³⁸⁷ Dryzek, 2000; 134; Dodge, 2009; 228

¹³⁸⁸ Dryzek, 2000; 77; Dryzek, 2001; 664

¹³⁸⁹ Dryzek, 2000; 135; Dryzek, 2001; 664

¹³⁹⁰ Dryzek, 2000; 134; Dryzek, 2001; 664

¹³⁹¹ Dryzek, 2000; 78

¹³⁹² Hendriks, 2006; 501

those who have been historically excluded from the policy process.¹³⁹³ What I call hybrid forums correspond to what Hendriks calls *mixed discursive spheres*.¹³⁹⁴ Cornwall and Coelho suggest that hybrid forums ‘constitute a distinct arena at the interface of state and society’ – what they call the *participatory sphere*.¹³⁹⁵ The diversity of actors is meant to encourage the cross-fertilisation of ideas.¹³⁹⁶

By definition micro hybrid forums are organised for relatively small groups of diverse participants who meet face-to-face.¹³⁹⁷ Hybrid forums can be open to the public¹³⁹⁸, semi-private¹³⁹⁹ or private. These forums are sometimes sponsored by state actors, sometimes by civil society associations¹⁴⁰⁰ and sometimes by economic actors. Sometimes economic actors, like RMGC, are legally required to convene hybrid forums as part of EIA processes. Many see hybrid forums as deliberations between state and non-state actors¹⁴⁰¹; although as this research shows state actor participation in hybrid forums is not required. Forum aims may be to define policy issues, to reach agreement or consensus, to influence the public sphere or to influence institutional forums.¹⁴⁰² In reality hybrid forums rarely result in binding public decisions.¹⁴⁰³

¹³⁹³ Dryzek, 2000; 86; Rosenberg, 2007; Connelly, 2009; Sanders, 1997; 350; Hendriks, 2006; 498; Hendriks, 2009; Thompson, 2008; Papadopoulos and Warin, 2007; Young, 1999; 155; Cornwall and Coelho, 2007; 18

¹³⁹⁴ Hendriks, 2006; 501; Dryzek, 2000; 50

¹³⁹⁵ Cornwall and Coelho, 2007; 1

¹³⁹⁶ Hendriks, 2006; 501

¹³⁹⁷ Dryzek, 2000; 50; Hendriks, 2009; 175; Mansbridge, 1999; 227

¹³⁹⁸ Dryzek, 2000; 12

¹³⁹⁹ Dodge, 2009; 230

¹⁴⁰⁰ Dryzek, 2000; Hendriks 2009; Button and Ryfe, 2005; 23; Hendriks, 2006; 500

¹⁴⁰¹ Dodge, 2009; Metze, 2009; Hendriks, 2006; 486; Hendriks, 2009

¹⁴⁰² Dryzek, 2000; Dodge, 2009; Connelly, 2009, 189; Hendriks, 2006; 501

¹⁴⁰³ Rawls, 2005a; 38; Habermas, 1998; Mansbridge, 2007; 254; Cornwall and Coelho, 2007; 24; Levine, Fung and Gastil, 2005; 276; Cornwall and Coelho, 2007; 25; Williamson and Fung, 2004; 6; Dryzek, 2001; 654

Participation in hybrid forums is sometimes organised for a particular jurisdiction, sometimes based on a particular issue and usually both.¹⁴⁰⁴ Hybrid forums may be structured as meetings, town hall meetings, committee meetings, task forces, public hearings, neighbourhood councils, panels, working groups, deliberative interviews, focus groups, policy mediation, seminars, planning cells¹⁴⁰⁵, stakeholder planning¹⁴⁰⁶ deliberative polling¹⁴⁰⁷, citizen juries¹⁴⁰⁸, co-governance councils, participatory budgeting, consensus conferences¹⁴⁰⁹ and public inquiries.¹⁴¹⁰ Powerful hybrid forums are what Dryzek calls state 'inclusion'; these forums can include lobbying, participation in policy development and implementation and political appointments.¹⁴¹¹

Dryzek cautions civil society participants from engaging in hybrid forums.¹⁴¹² For him, the state's imperatives constrain the terms it can accept and make it difficult for state actors to be influenced by public deliberation.¹⁴¹³ This means that, unless an organisation's defining interest can be integrated with the state's imperative, it is unlikely that the group's substantive goals will be incorporated into public policy. At the same time, by collaborating with state actors, civil society associations risk state co-option and can sacrifice their 'defensive orientation'.¹⁴¹⁴ Dryzek worries that the aim of civil society activists to reproduce and expand a vigorous civil society and public sphere may be put in

¹⁴⁰⁴ Dryzek, 2001; 654

¹⁴⁰⁵ Hendricks, 2005

¹⁴⁰⁶ Healey, 1992

¹⁴⁰⁷ Fishkin and Farrar, 2005

¹⁴⁰⁸ Crosby and Nethercut, 2005

¹⁴⁰⁹ Hendricks, 2005; Hendriks, 2006; 501

¹⁴¹⁰ Dodge, 2009; Dryzek, 2000; Hendriks, 2009; Gastil and Levine, 2005; Button and Ryfe, 2005; 23

¹⁴¹¹ Dryzek, 2000; 86, 136

¹⁴¹² Dryzek, 2001; 665; Hendriks, 2006; 496; Cornwall and Coelho, 2007; 23

¹⁴¹³ Dryzek, 2000; 29, 109

¹⁴¹⁴ Dryzek, 2000; 87, 110-1; Hendriks, 2006; 496; Hendriks, Dryzek, and Hunold, 2007; 367

jeopardy if civil society organisations reduce their activity in the macro discursive arena to participate in micro hybrid forums.¹⁴¹⁵

Dryzek and Hendriks recommend that civil society actors are more effective participating in the unconstrained macro discursive arenas rather than in micro hybrid forums.¹⁴¹⁶ The discursive arena is the only possible public arena for civil society actors who have been excluded from hybrid forums and is the only public arena where civil society activists can practice their defensive orientation to protect, reproduce and enlarge the functions of the public sphere and civil society generally.¹⁴¹⁷ Hendriks worries that civil society actors - who might be less capable or unwilling to follow the formal rules of hybrid forums (especially reciprocity and preference transformation) - will be implicitly excluded from the deliberations.¹⁴¹⁸ Dryzek concedes that it can be difficult to sustain political movements in the macro discursive arena, especially in more authoritarian environments.¹⁴¹⁹ However, he argues that political action in the discursive arena can actually leave lasting societal changes even if in the short-term it does not redirect policy decisions.¹⁴²⁰ Cohen and Arato (1992) suggest that civil society associations adopt *dualistic strategies*.¹⁴²¹ Here actors simultaneously or serially participate in micro deliberative forums and macro discursive arenas.¹⁴²²

¹⁴¹⁵ Dryzek, 2000; 85; Cohen and Arato, 1992; 531

¹⁴¹⁶ Dryzek, 2000; 103; Hendriks, 2006; 486, 500; Hendriks, Dryzek, and Hunold, 2007; 367; Diduck and Sinclair et al., 2007; 224; Cornwall and Coelho, 2007; 21; Dodge, 2009; 237

¹⁴¹⁷ Dryzek, 2000; 111; Dodge, 2009; 237; Parkinson, 2003; 191

¹⁴¹⁸ Hendriks, 2006; 493; Hendriks, Dryzek and Hunold, 2007; 362; Parkinson, 2003; 191

¹⁴¹⁹ Dryzek, 2000; 103

¹⁴²⁰ Dryzek, 2000; 101, 162

¹⁴²¹ Mansbridge, 1999; Cohen and Arato, 1992; Hendriks, 2006; 497; Hendriks, 2009; Dodge, 2009; 226

¹⁴²² Dryzek, 2000; 108; Mansbridge, 2007; 265

DELIBERATIVE SYSTEM

Some see the benefits of, as well as empirical examples of, what Mansbridge (1999) calls the *deliberative system* – a system of varied and independent but related macro discursive arenas and micro deliberative forums.¹⁴²³ Given that it would be impossible for *all* to deliberate in a mass general assembly, Benhabib argues that inclusive deliberative democracy requires a '*plurality of modes of association*' in which all have an opportunity to form opinions, participate in debate and contest discourses.¹⁴²⁴ Hendriks argues that a healthy deliberative system fosters connections between the various arenas and forums.¹⁴²⁵ Rather than a spectrum of separate venues, these macro discursive and micro deliberative spheres overlap and influence each other.¹⁴²⁶ The overlap of forums and arenas is important to prevent the extreme and intolerant views of like-minded actors participating exclusively in isolated enclaves.¹⁴²⁷ Micro forums are embedded in the macro discursive arena and are certainly influenced by hegemonic discourses.¹⁴²⁸ With enough publicity micro deliberative forums can also influence other forums as well as the discursive arena.¹⁴²⁹ According to Hendriks, in the ideal, a dialectic is formed between the micro and macro arenas – the various forums and arenas influence each

¹⁴²³ Dryzek, 2000; Hendriks, 2006; 497; Hendriks, 2009; Mansbridge, 1999; Mansbridge, 2007; 266; Fung and Wright, 2003; Gastil and Levine, 2005; Parkinson, 2003; 188; Thompson, 2008; 514; Gutmann and Thompson, 1996; 42

¹⁴²⁴ Benhabib, 1996a; 73, 76; Cohen, 1996; 99

¹⁴²⁵ Hendriks, 2006; 499

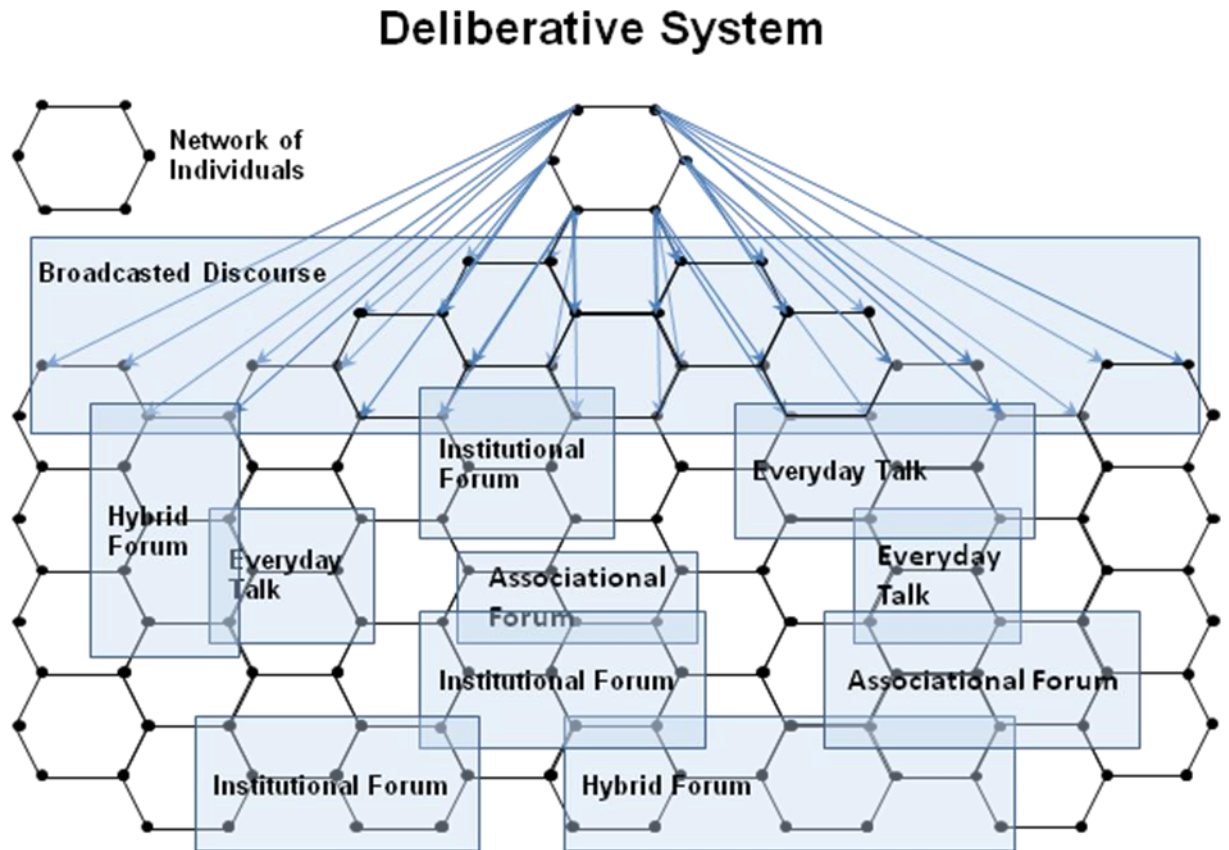
¹⁴²⁶ Hendriks, 2009; 176; Mansbridge, 1999; 213; Hendriks, 2006; 499

¹⁴²⁷ Hendriks, 2006; 500

¹⁴²⁸ Dodge, 2009; 226; Mendonça, 2009; 222; Hendriks, 2006; 486; Metze, 2009; 241; Hendriks, 2009; 177; Connelly, 2009; 189

¹⁴²⁹ Melville, Willingham, and Dedrick, 2005; 51; Cornwall and Coelho, 2007; 18; Scully and McCoy, 2005; 204; Hendriks, 2005b; 96; Coelho, 2007; 37; Scully and McCoy, 2005; 204; Hendriks, 2005b; 96; Coelho, 2007; 37; Lukensmeyer, Goldman and Brigham, 2005; 161; Weiksner, 2005; 216; Crosby and Nethercut, 2005; 114

other.¹⁴³⁰ Here I have developed a map of a deliberative system, inspired by Hendriks's description of her *integrated* deliberative system.¹⁴³¹



Actors can pursue different goals in different arenas.¹⁴³² In the discursive arena, actors identify issues, shift public understanding and interpretation of those issues and work to mobilise the sympathies and support of the public sphere and state actors.¹⁴³³ In deliberative forums, actors pursue support from state actors for their substantive goals as well as work to maintain and expand their political presence and relationships.¹⁴³⁴ Hendriks suggests that micro deliberative forums may be more appropriate for non-partisan actors willing to

¹⁴³⁰ Hendriks, 2006; 498; Mansbridge, 1999; 213

¹⁴³¹ Hendriks, 2006; 500

¹⁴³² Hendriks, 2009; 176; Hendriks, 2006; 487

¹⁴³³ Dodge, 2009; 237

¹⁴³⁴ Cohen and Arato, 1992; 190

consider other points of view and that macro discursive arena may be more suited for those actors advocating for a particular outcome.¹⁴³⁵ Broadcasted discourse is a more appropriate venue for louder, larger, well-resourced and well-organised associations.¹⁴³⁶ Activists, members of associational forums, may participate in everyday talk with non-activists to experiment with the ideas and reasons that can best persuade others.¹⁴³⁷ Hendriks argues that, despite the optimistic view represented in this map of overlapping forums and arenas, in reality it is difficult for hybrid deliberative forums 'to influence a policy debate either directly, by providing substantive policy input, or indirectly, by stimulating public discussion.'¹⁴³⁸

Habermas's two-track model tries to get around the problem of scale for deliberative democracy.¹⁴³⁹ Habermas argues that the central condition for democratic legitimacy, namely that all those bound or affected by a collective outcome ought to have an opportunity to participate in the deliberations, is impossible. In the real world only a few – much less *all* - of those subject to a public decision appear to participate.¹⁴⁴⁰ This is the circumstance of Habermas's parliamentary principle.¹⁴⁴¹ Habermas addresses this situation by basing deliberative legitimacy on the condition of influence rather than inclusion. His two-track model focuses on the relationship between the formal, state democratic institutions (micro institutional forums) and the macro discursive

¹⁴³⁵ Hendriks, 2006, 495

¹⁴³⁶ Hendriks, 2006; 495

¹⁴³⁷ Mansbridge, 1999; 219

¹⁴³⁸ Hendriks, 2006; 498

¹⁴³⁹ Habermas, 1998; 298; Dryzek, 2001; 656

¹⁴⁴⁰ Dryzek, 2001; 651; Dryzek, 2000; 8

¹⁴⁴¹ Habermas, 1998; 170

arena of the public sphere.¹⁴⁴² Here, the role of the public sphere is to discursively form and communicate public opinion – *opinion-formation*.¹⁴⁴³ For Habermas, the public sphere is a ‘weak public’; given its diffused and unorganised nature, the public sphere has a limited capacity to reach agreements and make decisions.¹⁴⁴⁴ Yet, state actors rely on the opinion-formation of the public sphere to identify and frame societal issues, agendas and competing solution proposals so that state actors can deal with them.¹⁴⁴⁵ In order to be successful, public opinion must be transformed into *communicative power* by penetrating the state through informal streams of communication – which must be open to all citizens, political parties and associations. These communication channels include the activities of political parties and particularly the activities of general elections.¹⁴⁴⁶ Communicative power is transformed into *legislative power* when it has an influence on the institutionalized procedures of democratic *will-formation*.¹⁴⁴⁷ Once legitimate laws are authorized and implemented as action, legislative power is converted into *state administrative power*.¹⁴⁴⁸ In order to be considered legitimate, the political system cannot operate according to its own interests - independent from the concerns of the public sphere.¹⁴⁴⁹ In order to be considered accountable, the political system cannot excessively open itself to specific interests through informal paths of

¹⁴⁴² Habermas, 1998; 308; Hendriks, 2006; 496; Parkinson, 2003; 185

¹⁴⁴³ Habermas, 1998; 363; Chambers, 2002; 97; Hendriks, 2006; 496; Dryzek, 2001; 656; Dryzek, 2000; 25 Outhwaite, 2009; 143

¹⁴⁴⁴ Habermas, 1998; 307, 359; Fraser, 1992; 134; Mansbridge, 1999; 227; Cohen, 1996; 190

¹⁴⁴⁵ Habermas, 1998; 307; Chambers, 2002; 97; Hendriks, 2006; 496; Mansbridge, 1999; 227

¹⁴⁴⁶ Habermas, 1998; 300, 368; Hendriks, 2006; 496; Dryzek, 2000; 39, 51; Dryzek, 2001; 656; Outhwaite, 2009; 139

¹⁴⁴⁷ Rehg, 1998; xxviii; Dryzek, 2001; 656; ; Dryzek, 2000; 25; Outhwaite, 2009; 141

¹⁴⁴⁸ Habermas, 1998; 169; Dryzek, 2001; 656; ; Dryzek, 2000; 25; Outhwaite, 2009; 141; Rehg, 1998; xxviii;

¹⁴⁴⁹ Rehg, 1998; xxxi

influence.¹⁴⁵⁰ For Habermas, the tested communicative power of the public sphere discursively generated in open controversies is transformed into state administrative power through the filter of democratically institutionalized legislative power.¹⁴⁵¹

For Dryzek democratic legitimacy is based on the degree to which 'collective decisions are consistent with the constellation of discourses existing within the public sphere'.¹⁴⁵² Collective decisions reached in institutional forums ought to resonate with public opinion.¹⁴⁵³ Resonance involves not only the numbers of people who support a particular discourse, but also the strength of their support.¹⁴⁵⁴ Dryzek criticises Habermas's model because he says that it is not complete or specific about how public opinion influences legislative forums.¹⁴⁵⁵ Habermas does not specify the process involved for state actors to determine the specific content of public opinion about a particular issue – making it difficult to determine whether institutional forums are indeed responsive to the substantive content of public opinion.¹⁴⁵⁶ Dryzek argues that the public sphere transfers the outcomes of its contestation to state actors via a number of discursive methods, not just through elections.¹⁴⁵⁷ In addition to the election process, public opinion is transmitted from the public sphere to state actors through the deployment of rhetoric, the alteration of discourse terms, direct

¹⁴⁵⁰ Rehg, 1998; xxxi

¹⁴⁵¹ Habermas, 1998; 299; Dryzek, 2000; 25; Rawls, 2005a

¹⁴⁵² Dryzek and Niemeyer, 2008; 484; Dryzek, 2001; 616, 661, 665; Hendriks, 2006; 502

¹⁴⁵³ Dryzek, 2001; 661

¹⁴⁵⁴ Dryzek, 2001; 661; Dryzek suggests the use of discourse analysis and surveys in order to test the legitimacy of collective decisions. (Dryzek, 2001; 661)

¹⁴⁵⁵ Dryzek, 2001; 656

¹⁴⁵⁶ Dryzek, 2001; 657

¹⁴⁵⁷ Dryzek, 2000; 50; Dryzek, 2001; 656

communication with public officials and threats of political instability.¹⁴⁵⁸ For Dryzek, the intersubjective augmentation, understanding and assumptions of public discourse affect state actors too.¹⁴⁵⁹ Institutional forums are embedded in macro discursive arenas. In other words, shifts in public discourse also generate shifts in the perceptions, opinions and understanding of policy issues in the minds of policy makers. The discursive power the public sphere has over state actors is manifested in the way issues are framed, concepts are defined and possible solutions are understood, not as direct influence.¹⁴⁶⁰

In this chapter, I have distinguished and defined the five types of venues that can be found in a deliberative system. This expansion of the idea of deliberative systems is used in Chapter 9 to systematically analyse the deliberative system around the zoning and project authorisation of the proposed RMGC gold mining project. In this thesis, I argue that the standard for deliberative legitimacy is different for each venue type. In the next chapter, I develop a deliberative legitimacy standard for each of the types of deliberative forums, including hybrid forums. The hybrid forum legitimacy standard is used in this thesis to critic the legitimacy claims of the series of hybrid forums employed for the RMGC EIA process.

¹⁴⁵⁸ Dryzek, 2001; 659, 660, 666

¹⁴⁵⁹ Dryzek, 2000; 79

¹⁴⁶⁰ Dryzek, 2000; 101

CHAPTER 6: DELIBERATIVE LEGITIMACY

I argue that the aims, approaches, formats, and therefore the legitimacy standards, are different for each of the five types of deliberative venues found in a strong deliberative system.¹⁴⁶¹ I draw from participatory and deliberative democracy theory, research and practice to identify the still contested conditions that make deliberative democracy practices legitimate. In this chapter, I focus on the conditions of deliberative legitimacy that I have drawn from deliberative democracy theory; in the next chapter I review the empirical and practical literature. These standards begin with, but expand on Habermas's ideal speech situation. Based on the ideas of new institutionalism, I assert that the structural features of hybrid forums shape participant behaviour, the distribution of power and political outcomes.¹⁴⁶² I develop the standard of deliberative legitimacy for micro hybrid forums that is used for the *pure critique* of the hybrid forums employed as part of the Roşia Montană Gold Corporation (RMGC) Environmental Impact Assessment (EIA) process. This standard of legitimacy forms the *theory of emancipation* and the *constructive critique* for the critical theory developed in this thesis. A theory of emancipation and a

¹⁴⁶¹ Shapiro, 1999; 33

¹⁴⁶² Peters, 2005; 19; Pierson and Skocpol, 2002; 706; March and Olsen, 1999, 99 in Peters, 2005; 29; Steinmo, Thelen and Longstreth, 1992; 2; Chambers, 2002; 103

constructive critique both refer to the alternative situation; in this case, the institutional features necessary for legitimate hybrid forums.¹⁴⁶³

Legitimacy is the moral basis from which people consent to public decisions and comply with their implementation or enforcement.¹⁴⁶⁴ The idea of legitimacy is grounded in a set of normative beliefs for social cooperation that can be expected to be shared by reasonable political equals.¹⁴⁶⁵ Legitimacy is essentially about acceptability; legitimate processes and outcomes are those that reasonable people can be presumed to accept.¹⁴⁶⁶ For Mansbridge, the concept of legitimacy is an ideal that depends on the context, rides along a spectrum and can never be fully achieved.¹⁴⁶⁷

Most people understand and accept that collective decisions sometimes result in a measure of coercion for some members of a society.¹⁴⁶⁸ Even though individuals may not always share the same norms and beliefs, they orient their behaviour in a way that is consistent with the rules they expect are accepted by most others.¹⁴⁶⁹ Even those decisions that directly frustrate the ability of some actors to pursue their interests will be accepted as long as they are generally considered legitimate by the society.¹⁴⁷⁰ Legitimacy is important, not only because it expresses our shared moral convictions, but also because

¹⁴⁶³ Dryzek, 1990; 32; Fay, 1987; 31; The constructive approach to critique is not thought of as an alternative to pure or indirect forms, but as an important addition to them. (Dryzek, 1990; 32)

¹⁴⁶⁴ Parkinson, 2003; 182; Hendriks, Dryzek and Hunold, 2007; 371; Outhwaite, 2009; 62; Estlund, 1997; 176; Dryzek, 1990; 55; Dryzek, 2000; 24; Sanders, 1997; 347

¹⁴⁶⁵ Gutmann and Thompson, 1996; 26

¹⁴⁶⁶ Rawls, 2005a; 488; Geuss, 1991; 59; Rehg, 1998; xxv; Estlund, 1997; 175; Gutmann and Thompson, 1996; 26; Johnson, Dowd and Ridgeway, 2006; 55; Parkinson, 2003; 184; Chambers, 1996; 194; Freeman, 2000; 383; Benhabib, 1996a; 69; Dryzek, 1990; 55; Dryzek, 2001; 660; Dryzek, 2000; v; Sanders, 1997; 347; Cohen, 1996; 100

¹⁴⁶⁷ Mansbridge, 2007; 263; Freeman, 2000; 379; Parkinson, 2003; 184; Manin, 1987; 361

¹⁴⁶⁸ Mansbridge, 1996; Geuss, 1991; 59

¹⁴⁶⁹ Johnson, Dowd and Ridgeway, 2006; 55

¹⁴⁷⁰ Geuss, 1991; 59; Gutmann and Thompson, 1996; 28; Estlund, 1997; 173

instrumentally legitimacy improves the efficiency of implementation; minimises resistant, strategic and subversive behaviour; contributes to social stability and justifies the use of coercion.¹⁴⁷¹ On the other hand, legitimacy also works to suppress dissenting and outlying views.¹⁴⁷² People determine the legitimacy of a political outcome by evaluating the substantive outcome itself and/or the procedure that went into reaching the substantive outcome.

Those who find political legitimacy exclusively in the procedures used to reach collective decisions support a *pure proceduralist* view of legitimacy.¹⁴⁷³ Proceduralists consider a process legitimate as long as 1) the process was followed according to the rules 2) the process is founded on a system of norms and beliefs about collective decision making that is assumed to be held by all members.¹⁴⁷⁴ A pure procedural notion of legitimacy is justified in diverse associations with no shared comprehensive moral or religious views that can provide guidance for the content of substantive outcomes.¹⁴⁷⁵ In these circumstances, it is difficult to assume that citizens will collectively agree on correct or true public solutions.¹⁴⁷⁶ In fact, some pure proceduralists deny the existence of correct or true substantive political outcomes under any circumstances.¹⁴⁷⁷

¹⁴⁷¹ Rawls, 2005a; iv ; Parkinson, 2003; 182; Dryzek, 1990; 55; Dryzek, 2000; 24; Dryzek, 2001, Fung, 2003; 534; Johnson, Dowd and Ridgeway, 2006; 56; Cheng and Fiero, 2005; 165; Hendriks, 2009; 174; Sokoloff, Steinberg and Pyser, 2005, 193; Soneryd and Weldon, 2003; 22; Sokoloff, Steinberg and Pyser, 2005, 193; Diduck and Sinclair et al., 2007; 228

¹⁴⁷² Johnson, Dowd and Ridgeway, 2006; 55; Chambers, 2002; 90; Medearis, 2005; 71; Parkinson, 2003; 182

¹⁴⁷³ Cohen, 1996; 96; Gutmann and Thompson, 1996; 33, 361; Parkinson, 2003; 183; Dryzek, 2000; 141

¹⁴⁷⁴ Geuss, 1991; 59

¹⁴⁷⁵ Rehg, 1998; xxv; Cohen, 1996; 95; Mansbridge, Bohman et al, 2010; 86

¹⁴⁷⁶ Gutmann and Thompson, 1996; 28; Estlund, 1997; 175

¹⁴⁷⁷ Gutmann and Thompson, 1996; 28

The moral properties that are typically considered inherent in legitimate democratic processes are fairness, equality, autonomy and self-determination.¹⁴⁷⁸ These values are preserved by political rights - like freedoms of speech, the press and assembly - that are necessary for fair democratic processes.¹⁴⁷⁹ The moral foundation of procedural democracy generally yields procedures like voting, majority rule, representation and party and interest group membership.¹⁴⁸⁰ Members of the minority can accept majority rule as a fair procedure because the process respects their status as free and equal citizens.¹⁴⁸¹ Other than these procedural conditions, in a *pure procedural* democracy there are no restrictions on the substantive outcomes of democratic procedures.¹⁴⁸² While a purely procedural idea of democracy has no standard for evaluating the quality or truth of a substantive outcome, this view asserts that legitimate democratic procedures will more likely protect individual rights and result in just outcomes.¹⁴⁸³

Substantive notions of legitimacy emphasise the justice of outcomes.¹⁴⁸⁴ A purely substantive conception of legitimacy says that just outcomes are completely independent of decision making processes.¹⁴⁸⁵ In this view, any process that reliably results in the most just outcomes – for example a council of experts – would be the most acceptable political procedure.¹⁴⁸⁶ Derived from

¹⁴⁷⁸ Freeman, 2000; 388-9; Rehg, 1998; xxv; Gutmann and Thompson, 1996; 26; Cohen, 1996; 95; Mansbridge, Bohman et al, 2010; 86; Estlund, 1997; 176

¹⁴⁷⁹ Freeman, 2000; 381; Gutmann and Thompson, 1996; 26; Cohen, 1996; 97

¹⁴⁸⁰ Parkinson, 2003; 183; Gutmann and Thompson, 1996; 26; Estlund, 1997; 176

¹⁴⁸¹ Gutmann and Thompson, 1996; 28; Estlund, 1997; 173; Mansbridge, Bohman et al, 2010;

86

¹⁴⁸² Freeman, 2000; 381

¹⁴⁸³ Freeman, 2000; 388; Gutmann and Thompson, 1996; 28

¹⁴⁸⁴ Freeman, 2000; 388; Cohen, 1996; 95; Gutmann and Thompson, 1996; 27

¹⁴⁸⁵ Freeman, 2000; 388; Estlund, 1997; 184; Cohen, 1996; 95; Gutmann and Thompson, 1996;

27

¹⁴⁸⁶ Freeman, 2000; 387

shared interests, traditions and values - which define concepts like justice and the common good - legitimate outcomes are those that are consistent with the substantive goals of a particular society and achieve normatively desired ends.¹⁴⁸⁷ Those who subscribe to substantive notions of legitimacy hope to resolve political disagreement by building agreement on a set of fundamental values and then leaving the resolution of individual disputes to an institution that is supposed to be above politics – like the American Supreme Court.¹⁴⁸⁸

For Rousseau, an important proponent of substantive or epistemic notions of legitimacy, citizens seek to discover the substantive content of the general will.¹⁴⁸⁹ Rousseau understands this common good as the conditions needed to secure individual freedom, independence and equality.¹⁴⁹⁰ Citizens must simply evaluate alternative solutions against their shared independent standard of justice in order to discover legitimate outcomes.¹⁴⁹¹ Individual results are either correct or incorrect.¹⁴⁹² In this view, those with a minority opinion have simply erred; what they thought was the general will was not and they must surrender their moral judgement to the correct or legitimate outcome.¹⁴⁹³

¹⁴⁸⁷ Habermas, 1996; 26; Bohman and Rehg, 1997; xiv; Rehg, 1998; xxxi; Dryzek, 2000; 174; Cohen, 1996; 95; Parkinson, 2003; 183; Gutmann and Thompson, 1996; 34

¹⁴⁸⁸ Gutmann and Thompson, 1996; 347, 361

¹⁴⁸⁹ Estlund, 1997; 183; Rehg, 1998; xxiv; Manin, Stein and Mansbridge, 1987; 343; Freeman, 2000; 376; Rehg, 1998; xxxi; Parkinson, 2003; 183

¹⁴⁹⁰ Freeman, 2000; 376; Gutmann and Thompson, 1996; 26

¹⁴⁹¹ Manin, Stein and Mansbridge, 1987; 350; Freeman, 2000; 376; Bohman and Rehg, 1997; xiv; Parkinson, 2003; 183; Estlund, 1997; 174; Cohen, 1996; 95; Gutmann and Thompson, 1996; 34

¹⁴⁹² Estlund, 1997; 183; Bohman and Rehg, 1997; x; Freeman, 2000; 387; Manin, Stein and Mansbridge, 1987; 343

¹⁴⁹³ Estlund, 1997; 184; Manin, Stein and Mansbridge, 1987; 343; Freeman, 2000; 387

Estlund and Gutmann and Thompson argue that exclusively procedural or substantive views of democratic legitimacy are incomplete.¹⁴⁹⁴ While procedural democrats emphasise the rights that safeguard democratic processes, they neglect the substantive liberties (such as religious liberty, liberty of conscience and property rights) that actually constrain majority rule and limit democratic processes.¹⁴⁹⁵ Even procedural democrats agree that substantive rights that protect democratic processes ought to be preserved – even from majority rule.¹⁴⁹⁶ Estlund argues that the fairest procedure for selecting between two alternatives is a coin flip.¹⁴⁹⁷ He asserts that our discomfort with this process reflects our deep consideration for ‘procedure-independent moral standards’ in public outcomes.¹⁴⁹⁸ Procedural fairness is not a sufficient basis for legitimacy to the degree we believe one alternative is more appropriate than another.¹⁴⁹⁹ Estlund also argues that proceduralism is ‘insensitive to reasons’; under pure proceduralism there can be no reason – even a good one - for favouring the claims of one citizen over another.¹⁵⁰⁰ Estlund and Gutmann and Thompson worry that purely substantive or epistemic notions of legitimacy are too idealistic for modern pluralist societies.¹⁵⁰¹ Diverse societies of autonomous citizens, who are not required to defer to the authority or expertise of others, require morally legitimate procedures to collectively reach

¹⁴⁹⁴ Gutmann and Thompson, 1996; 33, 40, 200, 361; Estlund, 1997; 176; Cohen, 1996; 97; Rehg, 1998; xxiv

¹⁴⁹⁵ Cohen, 1996; 97; Gutmann and Thompson, 1996; 31; Rehg, 1998; xxiv

¹⁴⁹⁶ Gutmann and Thompson, 1996; 31; Rehg, 1998; xxiv; When resolving conflicts over correct procedures, proceduralists are forced to put moral substance back into collective decision making. (Gutmann and Thompson, 1996; 32)

¹⁴⁹⁷ Estlund, 1997; 176

¹⁴⁹⁸ Estlund, 1997; 176

¹⁴⁹⁹ Estlund, 1997; 176

¹⁵⁰⁰ Estlund, 1997; 177; Rehg, 1998; xxxi; Gutmann and Thompson, 1996; 34

¹⁵⁰¹ Habermas, 1996; 24; Estlund, 1997; 173; Gutmann and Thompson, 1996; 34, 40, 200, 361

decisions.¹⁵⁰² In pluralist societies, widespread disagreement exists about the interpretation of concepts like justice and the common good.¹⁵⁰³ There is no shared, pre-deliberative, deeply held, substantive, ethical consensus on the 'correct' notion of the common good.¹⁵⁰⁴ Without procedural conditions for legitimacy, those who hold minority views on the independent standards for evaluating substantive outcomes have no choice but to reject the legitimacy of outcomes.¹⁵⁰⁵ Under these circumstances those with minority views may feel no obligation to comply with political outcomes – potentially resulting in social instability.¹⁵⁰⁶

Here I consider the legitimacy conditions for democratic deliberation proposed by Joshua Cohen (1989), Sylvia Benhabib (1996) and Amy Gutmann and Dennis Thompson's (1996). For both Cohen and Benhabib, a democracy is an association where members make collective decisions together based on a process of reasoned deliberation.¹⁵⁰⁷ For Gutmann and Thompson the core idea of deliberative democracy is that when people morally disagree on political matters, they should seek mutually acceptable agreements by continuing to reason together.¹⁵⁰⁸ Deliberative democracy must involve venues and arenas where people can propose issues for discussion, debate about those issues and settle on an outcome.¹⁵⁰⁹

¹⁵⁰² Estlund, 1997; 173; Gutmann and Thompson, 1996; 34; Bohman and Rehg, 1997; xiv

¹⁵⁰³ Estlund, 1997; 173; Rehg, 1998; xxxi; Gutmann and Thompson, 1996; 35; Habermas, 1996;

24

¹⁵⁰⁴ Habermas, 1996; 24; Richardson, 1997; 361

¹⁵⁰⁵ Estlund, 1997; 175

¹⁵⁰⁶ Estlund, 1997; 175

¹⁵⁰⁷ Cohen, 1997; 67; Cohen, 1989b; 26; Benhabib, 1996a; 68; Cohen, 1996; 99; Gaventa, 2006a; 17; Freeman, 2000; 382; Young, 1996; 122; Dryzek, 2001; 651

¹⁵⁰⁸ Gutmann and Thompson, 1996; 1; Freeman, 2000; 407

¹⁵⁰⁹ Cohen, 1997; 85; Cohen, 1989b; 33; Cohen, 1996; 99; Hendricks, 2006; 492

Very early in the deliberative turn, Cohen offered his *ideal deliberative procedure* and in 1996, Benhabib described her procedural model of democratic deliberation.¹⁵¹⁰ Cohen and Benhabib's conceptions of deliberative legitimacy both focus on deliberative procedures.¹⁵¹¹ However, Cohen argues that his model addresses pluralism, without endorsing a purely procedural conception of democracy.¹⁵¹² Yes, the principles behind his procedures are similar to those that are traditionally valued by procedural democracy.¹⁵¹³ Yet he argues that even the substantive liberal liberties that constrain democratic procedures are justified by deliberative democracy.¹⁵¹⁴ Benhabib argues that proceduralism is the rational response for plural societies; proceduralist models allow for the articulation and exploration of conflict 'under conditions of social cooperation mutually acceptable to all'.¹⁵¹⁵ Neither Cohen's nor Benhabib's procedure puts extra-constitutional restrictions on substantive debates and outcomes.¹⁵¹⁶

Gutmann and Thompson argue that their model seeks to transcend the arguments between procedural and substantive sources of legitimacy for democratic deliberation.¹⁵¹⁷ They see 'deliberation as an outcome-oriented process'; deliberation integrates substantive moral argument into democratic procedure.¹⁵¹⁸ Gutmann and Thompson's standard of deliberative legitimacy include both procedural *conditions* and substantive *principles*. Gutmann and

¹⁵¹⁰ Benhabib, 1996a; Cohen, 1997; 72; Cohen, 1989b; 30, 32; Christiano, 1997; 262; Gould, 1996; 177; Young, 1996; 122; Hendriks, 2006; 487; Freeman, 2000; 398; Mansbridge, 1999; 224

¹⁵¹¹ Estlund, 1997; 179

¹⁵¹² Cohen, 1996; 99; Freeman, 2000; 395

¹⁵¹³ Dryzek, 2000; 12; Freeman, 2000; 395

¹⁵¹⁴ Cohen, 1996; 99; Freeman, 2000; 395

¹⁵¹⁵ Benhabib, 1996a; 73

¹⁵¹⁶ Benhabib, 1996a; 72; Freeman, 2000; 391; Parkinson, 2003; 184

¹⁵¹⁷ Gutmann and Thompson, 1996; 27, 41, 200, 229; Cohen, 1996; 99; Freeman, 2000; 395; Hendriks, 2005b; 13

¹⁵¹⁸ Gutmann and Thompson, 1996; 27, 50

Thompson's conditions of deliberation – accountability, reciprocity and publicity – fairly regulate the process of deliberation, but they also, in themselves, hold substantive democratic value.¹⁵¹⁹ Their principles that govern the substantive content of deliberation – basic liberty, basic opportunity and fair opportunity – determine the substantive legitimacy of deliberative outcomes, but they also condition deliberative procedure and are themselves understood and formed through deliberative procedures.¹⁵²⁰ These sets of principles work to ensure collective substantive outcomes that can be adequately justified to all who are impacted.¹⁵²¹ This means, Gutmann and Thompson argue, that societies organised around institutions and practices of deliberative democracy are more legitimate than those societies based on the conceptions of democracy that find legitimacy in either procedural or substantive conceptions of democracy.¹⁵²²

All four writers argue that their models can be used to determine the adequacy of actual public deliberation.¹⁵²³ They assert that the more nearly deliberative practices align with their conditions the more likely the deliberative results will be more morally legitimate, rational and justifiable to all those who are bound by them.¹⁵²⁴ They admit that their procedural conceptions of deliberation may not

¹⁵¹⁹ Gutmann and Thompson, 1996; 93, 229; Parkinson, 2004; 379; Mansbridge, 1999; 221

¹⁵²⁰ Gutmann and Thompson, 1996; 12, 229; Thompson, 2008; 508; Freeman, 2000; 379; Chambers, 2003; 310

¹⁵²¹ Gutmann and Thompson, 1996; 27, 200-1, 224; Dryzek, 1990; 55; Cohen 1989, 2007; Thompson, 2008; 504; Freeman, 2000; 395; Chambers, 2003; 308; Cohen, 1996; 99; Dryzek, 2001; 654; Parkinson, 2003; 182; Dryzek, 2000; v, 16; Sanders, 1997; 347; Christiano, 1997; 244; Benhabib, 1996

¹⁵²² Gutmann and Thompson, 1996; 50, 200; Papadopoulos and Warin, 2007; 451

¹⁵²³ Gutmann and Thompson, 1996; 7

¹⁵²⁴ Gutmann and Thompson, 1996; 6, 50, 229; Benhabib, 1996a; 69; Cohen, 1989b; 30; Cohen, 1997; 72; Thompson, 2008; 508; Freeman, 2000; 379; Bohman and Rehg, 1997; xvi; Gould, 1996; 177; Freeman, 2000; 393; Christiano, 1997; 262

always produce just or even the 'morally best' outcomes.¹⁵²⁵ However, they assert that the application of their conditions would result in the best possible public debate, which would subsequently produce the best possible solutions given the available information and arguments.¹⁵²⁶ In the absence of shared comprehensive moral views, the legitimacy of collective outcomes depends both on the moral quality of the process and the ability of participants to justify substantive claims.¹⁵²⁷

For this thesis, I follow Cohen and Benhabib's lead and investigate deliberative legitimacy based on a procedural model – rather than based on Gutmann and Thompson's model which includes both procedural and substantive elements. An empirical evaluation of a deliberative event based on Gutmann and Thompson's substantive legitimacy conditions that restrict deliberative outcomes - basic liberty, basic opportunity and fair opportunity - would of course be valuable. However, given my personal interest as a mediator, for this analysis I focus on the procedural conditions outlined by Cohen, Benhabib and Gutmann and Thompson.¹⁵²⁸ Gutmann and Thompson's substantive principles that constrain outcomes are not part of the deliberative legitimacy standard developed for this thesis.

¹⁵²⁵ Gutmann and Thompson, 1996; 6, 50, 229; Benhabib, 1996a; 69; Cohen, 1989b; 30; Cohen, 1997; 72; Bohman and Rehg, 1997; xvi; Gould, 1996; 177; Freeman, 2000; 393; Christiano, 1997; 262; Thompson, 2008; 508; Freeman, 2000; 379

¹⁵²⁶ Cohen, 1989b; 30; Cohen, 1997; 72; Benhabib, 1996a; 70; Bohman and Rehg, 1997; xv; Estlund, 1997; 180; Gould, 1996; 177; Freeman, 2000; 398

¹⁵²⁷ Gutmann and Thompson, 1996; 4, 17; Freeman, 2000; 383; Cohen, 1996; 99; Thompson, 2008; 498; Chambers, 2003; 308; Dryzek, 2001; 654; Parkinson, 2003; 182; Dryzek, 2000; v; Sanders, 1997; 347; Hendricks, 2006; Christiano, 1997; 244

¹⁵²⁸ Mediators, as opposed to arbitrators, manage deliberative processes rather than offer substantive outcomes.

An analysis of the conditions outlined in the three models demonstrates that the models are very similar. Cohen, Benhabib and Gutmann and Thompson all agree that for deliberations to be legitimate: participants ought to be free; participants ought to be equal; deliberations ought to be inclusive; deliberations ought to be based on reasoned argument; reason ought to be guided by reciprocity; participants ought to be open to preference transformation; deliberations ought to be influenced by public opinion; and deliberations ought to be public.¹⁵²⁹ Gutmann and Thompson agree with Benhabib that deliberative participants ought to be informed.¹⁵³⁰ Gutmann and Thompson agree with Cohen and Benhabib that deliberative positions and outcomes ought to be justifiable. However, because Gutmann and Thompson are explicitly developing conditions for institutional representative forums, they shift the condition to – deliberative participants ought to be accountable to the greater membership. Gutmann and Thompson diverge from Cohen and Benhabib about their deliberative aims toward the common good. Rather than seeking the common good sought by Cohen and Benhabib, Gutmann and Thompson's deliberations seek common ground. All three models differ in their conditions for agreement. Cohen's model works toward consensus. Benhabib's model aims for the '*freely given assent of all concerned*.'¹⁵³¹ And Gutmann and Thompson's model aims to reach provisional agreement while maintaining mutual respect.

¹⁵²⁹ Cohen, 1997; 72; Cohen, 1989b; 30; Benhabib, 1996a; 68-9, 79, 87; Estlund, 1997; 180; Hendricks, 2006; 492; Dryzek, 2001; 651; Dryzek and Niemeyer, 2008; 485; Freeman, 2000; 382; Young, 1996; 121; Mendonça, 2009; 211; Hendriks, Dryzek and Hunold, 2007; 366; Gould, 1996; 177; Mansbridge, 1999; 225-6; Bohman and Rehg, 1997; xix; Dryzek, 2000; 39; Fung, 2004; 52; Deveaux, 2003; 787

¹⁵³⁰ Benhabib, 1996; 71

¹⁵³¹ Benhabib, 1996a; 79 emphasis in original; Cohen, 1989b; 34; Cohen, 1997; 75; Gould, 1996; 177; Young, 1996; 122; Bohman and Rehg, 1997; xix; Dryzek, 2000; 39; Dryzek, 2001; 651

Deliberative Legitimacy Standards			
	Cohen	Benhabib	G & T¹⁵³²
Conditions that Guide Deliberator Relations			
Free	Yes	Yes	Yes
Equal	Yes	Yes	Yes
Inclusive	Yes	Yes	Yes
Reciprocal	Yes	Yes	Yes
Transformative	Yes	Yes	Yes
Conditions that Shape Deliberative Content			
Informed		Yes	Yes
Reasonable	Yes	Yes	Yes
Common Good	Yes	Yes	No
Consensus	Yes	Free Assent	No
Conditions that Link the Forum to the Deliberative System			
Influenced	Yes	Yes	Yes
Justifiable/ Accountable	Yes	Yes	Yes
Public/ Transparent	Yes	Yes	Yes

With foundations in both Rawls's *theory of justice* and Habermas's *ideal speech situation*, all theorists agree that free and equal debate are necessary conditions for legitimate deliberative outcomes.¹⁵³³ Participants must be free and equal in order to competently and effectively interpret and develop mutual justifiable outcomes.¹⁵³⁴ The idea of freedom means that participants are not bound by forms of power or preconditions or by any religious or moral doctrine; participants cannot be threatened or coerced into accepting or rejecting certain proposals.¹⁵³⁵ For Gutmann and Thompson basic liberty refers to the notion of

¹⁵³² Gutmann and Thompson also include legitimacy conditions that limit substantive arguments to those that conform to conceptions of basic liberty, basic opportunity and fair opportunity. This analysis focuses on the procedural conditions of legitimacy.

¹⁵³³ Cohen, 1997; 73; Cohen, 1989b; 32; Cohen, 1996; 99; Gutmann and Thompson, 1996; 8, 50, 55, 199, 230, 349; Estlund, 1997; 180; Bohman and Rehg, 1997; xv; Gould, 1996; 177; Hendricks, 2006; 492; Young, 1996; 122; Dryzek, 2000; 16; Dryzek, 2001; 651; Young, 1996; 122; Freeman, 2000; 389; Rawls, 2005a; Mansbridge, 1999; 224, 226; The legitimacy condition of free and equal deliberators is part of Gutmann and Thompson's condition of reciprocity.

¹⁵³⁴ Freeman, 2000; 382; Dryzek, 2000; 16; Mendonça, 2009; 211

¹⁵³⁵ Cohen, 1997; 74; Cohen, 1989b; 32; Young, 1996; 121-2; Mansbridge, 1999; 224; Hendricks, 2006; 492; Bohman and Rehg, 1997; xxvi; Freeman, 2000; 382

'individual sovereignty over body and mind'.¹⁵³⁶ Participants are considered equal by the recognition that each has the capacities required to participate in public deliberations.¹⁵³⁷ For deliberation to be equal, each participant must have equal opportunities to introduce, propose, argue, question, support and criticise topics, facts, assumptions, perspectives and proposals.¹⁵³⁸ Each participant must have equal access to relevant information and equal opportunities to acquire an understanding of that information. Deliberative processes and outcomes are more legitimate as long as deliberation takes place among participants who possess sufficient social and economic status to view each other on terms of mutual respect.¹⁵³⁹ Equality also means that everyone's claims ought to be considered based on their merits rather than on the status, wealth or power of particular participants.¹⁵⁴⁰ Each participant must have equal opportunities to affect outcomes; the better argument should prevail no matter who offers it.¹⁵⁴¹

Cohen and Benhabib agree that anyone who is subject to a collective decision ought to have the right and opportunity to participate in and contribute to the deliberation.¹⁵⁴² For Gutmann and Thompson, collective outcomes must be

¹⁵³⁶ Gutmann and Thompson, 1996; 230

¹⁵³⁷ Cohen, 1989b; 33; Cohen, 1997; Bohman and Rehg, 1997; xxvi; Hendriks, Dryzek and Hunold, 2007; 366; Hendricks, 2006; 492; Freeman, 2000; 389

¹⁵³⁸ Cohen, 1989b; 33; Cohen, 1997; 74; Benhabib, 1996a; 70, 78; Young, 1996; 122; Mansbridge, 1999; 225; Hendricks, 2006; 492; Dryzek, 2000; 172; Dodge, 2009; 227; Rawls, 2005a; 23; Habermas, 1998; 315; Metze, 2009; 244; Mendonça, 2009; 211; Benhabib calls this right the *principle of egalitarian reciprocity*. (Benhabib, 1996a; 78)

¹⁵³⁹ Gutmann and Thompson, 1996; 349; Cohen, 1989b; 29

¹⁵⁴⁰ Gutmann and Thompson, 1996; 41; Cohen, 1989b; 33; Cohen, 1997; 69; Mansbridge, 1999; 224; Deveaux, 2003; 793

¹⁵⁴¹ Cohen, 1997; 74; Cohen, 1989b; 33; Benhabib, 1996a; 70, 78; Mansbridge, 1999; 225; Habermas, 1998; 305; Young, 1996; 122; Hendricks, 2006; 492; Dryzek, 2000; 172; Dodge, 2009; 227; Rawls, 2005a; 23; Habermas, 1998; 315; Metze, 2009; 244; Mendonça, 2009; 211

¹⁵⁴² Cohen, 1989b; 27, 32; Cohen, 1996; 99; Cohen, 1997; 73; Benhabib, 1996; 70; Hendriks, 2005b; 13; Hendriks, 2006; 492; Dryzek, 2000, 2; Parkinson, 2003; 180; Dryzek, 2001; 651; Medearis, 2005; 54; Hendriks, Dryzek and Hunold, 2007; 362; Freeman, 2000; 389, 395; Manin,

justified 'to all those who are bound by them and some of those who are affected by them'.¹⁵⁴³ Open and inclusive deliberation addresses the quality of substantive outcomes in modern pluralistic societies.¹⁵⁴⁴ The conditions of inclusivity, freedom and equality preserve the autonomy of individual deliberative participants.¹⁵⁴⁵

Benhabib and Gutmann and Thompson agree that deliberative democracy's condition of inclusivity implies that the claims of all of those bound to an outcome, as well as the claims of all of those impacted, ought to be considered – even the claims of extra-jurisdictional citizens.¹⁵⁴⁶ Gutmann and Thompson are primarily concerned with representative democracy and the accountability of representatives.¹⁵⁴⁷ They argue that representatives are not only accountable to their electoral constituents, but also to those who Gutmann and Thompson call their 'moral constituents'; moral constituents include all those affected and may involve citizens in other jurisdictions, as well as, citizens not yet born.¹⁵⁴⁸ Gutmann and Thompson do not provide a formula for calculating the balance of claims, but they do argue that representatives are accountable first to their voters and their party members.¹⁵⁴⁹

1987; 360; Estlund, 1997; 180; Bohman and Rehg, 1997; xv; Gould, 1996; 177; Young, 1996; 122; Mansbridge, 1999; 224, 226

¹⁵⁴³ Gutmann and Thompson, 1996; 13, 16, 51, 91, 95, 128-9; Chambers, 2003; 308; Dryzek, 2000; 149; Parkinson, 2004; 379; Parkinson, 2003; 180; The condition of inclusivity is part of Gutmann and Thompson's condition of accountability.

¹⁵⁴⁴ Cohen, 1996; 99; Dryzek, 2000; v; Dryzek, 2001; 654; Gutmann and Thompson, 1996; 44

¹⁵⁴⁵ Cohen, 1989b; 35; Benhabib, 1996a; 78; Bohman and Rehg, 1997; xv; Freeman, 2000; 394

¹⁵⁴⁶ Gutmann and Thompson, 1996; 8, 128-129, 144-7, 163, 227-8 351; Benhabib, 1996; 70

¹⁵⁴⁷ Gutmann and Thompson, 1996; 15, 131; Mansbridge, 1999; 221

¹⁵⁴⁸ Gutmann and Thompson, 1996; 8, 131, 144-7, 163, 228, 351; Dryzek, 2000; 149

¹⁵⁴⁹ Gutmann and Thompson, 1996; 129, 146, 150

Essentially reciprocity regulates the way citizens reason together and treat one another in conditions of deliberative disagreement.¹⁵⁵⁰ Cohen accepts Rawls's idea of *reasonable pluralism*, which means that members cannot expect that other participants share their preferences, convictions and ideals.¹⁵⁵¹ Also drawing from the Rawlsian notion of public reason, Gutmann and Thompson propose that citizens reason reciprocally when 'they seek fair terms of social cooperation for their own sake; they try to find mutually acceptable ways of resolving moral disagreements.'¹⁵⁵² Benhabib argues that public deliberation presupposes a discourse theory of ethics based on reciprocal respect and the recognition of other participants as autonomous individuals.¹⁵⁵³ Reciprocity includes acting fairly with one another; following the rules that others are expected to follow; and respecting and carefully considering the moral views of others, even when we think their views are morally wrong.¹⁵⁵⁴ Reciprocity discourages citizens from offering arguments that promote self-interest and reasons that are exclusively based on a general good at the expense of partial perspectives or the good of any one individual.¹⁵⁵⁵ Reciprocity guides citizens to take a broader view and consider the claims and weigh the interests of others.¹⁵⁵⁶ Citizens who are acting reciprocally appeal to moral and empirical

¹⁵⁵⁰ Gutmann and Thompson, 1996; 3, 55; Parkinson, 2004; 379; Sanders, 1997; 348

¹⁵⁵¹ Cohen, 1989b; 31; Cohen, 1997; 72; Dryzek, 2000; 11; Freeman, 2000; 395

¹⁵⁵² Cohen, 1997; 74; Cohen, 1989b; 32; Cohen, 1996; 100; Benhabib, 1996a; 83; Gutmann and Thompson, 1996; 2, 36-7, 53-5; Rawls, 2005a; 49; Dryzek, 2000; 2, 149; Dryzek, 2001; 651; Medearis, 2005; 62; Freeman, 2000; 380, 382; Sanders, 1997; 348

¹⁵⁵³ Benhabib, 1996a; 79; Gutmann and Thompson, 1996; 14, 39, 90, 360; Mansbridge, 1999; 222, 225; Freeman, 2000; 383, 412; Sanders, 1997; 347; Thompson, 2008; 498; Young, 1996; 126; Benhabib calls this the *right of universal moral respect*. (Benhabib, 1996a; 78)

¹⁵⁵⁴ Gutmann and Thompson, 1996; 2, 37, 134; Thompson, 2008; 498; Mansbridge, 1999; 222, 225; Young, 1996; 126

¹⁵⁵⁵ Gutmann and Thompson, 1996; 2, 7, 37, 53-4; Medearis, 2005; 56, 62; Dryzek, 2000; 45

¹⁵⁵⁶ Gutmann and Thompson, 1996; 42; Chambers, 2003; 317

reasons and principles that can be mutually accessed, accepted and justified – even to people who disagree with them.¹⁵⁵⁷

Participants must be viewed as autonomous, but they also must be open-minded and ‘willing to allow the power of reason and the better argument to shift their preferences’ towards mutual agreement.¹⁵⁵⁸ Benhabib argues that it is a ‘methodological fiction’ of political theories based on models of economic rationality that individuals hold ‘an ordered set of coherent preferences’.¹⁵⁵⁹ Rather, the insights gained through participation in a legitimate process of deliberation work to clarify, transform or enlarge participant substantive preferences and proposals, ideally leading to better and more inclusive outcomes.¹⁵⁶⁰ Cohen clarifies that the alteration of preferences is a process of political deliberation, not its *goal*.¹⁵⁶¹ Gutmann and Thompson argue that open-mindedness is not the only important virtue of a democratic citizen; citizens should find a balance between strongly affirming one’s own moral views while being open to consider the views of others.¹⁵⁶² Genuine deliberation encourages citizens to develop views that extend beyond their own self-interests to the collective interests of their community.¹⁵⁶³

¹⁵⁵⁷ Gutmann and Thompson, 1996; 2, 14, 54-5

¹⁵⁵⁸ Gutmann and Thompson, 1996; 50, 55, 79, 83; Cohen, 1989b; 35; Cohen, 1996; 100; Habermas, 1998; 305; Hendriks, 2002; 70; Hendriks, 2006; 493; Hendriks, Dryzek, and Hunold 2007; 366; Dryzek, 2000; 2, 16; Parkinson, 2003; 180; Gutmann and Thompson’s condition of preference transformation is part of their condition of reciprocity.

¹⁵⁵⁹ Benhabib, 1996a; 71

¹⁵⁶⁰ Gutmann and Thompson, 1996; 43, 173; Benhabib, 1996a; 71; Cohen, 1989b; 35; Cohen, 1997; 77; ; Habermas, 1996; 23, 99; Hendriks, 2002; 70; Hendriks, 2005b; 2; Hendricks, 2006; Hendriks, 2009; 174; Barber, 2003; 137; Hendriks, Dryzek and Hunold, 2007; 366; Papadopoulos and Warren, 2007; 456; Parkinson, 2003; 188; Young, 1996; 122

¹⁵⁶¹ Cohen, 1996; 100

¹⁵⁶² Gutmann and Thompson, 1996; 83

¹⁵⁶³ Gutmann and Thompson, 1996; 174

Gutmann and Thompson and Benhabib agree that deliberators must be informed about the topic for discussion.¹⁵⁶⁴ No single individual can know all the relevant information or anticipate all the perspectives or possible consequences of a public issue and its alternative solutions.¹⁵⁶⁵ Gutmann and Thompson argue that general moral principles are dependent on practical empirical facts and assumptions.¹⁵⁶⁶ According to them the principle of reciprocity requires that empirical claims relating to facts, estimates of risk and feasibility are consistent with and can be verified by relatively reliable methods of enquiry.¹⁵⁶⁷ Deliberative democracy therefore requires that the empirical information needed to evaluate arguments is provided to all of those who may be impacted by a collective outcome.¹⁵⁶⁸ Along with moral claims, new empirical information helps to enlighten and transform participant preferences.¹⁵⁶⁹

Public reason is a process of debate and reflection, where participants articulate their reasons for offering, supporting or criticising proposals.¹⁵⁷⁰ Reasoned outcomes result when each participant assents to a conclusion only because of the 'forceless force of the better argument'.¹⁵⁷¹ For Gutmann and Thompson deliberative claims ought to be constrained by notions of basic liberty, basic

¹⁵⁶⁴ Gutmann and Thompson, 1996; 95, 216; Chambers, 2003; 316; Benhabib, 1996; 71; Levine, Fung and Gastil, 2005; 274; Gutmann and Thompson's condition of informed participants is part of their publicity condition.

¹⁵⁶⁵ Benhabib, 1996; 71; Papadopoulos and Warren, 2007; 456

¹⁵⁶⁶ Gutmann and Thompson, 1996; 15

¹⁵⁶⁷ Gutmann and Thompson, 1996; 14-15, 55-6; Medearis, 2005; 62

¹⁵⁶⁸ Gutmann and Thompson, 1996; 95

¹⁵⁶⁹ Gutmann and Thompson, 1996; 43, 173-4, 356; Habermas, 1996; 23; Cohen, 1996; 99; Hendricks, 2006; Barber, 2003; 137; Hendriks, 2002; 70

¹⁵⁷⁰ Cohen, 1997; 74; Cohen, 1989b; 32; Benhabib, 1996a; 75; Dryzek, 2000; 15; Young, 1996; 122; Hendriks, 2006; 492; Gaventa, 2006a; 17; Mansbridge, 1999; 225; Freeman, 2000; 391; Deveaux, 2003; 787; Rehg, 1998; ix; Gutmann and Thompson's condition of reasoned debate is part of their condition of accountability.

¹⁵⁷¹ Habermas, 1976; 108 in Cohen, 1989; 32 n16; Habermas, 1998; 305; Young, 1996; 122; Mansbridge, 1999; 225

opportunity and fair opportunity.¹⁵⁷² However, they side with Benhabib and reject Rawls's view that deliberative reason should be restricted to those reasons that are based on a fixed shared political conception of justice.¹⁵⁷³ For Gutmann and Thompson, the substantive limits on deliberation themselves must be determined through deliberative procedure.¹⁵⁷⁴ Also unlike Rawls, Cohen, Benhabib and Gutmann and Thompson do not rule out arguments based on 'comprehensive doctrines'.¹⁵⁷⁵ Benhabib argues that only practical rationality can transcend culture.¹⁵⁷⁶ For her, any attempts to exclude reasons – even strategic ones - from public deliberation may simply push those reasons 'underground' without reducing their impact on political life.¹⁵⁷⁷

Cohen argues that public political debate should focus on the common good, 'because we cannot expect outcomes that advance the common good unless people are looking for them.'¹⁵⁷⁸ For Cohen, while participants should not be indifferent to their own concept of good, the common good operates for the advancement of the diverse aims and the mutual advantage of each member of the association.¹⁵⁷⁹ For Benhabib, democratic legitimacy presupposes that participants will accept binding decisions only if they reflect the common good – results that are 'equally in the interests of all.'¹⁵⁸⁰ For her, this is the challenge

¹⁵⁷² Gutmann and Thompson, 1996; 199-200, 224-5, 349, 354; Dryzek, 2000; 45; Chambers, 2003; 310; Mansbridge, 1999; 223

¹⁵⁷³ Benhabib, 1996a; 75; Gutmann and Thompson, 1996; 201, 224, 229; Freeman, 2000; 409, 417; Dryzek, 2000; 15, 16

¹⁵⁷⁴ Gutmann and Thompson, 1996; 201, 224, 229; Freeman, 2000; 409, 417; Dryzek, 2000; 16

¹⁵⁷⁵ Rawls, 2005a; liii, 247; Freeman, 2000; 398-9, 406; Bohman and Rehg, 1997; xvii; Dryzek, 2000; 17; Rawls later revised his views about the inclusion of comprehensive doctrines in public debate. (Rawls, 2005a; xlix; Rawls, 2005a; 462; Bohman and Rehg, 1997; xvii)

¹⁵⁷⁶ Deveaux, 2003; 788

¹⁵⁷⁷ Deveaux, 2003; 788

¹⁵⁷⁸ Cohen, 1989b; 36; Cohen, 1997; 71; Hendriks, 2006; 492; Bohman and Rehg, 1997; xv; Mansbridge, 1999; 226; Freeman, 2000; 382

¹⁵⁷⁹ Cohen, 1989b; 27; Cohen, 1997; 75

¹⁵⁸⁰ Benhabib, 1996a; 69; Dryzek, 2001; 651

for democratic legitimacy – reaching acceptable agreement on the common good under conditions of modern pluralism.¹⁵⁸¹ Gutmann and Thompson depart from Cohen and Rawls's condition that arguments must be confined to those claims that are in the common interest of all.¹⁵⁸² Rather than the common good, Gutmann and Thompson's deliberations seek common ground.¹⁵⁸³ Rather than the common good, deliberation works to identify similarities, clarify conflicts, correct misunderstandings and access relevant information.¹⁵⁸⁴ While acknowledging that in morally pluralistic societies we are destined to disagree, deliberative democracy allows us to decide our 'common destiny on mutually acceptable terms.'¹⁵⁸⁵

In Cohen's ideal deliberative procedure, participants argue and reason together to find a decision that is acceptable to all.¹⁵⁸⁶ The common good are those aims, interests and ideals that 'survive' public and reasoned deliberation.¹⁵⁸⁷ Benhabib worries that in pluralist societies deliberative consensus can only be reached by silencing or curtailing dissenting and minority views.¹⁵⁸⁸ Rather than unanimity, Benhabib proposes that only the voluntary assent of all concerned counts as deliberative agreement – allowing those with minority opinions to withhold their assent.¹⁵⁸⁹ Rather than consensus, Gutmann and Thompson's deliberation aims to reach provisional moral agreement and maintain mutual

¹⁵⁸¹ Benhabib, 1996a; 73

¹⁵⁸² Gutmann and Thompson, 1996; 2, 7, 14, 37, 42, 53-4, 90, 360; Medearis, 2005; 56, 62; Dryzek, 2000; 45; Chambers, 2003; 317; Dryzek, 2000; 17

¹⁵⁸³ Gutmann and Thompson, 1996; 346; Thompson, 2008; 506

¹⁵⁸⁴ Gutmann and Thompson, 1996; 43; Hendriks, 2005b; 2; Dryzek and Niemeyer, 2008; 489; Dryzek, 2001; 666

¹⁵⁸⁵ Gutmann and Thompson, 1996; 94, 361

¹⁵⁸⁶ Cohen, 1989b; 32; Cohen, 1997; 75; Gould, 1996; 177; Gaus, 1997; 206; Mansbridge, 1999; 226; Dryzek, 2000; 48

¹⁵⁸⁷ Cohen, 1997; 77

¹⁵⁸⁸ Benhabib, 1996a; 77

¹⁵⁸⁹ Benhabib, 1996a; 79

respect among citizens.¹⁵⁹⁰ Gutmann and Thompson argue that pluralist societies hold little hope of actually resolving many of their moral disagreements; in fact they argue that diverse societies ought to reject an unqualified search for agreement.¹⁵⁹¹ Rather, they offer their deliberative principles - with their standards of mutual respect and accommodation - that they say can help societies to learn to live together with disagreement.¹⁵⁹² Like Benhabib, Gutmann and Thompson point out that agreements reached through deliberation are provisional and can be revised in light of new information or better arguments.¹⁵⁹³ All three models argue that majority rule is a justifiably fair procedure in these circumstances because it respects the status of deliberating political equals.¹⁵⁹⁴

Following Habermas's two-track model, all three models agree that the legitimacy of formal democratic institutions relies on the influence of the public sphere.¹⁵⁹⁵ The formal institutions of society require as their correlate an unrestricted public sphere.¹⁵⁹⁶ In order to justify public decisions – to find reasons that others can accept - the principle of accountability requires that representatives consider and respond to the claims of general public.¹⁵⁹⁷ Citizens should be able to influence the judgments of their representatives, not

¹⁵⁹⁰ Gutmann and Thompson, 1996; 12, 16, 42, 50, 93-4, 175, 199, 346; Dryzek, 2000; 17; Thompson, 2008; 508; Papadopoulos and Warin, 2007; 458

¹⁵⁹¹ Gutmann and Thompson, 1996; 26, 55, 92-94, 175, 360; Thompson, 2008; 506

¹⁵⁹² Gutmann and Thompson, 1996; 26, 55, 94, 175, 360; Thompson, 2008; 506

¹⁵⁹³ Gutmann and Thompson, 1996; 26, 50-1, 356; Benhabib, 1996a; 72; Mansbridge, Bohman, et al, 2010; 87

¹⁵⁹⁴ Gutmann and Thompson, 1996; 27-8; Cohen, 1989b; 33; Cohen, 1997; 74; Cohen, 1996; 100; Benhabib, 1996a; 72; Mansbridge, Bohman, et al, 2010; 87; Gould, 1996; 177; Dryzek, 2000; 39; Young, 1996; 122

¹⁵⁹⁵ Benhabib, 1996a; 68, 87; Cohen, 1996; 190; Habermas, 1998; 171, 372; Dryzek, 2000; 51

¹⁵⁹⁶ Benhabib, 1996a; 87; Cohen, 1996; 190; Gutmann and Thompson's condition of influence is part of their condition of accountability.

¹⁵⁹⁷ Gutmann and Thompson, 1996; 16, 137-8, 227

only during political campaigns, but also as part of the legislative process.¹⁵⁹⁸ In the spirit of reciprocity and mutual respect, representatives ought to consider issues through deliberations with their colleagues but also with the public.¹⁵⁹⁹ Review and criticisms of policies by those not participating in the forum may reveal additional policy alternatives and ultimately lead to better outcomes.¹⁶⁰⁰ In a deliberative democracy, it is not appropriate that 'representatives give reasons while citizens merely receive them'.¹⁶⁰¹ When representatives vote against the views of their constituents, they must work to justify their position in a way that the public can accept.¹⁶⁰²

According to Gutmann and Thompson, some critics worry that the principle of accountability favours public opinion at the expense of representative judgment.¹⁶⁰³ These critics argue that seeking acceptance from the public may result in excessive populism, the over simplification of issues and demagoguery.¹⁶⁰⁴ Gutmann and Thompson, respond that deliberative democracy does not require representatives to always take the views of the public as given.¹⁶⁰⁵ Gutmann and Thompson argue that representatives are authorised to resist the majority will when it threatens to violate the deliberative constraints of constitutional liberties and opportunities.¹⁶⁰⁶ Accountable representatives can rely on their experience, knowledge and their own best

¹⁵⁹⁸ Gutmann and Thompson, 1996; 130, 136

¹⁵⁹⁹ Gutmann and Thompson, 1996; 130, 175

¹⁶⁰⁰ Gutmann and Thompson, 1996; 102

¹⁶⁰¹ Gutmann and Thompson, 1996; 359

¹⁶⁰² Gutmann and Thompson, 1996; 129, 148

¹⁶⁰³ Gutmann and Thompson, 1996; 137-8

¹⁶⁰⁴ Gutmann and Thompson, 1996; 132, 137-8, 175

¹⁶⁰⁵ Gutmann and Thompson, 1996; 147

¹⁶⁰⁶ Gutmann and Thompson, 1996; 140

judgment.¹⁶⁰⁷ The principle of accountability allows, but does not require, representatives to defer to their constituents when basic liberties and basic opportunities are not at stake.¹⁶⁰⁸

Deliberative legitimacy depends on the ability of participants to explain and justify their claims.¹⁶⁰⁹ In deliberative democracy, under circumstances of disagreement, citizens seek and provide mutual moral justification for collective outcomes.¹⁶¹⁰ Accountable deliberators consider the preferences of others and address the claims that they would accept, modify or reject.¹⁶¹¹ The accountability principle requires that actions are justified and others are given opportunities to criticise those actions.¹⁶¹² In this view public decisions are more acceptable when everyone's claims have been considered and when deliberators address those claims and justify the outcome.¹⁶¹³

Only arguments made publically can be examined and challenged by others and ultimately justified.¹⁶¹⁴ Gutmann and Thompson reject Rawls's notion that public reason can be performed through individual thought experiments that

¹⁶⁰⁷ Gutmann and Thompson, 1996; 130, 138

¹⁶⁰⁸ Gutmann and Thompson, 1996; 142, 351

¹⁶⁰⁹ Cohen, 1989b; 30, 34, 39; Cohen, 1996; 99; Cohen, 1997; 72, 77; Benhabib, 1996a; 68; Freeman, 2000; 383; Mansbridge, 1999; 225; Mansbridge, 2007; 252; Dryzek, 2000; v, 1; Dryzek, 2001; 651; Christiano, 1997; 262; Gaus, 1997; 206; Hendriks, 2006; 491; Hendriks, 2009; 174; Mendonça, 2009; 211 Dodge, 2009; 228; Connelly, 2009; 186; Rosenberg, 2007; 9; Young, 1999; 152; Gastil and Keith, 2005; 5; Button and Ryfe, 2005; 27; Gutmann and Thompson's condition of justifiability are part of their condition of accountability.

¹⁶¹⁰ Gutmann and Thompson, 1996; 13; Thompson, 2008; 502; Papadopoulos and Warin, 2007; 451; Chambers, 2003; 308

¹⁶¹¹ Gutmann and Thompson, 1996; 173, 227

¹⁶¹² Gutmann and Thompson, 1996; 91; Thompson, 2008; 504

¹⁶¹³ Gutmann and Thompson, 1996; 41

¹⁶¹⁴ Gutmann and Thompson, 1996; 93, 114, 229, 308; Cohen, 1989b; 39; Cohen, 1997; 77; Parkinson, 2004; 379; Dryzek, 2000; 11, 149; Mansbridge, 1999; 221; Hendriks, Dryzek and Hunold, 2007; 366; Christiano, 1997; 262; Gaventa, 2006a; 17; Bohman and Rehg, 1997; xvi; Button and Ryfe, 2005; 28; Levine, Fung and Gastil, 2005; 275; Rosenberg, 2007; 6; Shapiro, 1999; 35; Young, 1999; 152

lead solitary thinkers to identify the common good.¹⁶¹⁵ Public deliberation ensures reciprocity among deliberators; motivates representatives to fulfil their responsibilities; and discourages self-interested, immoral and unfair arguments.¹⁶¹⁶ This public processes forces participants to think from and empathise with the standpoint of others and results in what Arendt called 'enlarged mentality'.¹⁶¹⁷ In this way the transparency of the process of public reasoning promotes reciprocity.¹⁶¹⁸ Only arguments justified publically have a hope of persuading others to accept them.¹⁶¹⁹

Gutmann and Thompson concede that there are times when secrecy and confidentiality in deliberations can be justified.¹⁶²⁰ A concern that citizens might object to and try to block a policy is not justification for secrecy.¹⁶²¹ However, if deliberators would not feel free to consider controversial arguments; or free to transform their preferences in light of a compelling argument; or if secrecy protects basic liberties or opportunities; or if a policy requires secrecy to reach its aims and if the costs of secrecy do not exceed the benefits of the policy then Gutmann and Thompson argue that secrecy may be justified.¹⁶²² Usually secrecy can be justified for the details of a policy, not for a policy itself; for example, the fact that police conduct undercover operations is not a secret, but the details of a particular operation may require secrecy.¹⁶²³ Gutmann and Thompson argue that the exceptions to publicity and the reasons and scope for

¹⁶¹⁵ Gutmann and Thompson, 1996; 37

¹⁶¹⁶ Gutmann and Thompson, 1996; 8, 97-100, 103, 126; Cohen, 1989b; 34; Benhabib, 1996a; 71; Thompson, 2008; 510; Chambers 2004, 2005; Hendriks, 2005b; 2; Hendriks, 2009; 174; Deveaux, 2003; 787

¹⁶¹⁷ Benhabib, 1996a; 72; Thompson, 2008; 510

¹⁶¹⁸ Thompson, 2008; 510

¹⁶¹⁹ Gutmann and Thompson, 1996; 100, 103; Parkinson, 2004; 379

¹⁶²⁰ Gutmann and Thompson, 1996; 98; Thompson, 2008; 510

¹⁶²¹ Gutmann and Thompson, 1996; 102

¹⁶²² Gutmann and Thompson, 1996; 101-2, 114-16, 121, 350

¹⁶²³ Gutmann and Thompson, 1996; 104

secrecy must themselves be justified through public deliberation – prospectively when possible and retrospectively when necessary.¹⁶²⁴

Iris Marion Young (1996) supports a form of democracy ‘that understands politics as the meeting of people to decide public ends and policies in a rational way.’¹⁶²⁵ However, she worries that some of the assumptions and cultural biases embedded in deliberative theory may lead to coercion, inequality and exclusion in practice.¹⁶²⁶ Young agrees that deliberative communication ought to be guided by reciprocity and that participants ought to be open to the transformation of their preferences.¹⁶²⁷ However, she questions the possibility of truly free, equal and inclusive deliberations. She expands, beyond reasonable argument, the forms of communication that ought to be considered acceptable in public deliberations. And she outright rejects the notions of the common good and consensus as forms of power that can limit the freedom and equality of participants. She calls her alternative model ‘communicative democracy’.¹⁶²⁸

¹⁶²⁴ Gutmann and Thompson, 1996; 104-5, 115, 117, 350

¹⁶²⁵ Young, 1996; 121

¹⁶²⁶ Young, 1996; 122

¹⁶²⁷ Young, 1996; 126-7; Freeman, 2000; 412

¹⁶²⁸ Young, 1996; 123; Dryzek, 2000; 53; Benhabib, 1996a; 82

Deliberative Legitimacy Standards				
	Cohen	Benhabib	G & T¹⁶²⁹	Young
Conditions that Guide Deliberator Relations				
Free	Yes	Yes	Yes	?
Equal	Yes	Yes	Yes	?
Inclusive	Yes	Yes	Yes	?
Reciprocal	Yes	Yes	Yes	Yes
Transformative	Yes	Yes	Yes	Yes
Conditions that Shape Deliberative Content				
Informed		Yes	Yes	
Reasonable	Yes	Yes	Yes	Expanded
Common Good	Yes	Yes	No	No
Consensus	Yes	Free Assent	No	No
Conditions that Link the Forum to the Deliberative System				
Influenced	Yes	Yes	Yes	
Justifiable/ Accountable	Yes	Yes	Yes	
Public/ Transparent	Yes	Yes	Yes	

Young and others (Shapiro, 1999, Sanders, 1997; Mansbridge, 1996; Fraser, 1992; Deveaux, 2003) question the possibility of free, equal and inclusive deliberations; they doubt that any form of deliberative process can eliminate or equalise power.¹⁶³⁰ This means that some arguments may be considered on terms other than on their rational value.¹⁶³¹ For Young inequalities in deliberative forums are inevitable because some participants are better than others at articulating their arguments in reasonable terms; or some cultural styles of speech may be devalued; or some people may not feel that they have the right or the confidence to speak.¹⁶³² Power can also be expressed in the

¹⁶²⁹ Gutmann and Thompson also include legitimacy conditions that limit substantive arguments to those that conform to conceptions of basic liberty, basic opportunity and fair opportunity. This analysis focuses on the procedural conditions of legitimacy.

¹⁶³⁰ Young, 1996; 122; Young, 1990, 1999, 2001; Zapata, 2009; 197-8; Hendriks, 2009; 174; Dodge, 2009; 227; Mouffe, 1999; Dryzek, 2000; 88; Mendonça, 2009; 211; Shapiro, 1999; Metze, 2009; 241; Mansbridge, 1996; 51

¹⁶³¹ Young, 1999; Young, 2000; 70; Zapata, 2009; 198; Mendonça, 2009; 213; Dryzek, 2000; 88

¹⁶³² Young, 1996; 122; Young, 2000; 70; Dryzek, 2000; 64; Zapata, 2009; 197; Hendriks, 2006; 493; Dryzek, 1990; 15; Dryzek, 2000; 70; Metze, 2009; 241; Sanders, 1997; 348; Hendriks, 2009; 174; Barber, 2003; 175; Levine, Fung and Gastil, 2005; 279; Cornwall and Coelho, 2007;

way deliberations are organised.¹⁶³³ Rules of conduct, session formats and ground rules that encourage civility may constrain certain participants.¹⁶³⁴ Subtle changes to the political or deliberative agenda can exclude certain perspectives, experiences and proposals.¹⁶³⁵ Young worries that the coercion and inequalities found in hegemonic discourse or in what she calls ‘structural oppression’– the everyday practices, meanings and norms that shape our reality, prejudices and ideas of the possible - will find its way into deliberative forums, constrain what is acceptable and exclude the recognition of certain issues, voices, perspectives and possible solutions.¹⁶³⁶ Sanders draws on empirical research of jury deliberations to demonstrate that deliberators ‘do not leave behind the status, power and privileges that they hold in the outside world’.¹⁶³⁷ Young predicts that in these circumstances participants who are part of a dominate group - educated, white, middle-class - will have more power in deliberative settings.¹⁶³⁸ Simultaneously, those who may have less experience communicating in this way - women, minorities, the poor - are disadvantaged.¹⁶³⁹ For Sanders, deliberative democrats are not adequately addressing existing problems of disenfranchisement among the politically

9, 13; Connelly, 2009; Rosenberg, 2007; Mendonça, 2009; 213; Young calls this form of inequality ‘internal exclusion’. (Young, 1996; 122; Dryzek, 2000; 64; Mendonça, 2009; 213)
¹⁶³³ Young calls this form of power ‘constrained alternatives’. (Young, 2003; Mendonça, 2009; 213; Connelly, 2009; 189)

¹⁶³⁴ Mendonça, 2009; 220; Dryzek, 2000; 63; Sanders, 1997; 356

¹⁶³⁵ Young, 1990; 118–20; Young, 2003; Young, 2001; Mendonça, 2009; 213; Dodge, 2009; 228; Barber, 2003; 181; Hendriks, 2009; 174; Connelly, 2009; 187; Hickey and Mohan, 2005; 254

¹⁶³⁶ Young, 1990; Young, 2001; Mendonça, 2009; 213; Dodge, 2009; 227; Zapata, 2009; 197; Hendriks, 2006; 486; Hendriks, 2009; 177; Dryzek, 2000; 64, 167; Metze, 2009; 241, 244; Mansbridge, 1999; 224; Connelly, 2009; 189

¹⁶³⁷ Sanders, 1997; 364; Cornwall and Coelho, 2007; 12

¹⁶³⁸ Young, 1996; 124; Connelly, 2009; 186; Sanders, 1997; 348; Dryzek, 2000; 70; Young, 2000, 2001; Hendriks, 2009; 177

¹⁶³⁹ Young, 1990; 118–20; Young, 1996, 124; Sanders, 1997; 349; Hickey and Mohan, 2005; 254

disadvantaged.¹⁶⁴⁰ She worries that by not sufficiently dealing with existing disenfranchisement, deliberative democracy theory will only make matters worse in practice.¹⁶⁴¹

When Young looks empirically at debates and arguments in institutional forums like parliaments or the courts, Rawls's exemplary homes for public reason, Young sees power and coercion - antagonism, strategy and competition – rather than reciprocity.¹⁶⁴² Here deliberators aim to win arguments rather than to reach mutual understanding.¹⁶⁴³ At the same time, Young argues that coercion, strategy, self-interest and competition may be necessary components of democracy; these approaches to politics may provide better opportunities for oppressed groups in their fight against injustice.¹⁶⁴⁴ Coercion is used by social change organisations to 'confront hegemonic power' and to ensure equal access and fairer processes.¹⁶⁴⁵

As with Cohen, Benhabib and Gutmann and Thompson's conceptions of deliberative democracy, Young's communicative democracy includes an element of transformation.¹⁶⁴⁶ Young argues that in order to publically raise claims and offer the proposals that others might accept participants must transform their subjective preferences to objective ones.¹⁶⁴⁷ This process often

¹⁶⁴⁰ Sanders, 1997; 352; Young, 1999; 156; For Simon, some people repel from deliberation processes because they 'dislike the deliberative style'. Others may refuse to participate because they find it offensive that the topic has even been added to the public agenda. He uses the example of American minority students offended about deliberating over affirmative action. These people may prefer the more competitive discursive arena. (Simon, 1999; 50)

¹⁶⁴¹ Sanders, 1997; 370

¹⁶⁴² Young, 1996; 123; Dryzek, 2000; 65, 72

¹⁶⁴³ Young, 1996; 123

¹⁶⁴⁴ Young, 1992; 532; Young, 1996; Hendricks, 2002; 64; Hendriks, 2006; 493; Dodge, 2009; 228; Connelly, 2009; 189; Hendriks, 2009; 174; Simon, 1999; 63

¹⁶⁴⁵ Dodge, 2009; 236; Mansbridge, 1996; 58; Dryzek, 2000; Hendriks, 2009; 178

¹⁶⁴⁶ Young, 1996; 127

¹⁶⁴⁷ Young, 1996; 125; Papadopolous and Warin, 2007; 464 n34

transforms the way people consider their initial ideas.¹⁶⁴⁸ People's ideals for solutions may also shift as they listen to others and learn about their interests, perspectives, experiences and ideas.¹⁶⁴⁹ The knowledge gained through political communication increases participant wisdom for justice and collective problem solving.¹⁶⁵⁰ However, for Young, transformation occurs as a result of the awareness and learning that is gained through interacting with others in political communication, rather than as a result of participants transcending their self-interest for the sake of the common good.¹⁶⁵¹ Transformation requires that claims and proposals are not expressed as a general interest, but rather work to identify similarities when they exist and to highlight difference that can expand and transform participant ideas.¹⁶⁵²

Young argues that the emphasis on reasoned argument distorts the playing field and advantages some participants over others - upsetting the deliberative ideals of equality, freedom and inclusion. The process of reasoned argument consists of participants expressing claims and offering proposals while other participants criticise or support them; participants accept an outcome based on the 'force of the better argument'.¹⁶⁵³ Young argues that this model of communication originates from modern Western institutional contexts like scientific debate, the courts and parliaments.¹⁶⁵⁴ Young and Sanders complain that the norms of this form of communication favour speech that is linear and logical, 'formal and general', 'dispassionate and disembodied' and 'assertive

¹⁶⁴⁸ Young, 1996; 125-28

¹⁶⁴⁹ Young, 1996; 125; Papadopolous and Warin, 2007; 464 n34

¹⁶⁵⁰ Young, 1996; 128

¹⁶⁵¹ Young, 1996; 121, 125; Mansbridge, Bohman et al, 2010; 66-67

¹⁶⁵² Young, 1996; 128

¹⁶⁵³ Young, 1996; 121-2, 130; Habermas, 1998; 305 Mansbridge, Bohman et al, 2010; 66-67

¹⁶⁵⁴ Young, 1996; 123

and confrontational'.¹⁶⁵⁵ Communication that is exploratory, emotional, particular or conciliatory is disadvantaged.¹⁶⁵⁶ This means that the arguments of some prevail – not because they are better arguments, but because they have been presented in the right way.¹⁶⁵⁷ Young sees traditional deliberative institutions, and their form of communication, as inherently elitist and culturally exclusive – privileging white, middle-class men and silencing others - favouring those arguments that can be expressed reasonably over those that can only be expressed emotionally.¹⁶⁵⁸ Young worries that deliberative democracy's bias for reasoned critical argument leads to the exclusion of some people in practice.¹⁶⁵⁹

Young and others (Mansbridge, 2007; Sanders, 1997) argue for an expansion of the norms of political discussion to include a broader set of acceptable communication forms and styles.¹⁶⁶⁰ Young admits that critical argument is an important element of political talk.¹⁶⁶¹ However, arguments can be expressed in many ways and they ought to be mixed in with other communication forms.¹⁶⁶² In addition to critical argumentation, Young suggests the inclusion of other forms of communication like greeting, rhetoric and storytelling.¹⁶⁶³ Young

¹⁶⁵⁵ Young, 1996; 123-4; Dryzek, 2000; 65; Hendriks, 2009; 177; Dodge, 2009; 228

¹⁶⁵⁶ Young, 1996; 123; Dryzek, 2000; 71

¹⁶⁵⁷ Young, 1996; 123; Dryzek, 2000; 19, 70; Hendriks, 2009; 177; Sanders, 1997; 349

¹⁶⁵⁸ Young, 1996; 120, 123, 130; Young, 1998; 6-7; Young, 2000; 48; Chambers, 2003; 321; Dryzek, 2000; 65, 68n; Hendriks, 2006; 493; Hendriks, 2009; 177; Zapata, 2009; 199; Parkinson, 2003; 184; Ryfe, 2002; 360; Sanders, 1997

¹⁶⁵⁹ Young, 1996; 120, 122; Hendriks, 2006; 493

¹⁶⁶⁰ Young, 1996; 120, 124, 132; Dryzek, 2000; 1, 53; Mansbridge, 1999; 222; Mansbridge, 2007; 261; Sanders, 1997; 370; Zapata, 2009; 199; Hendriks, 2009; 178; Rosenberg, 2007; 10

¹⁶⁶¹ Young, 1996; 120, 125, 129; Parkinson, 2003; 185

¹⁶⁶² Young, 1996; 125, 129

¹⁶⁶³ Young, 1996; 120, 128-132; Benhabib, 1996a; 82; Hendriks, 2009; 177-8; Zapata, 2009; 199; Dryzek, 2000; 53, 66; Dodge, 2009; 228; Mansbridge, 1999; 222

argues that these forms of communication are more egalitarian than reasoned argument and advance mutual understanding, especially across difference.¹⁶⁶⁴

Young rejects Cohen and Benhabib's condition of deliberation that aims deliberation toward a common good and Cohen's condition of consensus.¹⁶⁶⁵

Young argues that an understanding of the common good will neither begin with unity that is discovered nor will it end with unity that is constructed through deliberations.¹⁶⁶⁶ We cannot assume, as the communitarians hope, that members of pluralist societies share understandings of many of their collective issues or solutions.¹⁶⁶⁷ Young worries that political deliberations with the goal of achieving consensus around a common good may work as a form of power.¹⁶⁶⁸ She argues that when participants are expected to transcend their individual experiences, perspective and interests in order to seek the good of the whole, the interests of the privileged will likely dominate the shared

¹⁶⁶⁴ Young, 1996; 129-32; Participants use greetings to recognise each other as individuals, to establish trust and respect and to encourage ongoing discussion. (Young, 1996; 129-30; Dryzek, 2000; 66; Mansbridge, 1999; 222) Young's greetings include talk like: leaving taking, politeness, ego stroking, deference and acknowledgement. (Young, 1996; 129; Dryzek, 2000; 66) Rhetoric and emotional appeals may be the only communication forms that can reach across difference, express the urgency of an issue and compel others to listen and take notice; rhetoric helps to get issues on the political agenda. (Young, 1996; 128; Young, 1998, 23-7; Dryzek, 2000, 52, 167; Parkinson, 2003; 184) Rhetoric, as a way of establishing the situational relationship between the speaker and audience, is sometimes necessary to persuade others and to reach agreement. (Young, 1996; 128, 130-1; Ryfe, 2002; 360; Parkinson, 2003; 184; Mansbridge, 1999; 222) Similar to Sanders's notion of testimony, Young argues that stories express the particular experiences and the potential impacts of the issues, claims and proposals introduced during political debate. (Young, 1996; 131; Sanders, 1997; Dryzek, 2000; 66; Mansbridge, 1999; 222) Participants can use stories to describe the source of their cultural values, priorities and meanings. (Young, 1996; 132) Narratives that describe histories and experiences and are a source of social knowledge; the combination of stories from different social perspectives produces a sort of 'collective social wisdom'. (Young, 1996; 132)

¹⁶⁶⁵ Young, 1996; 121-2; Young, 2000; 40-4; Benhabib, 1996a; 82; Mansbridge, Bohman et al, 2010; 66-67; Freeman, 2000; 412; Dryzek, 2000; 72; Hendriks, 2009; 177; Zapata, 2009; 199; Papadopoulos and Warin, 2007; 459

¹⁶⁶⁶ Young, 1996; 120, 122, 125; Dryzek, 2000; 66; Hendriks, 2009; 177

¹⁶⁶⁷ Young, 1996; 125; Dryzek, 2000; 66; Freeman, 2000; 412

¹⁶⁶⁸ Young, 1996; 122, 126; Dryzek, 2000; 66; Freeman, 2000; 412

understanding of a common good.¹⁶⁶⁹ For Young, a focus on consensus and the common good privileges the status quo and works to exclude participants and groups who are interested in pursuing their own agenda and interests.¹⁶⁷⁰

The aim of Young's communicative democracy is to reach understanding about solutions to collective problems.¹⁶⁷¹ By understanding, she does not mean mutual identification; she does not mean that participants work to adopt the same values, meaning or beliefs.¹⁶⁷² Rather, Young's understanding relates to the awareness and learning - that develops through the process of political communication - of the differences among participants.¹⁶⁷³ While not abandoning one's own perspective, this knowledge allows participants to better understand society, the possible consequences of an outcome and the context of their own experience and interest.¹⁶⁷⁴ Young proposes that we see differences in cultural identities, social position, perspectives, experiences and aims as 'resources for reaching understanding rather than as divisions that must be overcome'.¹⁶⁷⁵

Gutmann and Thompson concede that there may be differences in the deliberative capacities among individuals.¹⁶⁷⁶ However, they argue with some of the details of Young's 'communicative democracy'. For them, marginalised groups have struggled not because of insufficient deliberative abilities or

¹⁶⁶⁹ Young, 1996; 121, 126; Dryzek, 2000; 66; Freeman, 2000; 412; Zapata, 2009; 199; Papadopoulos and Warin, 2007; 459

¹⁶⁷⁰ Hendriks, 2006; 493; Young, 2001; Dodge, 2009; 228

¹⁶⁷¹ Young, 1996; 131

¹⁶⁷² Young, 1996; 127

¹⁶⁷³ Young, 1996; 127; Benhabib, 1996a; 82

¹⁶⁷⁴ Young, 1996; 127; Benhabib, 1996a; 82; Papadopoulos and Warin, 2007; 464 n34

¹⁶⁷⁵ Young, 1996; 120, 127; Young, 1990: 47; Gaventa, 2006a; 25; Hickey and Mohan, 2005;

255

¹⁶⁷⁶ Gutmann and Thompson, 1996; 132, 134

because of the deliberative advantages of those with more status; marginalised groups have not succeeded because of the economic and political inequalities in society.¹⁶⁷⁷ Gutmann and Thompson argue that political struggles that are based on public deliberation are more evenly matched than those that are based on economic and political power.¹⁶⁷⁸ They assert that properly structured deliberative procedures can expose power and reduce the discriminatory effects and injustices caused by social inequalities.¹⁶⁷⁹

In order to ensure deliberative equality, some (Rawls, 1993; Cohen, 1989; Gutmann and Thompson, 1996) argue for economic and social equality.¹⁶⁸⁰ Rawls calls for 'a decent distribution of income' and opportunities for employment, the assurance of basic health care and equal opportunities for deliberative training.¹⁶⁸¹ For Gutmann and Thompson, opportunity 'governs the distribution of goods that enable people to live a decent life' and obligates government to ensure access to decent work or a basic income.¹⁶⁸² While Dryzek agrees that 'material inequality can produce political inequality', he concludes that effective income redistribution is not currently a real possibility and should not be considered a prerequisite for deliberative democracy.¹⁶⁸³ Young agrees; economic and social justice is important for deliberative equality, but democratic principles need not, and should not, wait for a commitment from

¹⁶⁷⁷ Gutmann and Thompson, 1996; 133

¹⁶⁷⁸ Gutmann and Thompson, 1996; 133, 349; Hendriks, 2009; 174; Mendonça, 2009; 211; Dryzek, 2000

¹⁶⁷⁹ Dryzek, 2000; 165; Gutmann and Thompson, 1996; 43, 133, 349; Dryzek, 2000; Mendonça, 2009; 213

¹⁶⁸⁰ Rawls, 2005a; lvii; Cohen, 1997; 80; Sanders, 1997; 352

¹⁶⁸¹ Rawls, 2005a; lvii

¹⁶⁸² Gutmann and Thompson, 1996; 8, 210, 349

¹⁶⁸³ Dryzek, 2000; 172

society in order to be considered legitimate.¹⁶⁸⁴ Gutmann and Thompson hope that the injustices of political and economic inequalities are not used as an excuse to abandon the idea of deliberative democracy.¹⁶⁸⁵ In fact, securing economic justice may well be an issue that must be resolved by deliberative means.¹⁶⁸⁶

Some important deliberative theorists (Chambers, 1996; Habermas, 1996; Benhabib, 1996) worry that Young's inclusion of other forms of communication like rhetoric in public deliberations will lead to manipulation, flattery and demagoguery.¹⁶⁸⁷ Especially for institutional forums, Benhabib worries that the introduction of Young's expanded forms of communication would limit justice and introduce arbitrariness.¹⁶⁸⁸ Others (Dryzek, 2000; Gutmann and Thompson, 1996) have accepted that a place must be found for forms of communication, in addition to reasoned agreement, in certain deliberative venues.¹⁶⁸⁹ Even Benhabib agrees that rhetoric probably has a place in the informal unregulated discursive arenas where participants work to ensure that issues make it to the political agenda.¹⁶⁹⁰ Additionally Gutmann and Thompson see that testimony in deliberative forums allows deliberators to hear about experiences, perspectives and values that are different from their own; deliberators can use testimony to introduce values that they think ought to be shared.¹⁶⁹¹ Yet, most agree that the expanded forms of communication cannot

¹⁶⁸⁴ Young, 1999; 154

¹⁶⁸⁵ Gutmann and Thompson, 1996; 349

¹⁶⁸⁶ Young, 1999; 154

¹⁶⁸⁷ Dryzek, 2000; 67

¹⁶⁸⁸ Benhabib, 1996a; 83

¹⁶⁸⁹ Dryzek, 2000; 52-3, 67-8

¹⁶⁹⁰ Benhabib, 1996a; 82

¹⁶⁹¹ Gutmann and Thompson, 1996; 136

replace reason.¹⁶⁹² For Dryzek, argument is necessary for deliberation and the most complete communication form.¹⁶⁹³ While the expanded forms of communication inform the deliberations, they do not move deliberations forward; they leave issues unresolved.¹⁶⁹⁴ Dryzek argues that while expanded forms of communication can be included in public deliberations, they must induce reflection, be noncoercive and be able connect the particular experience to a more general principle – what I call Dryzek’s rules of expanded communication.¹⁶⁹⁵ Dryzek argues that communications that fail to meet these tests can, and probably will, be exposed by the participants themselves.¹⁶⁹⁶

Benhabib criticises Young’s *communicative democracy* because it claims to maintain individual differences, particular experiences, self-interests and partial perspectives - renouncing the normative principles of impartiality and the common good.¹⁶⁹⁷ Benhabib maintains that impartiality must be the principle that regulates deliberations – especially the deliberations of institutional forums.¹⁶⁹⁸ For her, impartiality is that which is ‘in the best interests of all equally’; without impartiality deliberative reasoning toward the common good is impossible.¹⁶⁹⁹ Deliberative legitimacy depends on the articulation of claims and arguments based on public reasons that can be commonly shared and accepted.¹⁷⁰⁰

¹⁶⁹² Gutmann and Thompson, 1996; 137

¹⁶⁹³ Dryzek, 2000; 53

¹⁶⁹⁴ Gutmann and Thompson, 1996; 137

¹⁶⁹⁵ Dryzek, 2000; 69, 76, 167; Dryzek, 2001; 660

¹⁶⁹⁶ Dryzek, 2000; 71; Sanders argues that it is unrealistic to expect the disadvantaged to contradict arguments that are based on privilege and prejudice. (Sanders, 1997; 354)

¹⁶⁹⁷ Benhabib, 1996a; 83

¹⁶⁹⁸ Benhabib, 1996a; 83

¹⁶⁹⁹ Benhabib, 1996a; 83

¹⁷⁰⁰ Benhabib, 1996a; 83

An overview of the conditions for deliberative legitimacy identified so far looks something like the matrix below. From this analysis, I have identified twelve possible conditions for deliberative legitimacy. For convenience I have divided the twelve conditions into three categories – conditions that guide deliberator relations; that shape deliberative content; and that link the forum to the deliberative system. These categories are not absolute. For example, inclusivity guides the relationships between deliberators, but it also impacts the content of the deliberations; more inclusive deliberations will include more diverse arguments. These categories help when speaking about the twelve conditions of deliberative legitimacy that I have identified in deliberative democracy theory.

Deliberative Legitimacy Standards				
	Cohen	Benhabib	G & T¹⁷⁰¹	Young
Conditions that Guide Deliberator Relations				
Free	Yes	Yes	Yes	?
Equal	Yes	Yes	Yes	?
Inclusive	Yes	Yes	Yes	?
Reciprocal	Yes	Yes	Yes	Yes
Transformative	Yes	Yes	Yes	Yes
Conditions that Shape Deliberative Content				
Informed		Yes	Yes	
Reasonable	Yes	Yes	Yes	Expanded
Common Good	Yes	Yes	No	No
Consensus	Yes	Free Assent	No	No
Conditions that Link the Forum to the Deliberative System				
Influenced	Yes	Yes	Yes	
Justifiable/ Accountable	Yes	Yes	Yes	
Public/ Transparent	Yes	Yes	Yes	

¹⁷⁰¹ Gutmann and Thompson also include legitimacy conditions that limit substantive arguments to those that conform to conceptions of basic liberty, basic opportunity and fair opportunity. This analysis focuses on the procedural conditions of legitimacy.

INSTITUTIONAL FORUMS

Cohen, Benhabib and Gutmann and Thompson are all explicitly writing about forums that seek to reach binding decisions.¹⁷⁰² Gutmann and Thompson's conditions implicitly apply to jurisdictional associations rather than voluntary ones.¹⁷⁰³ It is not clear if Cohen and Benhabib are referring to jurisdictional or voluntary democratic association or both. Gutmann and Thompson's conditions for legitimacy explicitly apply to the deliberations of those who participate as representatives of the full membership of the association.¹⁷⁰⁴ Cohen and Benhabib's conditions explicitly apply to the deliberations of 'all' – participation by the full membership of the association.¹⁷⁰⁵ However, Dryzek points out that Cohen says that 'outcomes are democratically legitimate 'if and only if they *could* be the object of a free and reasoned agreement among equals'.¹⁷⁰⁶ Dryzek interprets this to mean that, for Cohen, democratic legitimacy is based on the *rights* of citizens to deliberate, not necessarily their actual deliberation.¹⁷⁰⁷ For Dryzek, this point suggests that Cohen may have implicitly been referring to representative forums.

Many of the conditions for deliberative legitimacy identified by Cohen, Benhabib and Gutmann and Thompson make sense for those deliberations that aim to

¹⁷⁰² Cohen, 1989b; 32; Cohen, 1997; 74; Benhabib, 1996a; 73; Gutmann and Thompson, 1996; 13, 53; Mansbridge, 1999; 212, 213, 221, 226, 227; Mansbridge, Bohman et al, 2010; 65; Parkinson, 2003; 190; Dryzek, 2000; 20

¹⁷⁰³ Gutmann and Thompson, 1996; 144-154

¹⁷⁰⁴ Gutmann and Thompson, 1996; 1, 2, 37, 50; Mansbridge, 1999; 212, 213, 221, 226, 227; Parkinson, 2003; 190

¹⁷⁰⁵ Cohen, 1989b; 32, 34; Cohen, 1997; 75, 85; Benhabib, 1996a; 68, 70, 79, 87; Dryzek, 2001; 485, 651; Dryzek, 1990; 15; Dryzek, 2000, v; Hendriks, 2009; Metze, 2009; Habermas, 1998; 315; Elster, 1998; 8; Rosenberg, 2007; 9; Mansbridge, 1996; 47; Mansbridge, 2007; 253; Shapiro, 1999; 33; Young, 1999; 152, 155; Button and Ryfe, 2005; 27; Carson and Hartz-Karp, 2005; 122; Levine, Fung and Gastil, 2005; 273

¹⁷⁰⁶ Cohen, 1989b; 74; Cohen, 1997; 73; Dryzek, 2001; 651; Bohman and Rehg, 1997; xv; *My emphasis*.

¹⁷⁰⁷ Dryzek, 2001; 651

reach binding decisions and that are representative rather than fully inclusive.¹⁷⁰⁸ Those legitimacy conditions that guide the relationship between the deliberative participants (the representatives) to the full association membership outside of the forum – accountable/justifiable, influenced and public - are particularly important for the legitimacy of representative deliberations that result in binding outcomes. Deliberations must be accountable/justifiable, public and influenced because some free and equal members of the association are not participating in the deliberations that may result in an outcome that affects them.¹⁷⁰⁹ Representatives must be accountable to and must justify their political actions to the full membership outside of the deliberative forum in order to promote their understanding and to attain their free assent or provisional agreement of the outcome.¹⁷¹⁰ The deliberations ought to be public so that members who are not participating in the deliberations can be sure that representatives are acting in the best interests of the membership; that the deliberative process itself is legitimate – fair, equal, reciprocal, etc.; and so that they can examine and challenge or support the outcome.¹⁷¹¹ Institutional forums – especially the courts – sometimes publish in writing the arguments considered, accepted and rejected with justification. In order for democratic deliberations to be legitimate they ought to be influenced by the opinions, ideas, values and preferences of those free and equal association members who are not participating in the deliberative

¹⁷⁰⁸ Mansbridge, 1999; 213, 221; Gutmann and Thompson, 1996; 53; Papadopoulos and Warin, 2007; 451

¹⁷⁰⁹ Gutmann and Thompson, 1996; 8; Papadopoulos and Warin, 2007; 451

¹⁷¹⁰ Gutmann and Thompson, 1996; 8, 13, 37, 50; Mansbridge, 1999; 221, 228

¹⁷¹¹ Parkinson, 2004; 379; Gutmann and Thompson, 1996; 15, 97, 99, 114

process.¹⁷¹² This condition of influence is central to Habermas's two-track model and Dryzek's discursive model of democracy.

Gutmann and Thompson diverge from Cohen and Benhabib only on the conditions that deliberations ought to be aimed toward consensus around the common good. I agree with Dryzek who argues that the aim of consensus is no longer a condition for deliberative legitimacy in any of the venues – including institutional ones.¹⁷¹³ He says that even Habermas now recognises the practical difficulties of the realisation of consensus in practice.¹⁷¹⁴ Given that unanimity cannot be expected deliberations often end with a decision rule – usually a majority voting process.¹⁷¹⁵

For institutional forums, I agree with Cohen and Benhabib that legitimate deliberations ought to reason toward a common good.¹⁷¹⁶ Rather than based on their own self-interest, I argue that representatives ought to offer claims and arguments that express their idea of the best possible outcome - given the existing circumstances - for their association. My notion of common good is a practical one. I argue that in any one situation a plurality of notions of the common good exist. Because deliberative outcomes are provisional, the conflicts and commonalities around the idea of the common goods ought to be recorded for future deliberations. However, especially in those situations when

¹⁷¹² Gutmann and Thompson, 1996; 8, 117, 227; Mansbridge, 2007; 253; Dryzek, 2000; 162; Button and Ryfe, 2005; 27; Chambers, 2002; 105; Benhabib, 1996a; 72; Chambers argues that 'bad civil society' ('mean-spirited, antidemocratic, even racist groups') develops when there is a lack of political efficacy in the public sphere. An unresponsive, undemocratic state leads to more aggressive forms of civil society. (Chambers, 2002; 105)

¹⁷¹³ Dryzek, 1990; 15; Dryzek, 2000; 72

¹⁷¹⁴ Habermas, 1979; 90; Habermas, 1982; 257-8 in Dryzek, 2000; 72; Habermas, 1998; 305, 339; Dryzek, 2000; 48; Benhabib, 1996a; 72

¹⁷¹⁵ Rawls, 2005b; 488; Dryzek, 2000; 38; Mansbridge, 2007; 263; Cohen, 1997; 75; Levine, Fung and Gastil, 2005; 274; Dodge, 2009; 227

¹⁷¹⁶ Cohen, 1989b; 27; Cohen, 1997; 75; Benhabib, 1996a; 69; Dryzek, 2001; 651

a non-decision is a form of decision, deliberations must land on an outcome.¹⁷¹⁷ For institutional forums, I argue that it is better for that outcome to have been reached based on the consideration of the good of the association rather than on a single self-interest or on an aggregation of self-interests.

For institutional forums, I propose with Parkinson (2003) that - given the impracticality of the condition of inclusive participation - the condition of representation should replace the condition of inclusivity for deliberative legitimacy.¹⁷¹⁸ A condition that requires the participation of all who are bound or affected by a collective outcome is not possible and only works to conceal the actual requirement for legitimacy. An institutional deliberative forum is legitimate to the degree that the participants or the deliberations represent the demographics, arguments, claims, interests, opinions and values of all those who would be bound or affected by the outcome. The type of representation – based on gender, ethnicity, age, class, interests, discourse, etc. – and the method for selecting representatives – election, lot, distributive sampling - must be subject to the free assent of all.¹⁷¹⁹

Mansbridge argues that the conditions for procedurally legitimate deliberation have been developed over time based on what in the past has produced good decisions and based on those conditions that are in themselves good.¹⁷²⁰ However, for Mansbridge, the conditions for deliberative legitimacy are still an open question.¹⁷²¹ She argues that the relationships between the features of

¹⁷¹⁷ Barber, 2003; 120

¹⁷¹⁸ Parkinson, 2003; 186; Young, 1996; 123

¹⁷¹⁹ Parkinson, 2003; 186

¹⁷²⁰ Mansbridge, 1999; 221

¹⁷²¹ Mansbridge, 1999; 221

the deliberative venues and the conditions for legitimate deliberation have not yet been identified.¹⁷²² Mansbridge wonders if the conditions that apply to institutional forums also apply to the deliberative system as a whole and to the other types of deliberative forums and arenas.¹⁷²³ I argue that the deliberative legitimacy conditions are indeed different for the various types of forums represented in a deliberative system. In this section I develop deliberative legitimacy conditions for each of these forum types.

Deliberative Legitimacy Standards by Venue Type					
	Institutional	Everyday Talk	Discursive	Associational	Hybrid
Conditions that Guide Deliberator Relations					
Free	Yes	Yes	Yes	Yes	Yes
Equal	Yes	Yes	Yes	Yes	Yes
Inclusive/ Representative	Represent	No	Inclusive	Inclusive	Represent
Reciprocal	Yes	Reciprocal/ Authentic	No	Yes	Reciprocal/ Authentic
Transformed	Yes	Yes	No	Yes	Yes
Conditions that Shape Deliberative Content					
Informed	Yes	No	Yes	Yes	Yes
Reasonable	Yes	Expanded	Expanded	Expanded	Expanded
Common Good	Yes	No	No	Yes	No
Consensus	No	No	No	Yes	No
Conditions that Link the Forum to the Deliberative System					
Influenced	Yes	No	No	No	Yes
Justifiable/ Accountable/ Influential	Justifiable/ Accountable	No	Influential	No	Influential
Public/ Transparent	Yes	No	Yes	No	Yes

EVERYDAY TALK

Jane Mansbridge (1999) analyses what she calls ‘everyday talk’ against the existing criteria for deliberative legitimacy – the conditions designed by Cohen

¹⁷²² Mansbridge, 1999; 228

¹⁷²³ Mansbridge, 1999; 221

and Gutmann and Thompson.¹⁷²⁴ Mansbridge distinguishes everyday talk from institutional forums based on whether or not the deliberations result in binding decisions for all those impacted.¹⁷²⁵ While I agree that the aim of the forum is an important feature that distinguishes the forum types from one another, I argue that additional forum features ought to be considered when determining their conditions for legitimacy. For Mansbridge, the results of her analysis suggests that, while the standards must be loosened to accommodate the informal character of everyday talk, many of the conditions described for institutional forums are also relevant for everyday talk.¹⁷²⁶ I agree that the legitimacy conditions for institutional forums can be used as a starting point. However, I argue that the legitimacy conditions do vary based on the type of deliberative arena or forum.¹⁷²⁷

In many ways, it does not make sense to speak about legitimacy in relation to macro discursive arenas like everyday talk and broadcasted discourse. The discursive arena is the unregulated and less formal arena for public discourse.¹⁷²⁸ However, Mansbridge argues that the quality of all public deliberations ultimately impact the legitimacy of the collective outcomes that emerge from the deliberative system.¹⁷²⁹ The combined and interactive communications of the public sphere are filtered, synthesized and coalesced

¹⁷²⁴ Mansbridge, 1999; Parkinson, 2003; 190; Dryzek, 2001; 663; Hendriks, 2009; 178; Hendriks, 2006; 497

¹⁷²⁵ Mansbridge, 1999; Shapiro, 1999; 33

¹⁷²⁶ Mansbridge, 1999; 212, 213, 221, 227-8

¹⁷²⁷ Benhabib, 1996a; 83; Thompson, 2008; 502; Shapiro, 1999; 33

¹⁷²⁸ Hendriks, 2006; 487, 494; Habermas, 1996; 307; Benhabib, 1996a; Dryzek, 1990, 2000; Mansbridge, 1999; 227

¹⁷²⁹ Mansbridge, 1999; 224

into bundles of public opinions.¹⁷³⁰ The claims, arguments and conclusions of any one event of everyday talk or broadcasted discourse may take hold in the public discourse ultimately shaping the outcomes of the deliberative system. Even private small scale everyday talk matters for the quality of the outcomes produced by the deliberative system. This means that some standards that regulate the quality of everyday talk and broadcasted discourse perhaps ought to be considered.

While political in nature, Mansbridge's everyday talk does not aim to reach binding decisions.¹⁷³¹ Nor does everyday talk typically seek to reach agreement for action.¹⁷³² And, while deliberators may be intersubjectively influenced, this form of discourse does not necessarily intend to influence the broader public.¹⁷³³ Rather, for the most part, everyday talk appears to be simply expressive political talk.¹⁷³⁴ At the same time, based on Habermas's theory of communicative rationality, all actors participating in discourse presuppose and anticipate the ideal speech situation.¹⁷³⁵ This means that actors participating in everyday talk aim to reach (whether they actually do or not) mutual understanding, an idea of truth and consensus.¹⁷³⁶

The deliberations of everyday political talk are not likely to be representative. Given the informal and private nature of everyday talk, the participants of everyday talk are viewed as representing their own interests, opinions, ideas

¹⁷³⁰ Habermas, 1998; 360; Mansbridge, 1999; 211, 212; Chambers, 2002; 96; Hendriks, 2006; 499

¹⁷³¹ Mansbridge, 1999; 212, 227; Parkinson, 2003; 190; Benhabib, 1996a; 84

¹⁷³² Mansbridge, 1999; 212

¹⁷³³ Mansbridge, 1999; 213; Hendricks, 2006; 498

¹⁷³⁴ Mansbridge, 1999; 212

¹⁷³⁵ Bernstein, 1990; 210; Outhwaite, 2009; 39; Geuss, 1991; 66

¹⁷³⁶ Bernstein, 1990; 211; Outhwaite, 2009; 27; Geuss, 1991; 66

and preferences. Even if a participant identifies with a particular group or identity, all other participants are likely to see that person speaking as a *member* of that group rather than *on behalf of* that group. If one of the participants does formally speak on behalf of an association, I would call it a hybrid forum rather than everyday talk.

Everyday talk sits more toward the private end of the public sphere. As mentioned earlier, everyday talk is the informal, usually face-to-face, political communications held every day among family, friends, colleagues, neighbours and strangers in the workplace, the classroom, at home or at the pub.¹⁷³⁷ Everyday talk occurs within voluntary association rather than jurisdictional association. Everyday talk is a relatively safe, private and comfortable place for participants to create and test ideas and opinions with each other.¹⁷³⁸

This means that I revise Mansbridge's application of the conditions for the deliberative legitimacy of everyday talk that relate to the relationship between the deliberative forum and the deliberative system - accountability, influence and publicity. I agree with Mansbridge that the participants of everyday talk should not formally be held to account by the free and equal members of their associations who did not participate in their everyday talk deliberations.¹⁷³⁹ The conditions of accountability and publicity for everyday talk will likely not produce the most creative, authentic or helpful deliberations or outcomes.¹⁷⁴⁰ Participants who are publically held to account in public deliberation processes may find it more difficult to think outside of the box; to consider controversial

¹⁷³⁷ Mansbridge, 1999; 212; Habermas, 1998; 307; Dryzek, 2001; 663

¹⁷³⁸ Mansbridge, 1999; 211; Thompson, 2008; 502

¹⁷³⁹ Mansbridge, 1999; 212, 221, 224, 224, 226-8; Parkinson, 2003; 190

¹⁷⁴⁰ Mansbridge, 1999; 222

arguments; to change their mind; or to correct misinterpretations.¹⁷⁴¹ I, however, disagree with Mansbridge's argument that for it to be legitimate the later stages of everyday talk ought to be made public.¹⁷⁴² I argue that, given its private and experimental nature, publicity is not an appropriate condition for the legitimacy of informal everyday talk.¹⁷⁴³ I add that - while everyday talk cannot help but be influenced by the public discourse and deliberative forums of the deliberative system – for it to be legitimate, informal everyday political talk is not required to demonstrate that it has considered or that it has been influenced by the constellation of discourses in the public sphere. In the private and protected space of everyday talk, participants can draw on the discourses they see relevant.

I agree with Mansbridge that the most of legitimacy conditions that guide the relationship among the participants – free, equal, reciprocal and transformative - all apply to everyday talk.¹⁷⁴⁴ While the ideal may not be possible, deliberative legitimacy for everyday talk is based on the degree to which deliberative participants are considered free and equal.¹⁷⁴⁵ Participants of everyday talk – and of all other talk really - presuppose the ideal speech situation, which itself includes the conditions of freedom and equality.¹⁷⁴⁶ Participants of everyday talk must be guaranteed sufficient freedoms – of speech, the press and association - to engage in good political talk.¹⁷⁴⁷ Good political talk must be free from coercion - strategic behaviour, deception, manipulation, force and

¹⁷⁴¹ Mansbridge, 1999; 223

¹⁷⁴² Mansbridge, 1999; 221

¹⁷⁴³ Mansbridge, 1999; 221

¹⁷⁴⁴ Mansbridge, 1999; 213, 222

¹⁷⁴⁵ Mansbridge, 1999; 213

¹⁷⁴⁶ Bernstein, 1990; 210; Outhwaite, 2009; 39; Geuss, 1991; 66

¹⁷⁴⁷ Mansbridge, 1999; 224

domination.¹⁷⁴⁸ Mansbridge draws on Cohen's interpretation of equality; participants are equal when the distribution of political and economic power does not impact their chances to contribute to the deliberative outcome.¹⁷⁴⁹ The outcome of political talk among a group of friends, just like those of institutional forums, ought to be based on the unforced force of the better argument, rather than on the power, expertise, wealth, privilege or status of particular participants.¹⁷⁵⁰ These conditions are necessary to ensure that everyday talk reaches its aim of mutual understanding, if not its aim of consensus around a truth.¹⁷⁵¹ The degree to which these conditions are met, determines the likelihood that the participants settle on the better outcome.¹⁷⁵²

In her essay, Mansbridge does not consider the condition of inclusivity for everyday talk. Anyway, I argue that inclusivity is not an applicable condition for everyday talk. Generally, the condition of inclusivity requires that all those who are bound by a deliberative outcome ought to be given an opportunity to participate in the deliberations. Everyday talk does not seek to reach binding agreement. Given its private, expressive and experimental nature and its voluntary association, the condition of inclusivity ought not to apply to everyday talk.

¹⁷⁴⁸ Dryzek, 1990; 14; Dryzek, 2000; 1; Habermas, 1998; Hendriks, 2009; 178; Rawls, 2005a; Connelly, 2009

¹⁷⁴⁹ Mansbridge, 1999; 224-5; Cohen, 1989; 23

¹⁷⁵⁰ Habermas, 1998; 305; Mansbridge, 1996; 47; Mansbridge, 1999; 225; Dryzek, 1990; 15; Dryzek, 2000; Dryzek, 2001; Hendriks, 2006, 492; Hendriks, 2009; 178; Cohen, 1989; Cohen, 1997; 74; Mendonça, 2009; 211; Rawls, 2005a; Benhabib, 1996a; 68; Rosenberg, 2007; 4; Button and Ryfe, 2005; 27; Habermas, 1996; Levine, Fung and Gastil, 2005; 282; Connelly, 2009; 186

¹⁷⁵¹ Mansbridge, 1999; 224, 226

¹⁷⁵² Dryzek, 2000; 8; Hendriks, 2009; 177

Mansbridge says that the condition of reciprocity fits well with everyday talk.¹⁷⁵³ Given the autonomy of those who participate in everyday talk, participants of legitimate everyday talk ought to treat each other with mutual respect; listen and consider each others' arguments; and present arguments that others might be willing to consider.¹⁷⁵⁴ Mansbridge's reciprocity also includes the condition of preference transformation – 'openmindedness' and the willingness to shift one's preferences in light of the better argument.¹⁷⁵⁵ I agree with Mansbridge that a conception of reciprocity for everyday talk – especially given its experimental character - may sometimes need to be tempered by authenticity.¹⁷⁵⁶ She argues that sometimes authenticity requires 'non-reciprocity'.¹⁷⁵⁷ Given the private, voluntary and experimental character of everyday talk, participants may sometimes draw on self-centred arguments and engage in angry discourse.¹⁷⁵⁸ Revised in this way, the conditions of reciprocity and preference transformation apply easily to everyday talk.¹⁷⁵⁹

I expand on Mansbridge's analysis of everyday talk and the conditions for legitimacy that shape deliberative content – informed, reasonable, common good and consensus. Mansbridge does not consider the condition of informed deliberations for everyday talk. Ideally, participants of everyday talk take the effort to inform themselves about the topic for deliberation. However, the work involved to truly educate ourselves – gather, analyse and comprehend the

¹⁷⁵³ Mansbridge, 1999; 213, 222

¹⁷⁵⁴ Mansbridge, 1999; 225; Gutmann and Thompson, 1996; 2, 12, 130, 175; Cohen, 1989b; 34, 36; Cohen, 1997; 67, 77; Hendriks, 2006; 492; Benhabib, 1996a; 78;

¹⁷⁵⁵ Mansbridge, 1999; 213; Habermas, 1998; 305

¹⁷⁵⁶ Mansbridge, 1999; 224

¹⁷⁵⁷ Mansbridge, 1999; 223

¹⁷⁵⁸ Mansbridge, 1996; 51; Young, 2001; Mansbridge, 1999; 223; Young, 1992; 532; Young, 1996; Hendriks, 2002; 64; Hendriks, 2006; 493; Dodge, 2009; 228; Gutmann and Thompson, 1996; 90, 135; Dryzek, 2000; 26, 53

¹⁷⁵⁹ Mansbridge, 1999; 213

information - for complex political issues, probably takes everyday talk out of the realm of everyday. Given the private, informal and experimental nature of everyday talk, it may not make practical sense to restrict legitimate everyday talk to only that which is fully informed.

I agree with Mansbridge that the legitimacy condition of reasoned argument for everyday talk ought to be expanded to include other, more personal, forms of communication. Mansbridge draws on Young's communicative democracy to argue that the process of deliberation everyday talk ought to include, in addition to reasoned argument, other communication forms like greeting, rhetoric, and storytelling.¹⁷⁶⁰ Mansbridge argues for a plural conception – rather than a unity notion - of what is reasonable.¹⁷⁶¹ Many reasons can be offered for each of the many sides of an argument and the opposing reasons for an argument can both be right.¹⁷⁶² Although she admits that everyday talk is not always reflective and self-conscious, Mansbridge proposes that the condition for deliberative legitimacy for everyday talk ought to be a mixture of 'considered' reason and emotion rather than just purely 'reasoned' arguments.¹⁷⁶³ As long as the more personal forms of communication are combined with reasoned argument and they comply with Dryzek's rules for expanded forms of communication, they can help to better inform the deliberations which can only result in better outcomes.¹⁷⁶⁴

¹⁷⁶⁰ Mansbridge, 1999; 213, 222, 225-6; Hendriks, 2009; 178

¹⁷⁶¹ Mansbridge, 2007; 261

¹⁷⁶² Mansbridge, 2007; 261

¹⁷⁶³ Mansbridge, 1999; 211, 213, 226

¹⁷⁶⁴ Dryzek, 2001; 660

I agree with Mansbridge that the legitimacy conditions of the common good and consensus are not appropriate criteria for legitimate everyday talk.¹⁷⁶⁵ Mansbridge argues that all legitimate deliberation should aim not only for consensus, but also to clarify or even sharpen conflict when necessary.¹⁷⁶⁶ Mansbridge argues that everyday talk does result in an outcome, but the resonance of public opinion is the combined and synthesised outcome of integrated episodes of individual agreement and disagreement – not consensus.¹⁷⁶⁷ Mansbridge worries that Cohen’s common good condition - the content of deliberations should focus on the common good - conceal conflict and distort participant understanding of the issue.¹⁷⁶⁸ Mansbridge argues that not only everyday talk but all deliberation should reveal conflict that may be masked by elite protection of the status quo through non-decision or by hegemonic interpretations of the common good.¹⁷⁶⁹ For her the outcome of legitimate deliberations ought to be a better understanding among citizens of our conflicts and commonalities - ‘whether or not these interests can be forged into a larger common good.’¹⁷⁷⁰

BROADCASTED DISCOURSE

As with the other arena of the macro sphere, everyday talk, broadcasted discourse does not seek to reach binding decision.¹⁷⁷¹ Nor is the aim of broadcasted discourse simply expressive. Rather broadcasted discourse aims

¹⁷⁶⁵ Mansbridge, 1999; 226

¹⁷⁶⁶ Mansbridge, 1999; 226

¹⁷⁶⁷ Mansbridge, 1999; 212, 224; Hendriks, 2006; 499

¹⁷⁶⁸ Mansbridge, 1999; 226

¹⁷⁶⁹ Mansbridge, 1999; 226

¹⁷⁷⁰ Mansbridge, 1999; 226

¹⁷⁷¹ Cohen, 1996; 191; Dryzek, 2000; 25, 56; Hendriks, 2006; 493; Hendriks, 2009; 176; Mansbridge, 1999; 212; 227; Benhabib, 1996a; 84; Dryzek and Niemeyer, 2008; Cohen, 1996; 190; Habermas, 1998; Dodge, 2009; 225

to influence; broadcasted discourse seeks to influence public opinion, social change and action and to influence the other deliberative venues of the deliberative system – especially the institutional forums.¹⁷⁷² Channels of influence like protests, media events, information campaigns, boycotts and demonstrations are examples of broadcasted discourse.¹⁷⁷³ Broadcasted discourse can travel across political jurisdictions¹⁷⁷⁴; although, the association initiating the discourse probably has a targeted audience in mind. Broadcasted discourse is the arena where issues are publically raised for the political agenda and the contestation of discourses plays out.¹⁷⁷⁵ Broadcasted discourse is unique of all the deliberative forums; it is conducted one-way, rather than interactively, with one group presenting their claims and arguments while one group listens – or not. Because it is one-way discourse, it is less personal and makes it more difficult for initiators to clarify arguments, to correct mistakes and to respond to questions and arguments.

Broadcasted discourse can be seen as one association of actors – civil society, corporate, or state – seeking to influence the public sphere and other associations. This means that the legitimacy conditions of accountability/justifiability and publicity apply. In order for broadcasted discourse to obtain widespread agreement, the association must be able to justify its position to the public with claims and arguments. For the same

¹⁷⁷² Dryzek, 2000; 25, 56, 102; Habermas, 1998; 383; Outhwaite, 2009; 143; Hendriks, 2006; 493; Hendriks, 2009; 176; Mansbridge, 1999; 213, 227; Mansbridge, 2007; 266; Dryzek and Niemeyer, 2008; Cohen, 1996; 190-1; Cohen and Arato, 1992; ix, 531; Dodge, 2009; Hendriks, 2006; 491; Shapiro, 1999; 34-5; Benhabib, 1996a; 84; Gastil and Keith, 2005; 3; Parkinson, 2003; 184; Aler and Koontz, 2004; 476

¹⁷⁷³ Dryzek, 2000; 26; Hendriks, 2006; 494; Gutmann and Thompson, 1996; 135

¹⁷⁷⁴ Dryzek, 2001; 663 Dryzek refers to Mansbridge's 'everyday talk'. (Dryzek, 2001; 663)

¹⁷⁷⁵ Habermas, 1998; 314; Dryzek, 2000; 101; Dodge, 2009; 227; Gutmann and Thompson, 1996; 135; Parkinson, 2003; 191

reason, broadcasted discourse must be public; in order to reach its aim of influence broadcasted discourse must reach large groups of people. However, because broadcasted discourse is most often initiated by voluntary associations, broadcasted discourse does not need to demonstrate that it has considered or has been influenced by the constellation of discourses of the public sphere. This does not mean that it does not make practical sense for voluntary associations to consider the discourses of the public sphere that support or oppose their position. Rather, unlike the representatives of institutional forums who must consider the arguments of the non-deliberating members of their association, broadcasted discourse participants are not required to be influenced by other discourses in order for the venue to be legitimate.

The conditions of freedom, equality and inclusivity apply to the broadcasted arena. The legitimacy of the discursive arena depends on the degree to which voluntary associations have the freedom to participate in the arena and to present their claims and arguments in the way they determine best meets their aims. Constitutional freedoms of speech, association and of the press work to guarantee this liberty.¹⁷⁷⁶ Equal and inclusive access allows all voluntary associations to have equal opportunities to contribute to and shape the public opinion and to influence decision makers. For Dryzek, inclusion involves the representation of discourses rather than of individuals.¹⁷⁷⁷ Discursive legitimacy requires that the contestation of public discourses is subject to decentralised

¹⁷⁷⁶ Habermas, 1998; 368; Dryzek, 2000; 25

¹⁷⁷⁷ Dryzek and Niemeyer, 2008; 485

and competent control and engages a broad variety of competent actors.¹⁷⁷⁸ Open and inclusive discourse is required for the self-regulation of the venue against coercion, distortion and manipulation.¹⁷⁷⁹

Because of its anarchic structure, the discursive arena is more subject to unequal expressions of power.¹⁷⁸⁰ It is true that the cost of entry for the broadcast arena generally requires a level of resources that are most likely not shared equally among voluntary associations.¹⁷⁸¹ It is also true that this cost means that some discourses are excluded from the venue.¹⁷⁸² Arguments that already exist in the hegemonic discourse have an advantage over those arguments that lie in outlying fringe or opposition discourses. While a variety of discourses may exist in this arena, not all of them have a platform and not all of them will be heard.¹⁷⁸³ However, the degree to which a discursive arena meets the conditions of inclusive and equal access to broadcast methods for all voluntary associations determines the legitimacy of this venue.¹⁷⁸⁴

While reciprocity and preference transformation certainly occur within the broadcasted discursive arena, these conditions are not required for deliberative legitimacy in this arena.¹⁷⁸⁵ The discursive arena is where the contestation of discourses plays out.¹⁷⁸⁶ Rather than a cooperative effort, this is a competitive,

¹⁷⁷⁸ Dryzek, 2001; 666; Hendriks, 2006; 502; Dryzek, 1990; 55

¹⁷⁷⁹ Dryzek, 2001; 662, 666; Dryzek, 1990; 55; Chambers argues that the ability of inclusive discursive venues to self-regulate maybe over estimated. (Chambers, 2002; 100–5; Hendriks, 2006; 495)

¹⁷⁸⁰ Habermas, 1998; 307

¹⁷⁸¹ Hendriks, 2006; 489; Habermas, 1998; 307, 325

¹⁷⁸² Hendriks, 2006; 489

¹⁷⁸³ Dryzek, 2000; 134; Hendriks, 2006; 502

¹⁷⁸⁴ Benhabib, 1996a; 73-74

¹⁷⁸⁵ Rawls, 2005a; 49, 217; Dryzek, 2000; 17, 149; Hendriks, 2009; 175; Barber, 2003; 174

¹⁷⁸⁶ Cohen and Arato, 1992; ix; Hendriks, 2002; 69; Hendriks, 2006; 502; Dodge, 2009; 227; Benhabib, 1996a; 74; Dryzek, 2000; 162; Dryzek, 2001; 652, 659; Habermas, 1998; 486 Here Dryzek relies on a notion of discourse that is slightly different than the one offered by Habermas

sometimes adversarial, project.¹⁷⁸⁷ It is in this venue that oppressed participants use more competitive forms of deliberation in their fight against injustice. It may make practical sense for voluntary associations to treat the public sphere with respect; to listen to and consider the opinions, values and arguments of the public sphere; to offer arguments they expect the public sphere to accept; to keep an open mind and to shape their positions in light of the better argument. However, as long as it is authentic and not coercive or manipulative, this sphere is the part of the deliberative system where non-reciprocity is legitimate.¹⁷⁸⁸ Self-interested, uncooperative, ideological, rhetorical and even angry discourse is acceptable in this venue.¹⁷⁸⁹ Sometimes intense opposition is required to disrupt the status quo.¹⁷⁹⁰

Fair competition between discourses does not legitimise strategic behaviour; broadcasted discourse should not be coercive, manipulative or distortive. This means that for broadcasted discourse to be legitimate the positions and arguments that are presented must be informed and reasoned. For the discursive arena the forms of communication can be expanded beyond reasoned argument to include many types of communication - stories,

as part of his Theory of Communicative Action. (Dryzek, 2001; 658) In this context, discourse draws on social constructionist and interpretive theories. (Dodge, 2009; 227) From these theories, policy issues and their solutions are not objectively real. (Dodge, 2009; 227) Rather they are constructed, reproduced and transformed intersubjectively through discourse. (Dryzek, 2000; 18; Habermas, 1998; 307) 'A discourse is a shared means of making sense of the world embedded in language.' (Dryzek, 2000; 18; Hendriks, 2006; 493) Those who hold a particular discourse are able to perceive and pull together perceptions, facts, myths, assumptions, opinions and values into coherent storylines of meaning. (Dryzek, 2000; 121; Dryzek, 2001; 658; Metze, 2009; 242; Hendriks, 2006; 493)

¹⁷⁸⁷ Dryzek, 2000; 76; Mansbridge, 1996; Young, 1996; Hendriks, 2002; 69; Hendricks, 2006; 487

¹⁷⁸⁸ Mansbridge, 1999; 223, 224; Young, 1992; 532; Young, 1996; Hendricks, 2002; 64; Hendriks, 2006; 493; Dodge, 2009; 228; Gutmann and Thompson, 1996; 90, 135; Dryzek, 2000; 26, 53

¹⁷⁸⁹ Mansbridge, 1999; 223; Young, 1992; 532; Young, 1996; Hendricks, 2002; 64; Hendriks, 2006; 493; Dodge, 2009; 228; Gutmann and Thompson, 1996; 90, 135; Dryzek, 2000; 26, 53; Benhabib, 1996a; 77

¹⁷⁹⁰ Mansbridge, 1999; 223

testimony, but also even performances, song, poetry, blocking building entrances and other non-violent actions.¹⁷⁹¹ Dryzek sees rhetoric as the main transmission medium of public opinion (the discursive arena) to state actors (institutional forums).¹⁷⁹² However, empirical claims – assumptions, facts, estimates or risk - must be comprehensive, consistent, accurate and verifiable with reliable methods of inquiry.¹⁷⁹³

The conditions that deliberations ought to seek consensus around the common good do not apply to the broadcasted discursive arena. For Dryzek consensus in the public sphere is neither possible nor desirable.¹⁷⁹⁴ While arguments based on self-interest, rather than a common interest, may not always be successful in the discursive arena, they are certainly legitimate here. Voluntary associations, competing in the broadcasted discursive arena, most likely work to persuade the public sphere that their self-interest matches the interests of the community.

ASSOCIATIONAL FORUMS

Like the outcomes of institutional forums for jurisdictional associations, the outcomes of intra-associational forums are often binding on association membership for voluntary associations.¹⁷⁹⁵ Deliberations in associational forums aim to reach agreement for action.¹⁷⁹⁶ Voluntary associations include grassroots organisations, churches, professional associations, universities,

¹⁷⁹¹ Dryzek, 2001; 660; Hendriks, 2009; 176; Gutmann and Thompson, 1996; 135; Benhabib, 1996a; 81

¹⁷⁹² Dryzek, 2000; 167

¹⁷⁹³ Gutmann and Thompson, 1996; 14-15, 55-6; Medearis, 2005; 62

¹⁷⁹⁴ Dryzek, 2001; 665; Deveaux, 2003; 787

¹⁷⁹⁵ Mansbridge, 1999; 213, 227; Parkinson, 2003; 190

¹⁷⁹⁶ Mansbridge, 1999; 212

social movements and even businesses.¹⁷⁹⁷ Voluntary associations deliberate to constitute and mobilise themselves, to generate solidarity, to develop strategy, to share information and to implement plans.¹⁷⁹⁸ Different voluntary associations may deliberate together to form alliances; these inter-associations may result in non-binding agreements for action.¹⁷⁹⁹ While voluntary associations may participate in the broadcasted discursive arena, associational forums are a different kind of deliberation; it is in associational forums that voluntary associations develop the substantive messages and action plans for participation in the discursive arena.¹⁸⁰⁰ Staff, volunteers, board members, funders, investors and clients of a voluntary association are potential participants of their associational forums.

This analysis applies only for those associational deliberations whose outcomes only affect the membership of the association or alliance. Associational forums are not appropriate for those deliberations whose outcomes are binding on or affect people who are outside of the association's membership.¹⁸⁰¹ Deliberative democracy requires that collective outcomes are justified with moral reasons for all those who are bound or affected by them.¹⁸⁰² Mansbridge argues that 'what touches all should be decided by all'.¹⁸⁰³ For example, deliberative democracy would argue that a voluntary association's decision to pollute the air that is

¹⁷⁹⁷ Mansbridge, 1999; 213; Gutmann and Thompson, 1996; 12, 359; Fung, 2004; 52; Habermas, 1998; 175

¹⁷⁹⁸ Fung, 2004; 52; Mansbridge, 1996; 58; Cornwall and Coelho, 2007; 18; Mansbridge, 1999; 212; Gutmann and Thompson, 1996; 40, 113; Dryzek, 2000; 77, 134; Hendriks, Dryzek and Hunold, 2007; 369; Cornwall and Coelho, 2007; 23

¹⁷⁹⁹ Dryzek, 2000; 134; Dodge, 2009; 228

¹⁸⁰⁰ Mansbridge, 1996; 57

¹⁸⁰¹ Mansbridge, 1999; 215

¹⁸⁰² Gutmann and Thompson, 1996; 13, 16, 51, 91, 128-9; Chambers, 2003; 308; Dryzek, 1990; 15; Dryzek, 2000; 149; Parkinson, 2003; 180; Parkinson, 2004; 379; Hendriks, 2009; Metze, 2009; Habermas, 1998; 315; Elster, 1998; 8; Benhabib, 1996a; 70; Rosenberg, 2007; 9; Mansbridge, 2007; 253; Shapiro, 1999; 33; Young, 1999; 155; Button and Ryfe, 2005; 27

¹⁸⁰³ Mansbridge, 1999; 215

inhaled by people outside of its membership would have to include those people in its deliberations.¹⁸⁰⁴ If a church in a residential area considers operating a soup kitchen and offering 3 meals a day for an estimated 300 homeless people, that church ought to include its neighbours in the creation of the programme. This means that associational outcomes that affect those outside of its membership must be considered in a different kind of forum – probably institutional or hybrid.

As autonomous voluntary associations, the legitimacy conditions that guide the relationships between an associational forum and the deliberative system do not apply. As long as deliberative outcomes are only binding on – or only affect - the membership of the voluntary association, the participants of associational forums are not accountable to the general public, the deliberations are not required to be public¹⁸⁰⁵ and the participants are not required to consider or to be influenced by the rest of the deliberative system.¹⁸⁰⁶ What Mansbridge calls the ‘protected enclaves’ are the private, safe and comfortable spaces for member of voluntary associational to speak freely and creatively and to test ideas together.¹⁸⁰⁷

In order for the deliberations of democratically structured voluntary associations to be legitimate, the legitimacy conditions that guide the relationship among

¹⁸⁰⁴ Barber, 2003; 123; Benhabib, 1996a; 76; Dryzek, 2000; 102; Mansbridge, 1999, 215

¹⁸⁰⁵ Mansbridge, 1996; 57

¹⁸⁰⁶ While associational deliberations are not public, Mansbridge urges members of voluntary associations to deliberate outside of their groups. (Mansbridge, 1996; 58) For her, it is only in the ‘oppositional enclaves’ (everyday talk, hybrid forums and discursive arenas) where group members can learn to put their arguments into words that others can hear and understand. (Mansbridge, 1996; 58)

¹⁸⁰⁷ Mansbridge, 1996; 57; Mansbridge, 1999; 219; Cornwall and Coelho, 2007; 18; Fraser, 1992; 124; Benhabib, 1996a; 83

participants apply.¹⁸⁰⁸ The constitutions of voluntary associations ought to be designed in a way that minimises the possibility for coercive behaviour and that ensures that the participants of associational forums are considered equal.¹⁸⁰⁹ To the degree possible all the members of a democratically structured voluntary association ought to have the opportunity to participate in associational forums. When this is not possible the conditions of representation applies. In this case, the conditions of accountability, publicity and influenced apply – not with the rest of the deliberative system but with the other members of the voluntary association. The conditions of reciprocity and transformation apply for associational deliberations. These conditions ensure that deliberative outcomes are based on the better argument rather than on coercion, self-interest or on the rank, status or privilege of particular participants.

The deliberative conditions of informed and reasonable apply to associational forums. However, because voluntary associations are private and members tend to share worldviews, the fundamental reasons used in these deliberations are substantively different than those used in the more public deliberative forms. Associational deliberation and decision should be based on the reasons shared by its members and need not consider reasons that might be more acceptable in public settings.¹⁸¹⁰ This unconstrained form of deliberation allows for full and open discourse within the internal life of the association.¹⁸¹¹ Mansbridge agrees

¹⁸⁰⁸ Not all voluntary associations are structured democratically, in which case some other conditions for legitimacy – probably based on role or position - will apply. (Hendriks, 2006; 495)

¹⁸⁰⁹ Young, 1996; 121

¹⁸¹⁰ Rawls, 2005a; 220; For Rawls, justifications or explanations of outcomes within voluntary associations - what he calls the 'background culture' - are considered *non-public reasons*. (Rawls, 2005a; 220; Rawls, 2005b; 444; Benhabib, 1996a; 75) These deliberations are not limited by - and need not be based on –what Rawl's calls the public's shared political conceptions of justice. (Rawls, 2005a; 48, 215; Benhabib, 1996a; 75)

¹⁸¹¹ Rawls, 2005b; 444

that the deliberations in associational forums can include arguments based solely on individual and group interests – rather than, or as well as, on public interests.¹⁸¹² Benhabib criticises Rawls's assertion that associations might use one set of substantive reasons in deliberations within and among themselves and another type when they engage with the public and public institutions.¹⁸¹³ While, I do not agree that personal comprehensive doctrines ought to be restricted from the public venues (institutional, hybrid and broadcasted), I agree with Rawls that the condition of reciprocity means that members of voluntary associations might use one set of reasons – based on their shared aims, norms and beliefs - to justify their propositions during internal deliberations and another set of reasons in more public deliberations where they cannot expect others to share their worldview.

The memberships of voluntary associations are more homogenous than those of jurisdictional associations where members are 'thrown' together based on geography and interdependence.¹⁸¹⁴ This means that the legitimacy conditions of the common good and consensus can more easily fit with associational forums. This is not to say that all members of a voluntary association agree on everything; however, they often share similar interests, aims, values, beliefs and ideas of the good life. Members enter the deliberative setting with a shared set of principles that can guide them toward consensus on the common good for the association.

¹⁸¹² Mansbridge, 1996; 57

¹⁸¹³ Benhabib, 1996a; 76

¹⁸¹⁴ Young, 1996; 126

HYBRID FORUMS

Hendriks says that hybrid forums connect the micro and macro spheres.¹⁸¹⁵ This means that the legitimacy conditions for hybrid forums are a mix of those required for institutional and discursive venues. For a forum to be hybrid it must include participation by more than one type of political actor acting in his/her official capacity – state, civil society, commercial and lay citizens.¹⁸¹⁶ Hybrid forums are typically convened to discuss a particular issue within a particular jurisdiction.¹⁸¹⁷ Hybrid forums are rarely fully inclusive which means that they are representative.¹⁸¹⁸ With the exception of co-governance councils, town hall meetings and hybrid forums with a legal mandate, hybrid forums rarely result in binding decisions.¹⁸¹⁹ Rawls would argue that decisions that may result in coercible action by state actors should *only* be reached by the courts or by a majority of the citizens, through their legally elected representatives.¹⁸²⁰

I argue that the participants of hybrid forums seek to influence public opinion, public action and institutional forums.¹⁸²¹ From my experience, those who participate in hybrid forums rarely seek to simply express their political views or provide input – as they do in everyday talk. The cost of participation in hybrid

¹⁸¹⁵ Hendriks, 2006; 501

¹⁸¹⁶ Gutmann and Thompson, 1996; 131; Hendriks, 2002; 69

¹⁸¹⁷ Dryzek, 2001; 654

¹⁸¹⁸ Benhabib, 1996a; 73-4

¹⁸¹⁹ Rawls, 2005a; 38; Habermas, 1998; Mansbridge, 2007; 254; Cornwall and Coelho, 2007; 24; Levine, Fung and Gastil, 2005; 276; Cornwall and Coelho, 2007; 25; Williamson and Fung, 2004; 6; Dryzek, 2001; 654; The legitimacy standard for hybrid forums with a legal mandate to reach binding decision would be the same as the standard for institutional forums. The difference between institutional forums and hybrid forums with a legal mandate to reach binding decision is usually based on the participant selection method. Individuals are generally selected to participate in institutional forums by constitutionally defined general elections. Individuals are selected to participate in binding hybrid forums by appointment or by stakeholder selection.

¹⁸²⁰ Rawls, 2005a; This argument of course does not address the multitude of unregulated public decisions made every day by unelected public officials in state bureaucracies and even those decision made by voluntary associations that affect non-members.

¹⁸²¹ Zapata, 2009; 204; Dodge, 2009; 230; Hendriks, 2009; 176; Rosenberg, 2007; 9; Gastil and Keith, 2005; 3; Melville, Willingham, and Dedrick, 2005; 42; Dryzek, 2001; 654

forums, especially for volunteers, is very high. I assert that most participants of hybrid forums would be dissatisfied if their participation did not make some difference. Participants of hybrid forums that make no difference express their dissatisfaction by calling the forum a ‘talking shop’ or accusing forum convenors of ‘just ticking the consultation box’.¹⁸²² These hybrid forums have been described as ‘tokenism – symbolic gestures that give the illusion of citizen power without actually granting such power’.¹⁸²³

Because participants of hybrid forums aim to influence the deliberative system, and because they are representing members of the jurisdictional association who are not participating in the deliberations, the three legitimacy conditions that guide the relationship between the forum and the deliberative system – accountability, publicity and influenced – all apply. In order to influence the deliberative system, participants of hybrid forums must be able to justify their outcomes to the general public and to participants of other forums in ways that are considered acceptable. Because hybrid forum are representative, the deliberations ought to be public so that the non-participant members of the jurisdiction can ensure that the process was acceptable and that the forum participants were acting in their best interests and so that they can examine and challenge the deliberative outcomes. Finally, as representatives, participants of hybrid forums ought to demonstrate that they considered and were influenced by the opinions and views of the free and equal members of the jurisdictional association who did not participate in the deliberations.

¹⁸²² Pretty and Shah, 1997; 54; Dryzek, 2000; 50

¹⁸²³ Arnstein, 1969; Almer and Koontz, 2004; 476

The conditions that guide the relationship between deliberators all apply for hybrid forums. However, given that hybrid forum participants are not formally representing the jurisdictional membership, I argue that the conditions of reciprocity and transformation should be revised to include Mansbridge's idea of authenticity. For hybrid forums to be legitimate participants ought to treat each other with mutual respect as free and equal citizens.¹⁸²⁴ Participants ought to listen to and consider each others' arguments. However, I agree with Mansbridge (1996, 2007) and Young (1999); participants of legitimate hybrid forums should not be restricted to only those arguments that they expect others will accept.¹⁸²⁵ Participants of hybrid forums ought to be free to present self-interested arguments.¹⁸²⁶ While hybrid forum participants ought to listen with an open mind, they should not be required to transform their preferences in light of the better argument if they determine that the better argument is counter to their self-interest.¹⁸²⁷

This means that hybrid forums will not always result in agreement, much less consensus. However, given its aim to influence – rather than to reach binding agreement – it is not necessary for the outcome of hybrid forums to be in some form of agreement, even in some form of majority rule. Nor do I think that the condition of a common good applies to the legitimacy of hybrid forums.¹⁸²⁸ While I expect that most participants will have a view toward a common good, especially when it does not conflict with their self-interest, I do not think that

¹⁸²⁴ Hendriks, 2009; 178; Metze, 2009; 244; Mendonça, 2009; 211

¹⁸²⁵ Mansbridge, 1996; 49; Mansbridge, 2007; 264; Sanders, 1997; 370; Young, 1999; 155; Benhabib, 1996a; 83

¹⁸²⁶ Mansbridge, 1996; 49; Mansbridge, 2007; 264; Sanders, 1997; 370; Young, 1996; 122-5; Young, 1999; 155; Hendriks, 2006; 493; Deveaux, 2003; 781

¹⁸²⁷ Hendriks, 2006; 493

¹⁸²⁸ Young, 1996; 126; Mansbridge, 1999; 226; Simon, 1999; 51; Sanders, 1997

participants ought to restrict their arguments and their assent to a notion of the common good.¹⁸²⁹ Impartiality might be important for institutional forms (bureaucracies, parliaments and juries).¹⁸³⁰ But it is counterproductive in hybrid forums and the discursive arena where the whole point of inclusion and participation is to make sure all interests are known, understood and considered.¹⁸³¹ I agree with Mansbridge who argues that it is more legitimate for hybrid forums to result in the clarification of commonalities and conflicts among reasonable participants than for participants to be forced into a consensus on a common good.¹⁸³²

Legitimate hybrid forum deliberations ought to be based on informed and reasoned argument. Unlike everyday talk, hybrid forums may be the one forum type where lay citizens have an opportunity to truly inform themselves about complex public issues. Hybrid forums can be, and have been, convened in a way that participants have access to comprehensive and accurate information about the forum topic. The notion of reasoned debate for legitimate hybrid forums ought to be expanded to include other forms of communication as long as they comply with Dryzek's rules for expanded forms of communication.¹⁸³³

My intention for this chapter was to provide an overview of deliberative theory from the conditions that determine the legitimacy of each deliberative forums type. This analysis locates hybrid forums in the deliberative system and

¹⁸²⁹ Dodge, 2009; 228; Hendriks, 2006; 493; Sanders, 1997; 361; Mansbridge, 2007; 264; Cornwall and Coelho, 2007; 16

¹⁸³⁰ Benhabib, 1996a; 83

¹⁸³¹ Mansbridge, 2007; 264; Cornwall and Coelho, 2007; 16

¹⁸³² Mansbridge, 1999; 226; Mansbridge, 2005; 238; Sanders, 1997; Melville, Willingham, and Dedrick, 2005; 45; Young, 1996; 125; Hendriks, 2009; 177; Zapata, 2009; 199; Benhabib, 1996a; 77

¹⁸³³ Hendriks, 2006; 493; Young, 1996; 122-5

constructs their legitimacy standard. This standard is used to critic the series of hybrid forums employed during the EIA process of the proposed RMGC gold mining project.

CHAPTER 7: HYBRID FORUM LEGITIMACY IN PRACTICE

In this chapter, I review the empirical research and practical literature and elaborate on the ten conditions of hybrid forum deliberative legitimacy identified in the previous chapter. The results of this analysis are combined with the standard developed in Chapter 6 to form the hybrid forum legitimacy standard that is used to critically analyse the legitimacy claims of the series of hybrid forums that were convened during the summer of 2006 for the Environmental Impact Assessment (EIA) process for the proposed Roşia Montană Gold Corporation (RMGC) gold mining project. For critical theorists, the relationship between theory and practice is important.¹⁸³⁴ Critical Theory works to bring together theory and practice so that ‘theory is informed by practice’ and ‘practice is shaped by theory’.¹⁸³⁵ However, Ritzer argues that in reality ‘theorizing is done by one group, which is delegated, or more likely takes, that right, whereas practice is relegated to another, less powerful group.’¹⁸³⁶ As a practicing facilitator of hybrid forums, I am committed to the union of deliberative theory and practice.

In this chapter, I complete the development of the hybrid forum legitimacy standard. Through this analysis, I discover another legitimacy condition that is

¹⁸³⁴ Ritzer, 2008; 288; Bernstein, 1990; 182; Outhwaite, 2009; 21

¹⁸³⁵ Ritzer, 2008; 288; Bernstein, 1990; 182; The acceptance and application of the critical theory by the actors to whom it is directed is the coupling of theory and practice. (Bernstein, 1990; 215)

¹⁸³⁶ Ritzer, 2008; 288

not explicitly described in deliberative theory – early participation. I begin this chapter with a short review of some of the various models of hybrid forums in practice. I review the methods and best practices developed by hybrid forum conveners and facilitators to ensure deliberative legitimacy. I explore the experiences and results of hybrid forum legitimacy as reported by researchers, conveners and facilitators. Finally, I examine the legitimacy of a few empirical cases of EIA public meetings – the hybrid forum model studied for this thesis. . This review of hybrid forums in practice is important; because based on new institutionalism theory, I assert that the structural features of these forums shape participant behaviours, distributions of power and forum outcomes.

HYBRID FORUM MODELS

From the case studies reviewed for this chapter, I have identified six types of hybrid forums – deliberative conferences, co-governance councils, quasi-legal processes, remote deliberation, in-the-field deliberation and public meetings. Hybrid forums include participation by more than one type of political actor – state, civil society, commercial and lay citizens.¹⁸³⁷ These forums are typically representative and public. Hybrid forum models vary along lines of collaboration and competition, participant interaction and procedural rigor. Deliberative conferences seem to be more prevalent in the more developed states, while co-governance councils are more likely to be found in the less developed south.¹⁸³⁸

¹⁸³⁷ Gutmann and Thompson, 1996; 131; Hendriks, 2002; 69

¹⁸³⁸ Coelho, Pozzoni and Montoya, 2005; 175; Mahmud, 2007; 59

Deliberative conferences are ad hoc deliberative projects organised to discuss a specific topic; they are not permanent assemblies.¹⁸³⁹ Examples of deliberative conferences include: deliberative polls¹⁸⁴⁰, *National Issues Forums*¹⁸⁴¹, consensus conferences¹⁸⁴², lobbying¹⁸⁴³, planning cells¹⁸⁴⁴, citizen juries¹⁸⁴⁵, public policy mediation¹⁸⁴⁶, *21st Century Town Meetings*¹⁸⁴⁷, collaborative learning processes¹⁸⁴⁸ and study circles¹⁸⁴⁹. Rather than experts, lay citizens are at the centre of conference deliberation; although, public officials, interest group and industry representatives, experts and individual citizens will often all participate together.¹⁸⁵⁰ Typically, main body of deliberative conference participants are split into small groups of 8 to 10 participants for more in depth deliberations. Afterward, participants are brought back together to report their results to the plenary and to create a Forum Report of their outcomes.¹⁸⁵¹ Information is provided to conference participants in the form of written materials, field trips and presentations by experts, public officials and witnesses.¹⁸⁵² Participation selection is often by random selection and sometimes by open invitation.¹⁸⁵³ Conferences are usually structured as flat

¹⁸³⁹ Melville, Willingham, and Dedrick, 2005; 44; Hendriks, 2005a; 87; Cornwall and Coelho, 2007b; 1; Hendriks, 2005a; 87

¹⁸⁴⁰ Fishkin and Farrar, 2005; 68

¹⁸⁴¹ Charles, Sokoloff and Satullo, 2005 and Sokoloff, Steinberg and Pyser, 2005

¹⁸⁴² Hendriks, 2005a; 82

¹⁸⁴³ Dryzek, 2000; 86, 136

¹⁸⁴⁴ Dienel, 1997 cited in Hendriks, 2005a; 81

¹⁸⁴⁵ Crosby and Nethercut, 2005; 111

¹⁸⁴⁶ Amy, 1987

¹⁸⁴⁷ Lukensmeyer, Goldman and Brigham, 2005; 154

¹⁸⁴⁸ Cheng and Fiero, 2005; 164

¹⁸⁴⁹ Scully and McCoy, 2005; 199

¹⁸⁵⁰ Hendriks, 2005a; 82; Sokoloff, Steinberg and Pyser, 2005, 191; Potapchuk, Calson and Kennedy, 2005; 258; Gastil and Keith, 2005; 11; Cheng and Fiero, 2005; 170; Carson and Hartz-Karp, 2005; 130; Diduck and Sinclair et al., 2007; 220

¹⁸⁵¹ Melville, Willingham, and Dedrick, 2005; 44

¹⁸⁵² Melville, Willingham, and Dedrick, 2005; 41; Scully and McCoy, 2005; 200; Fishkin and Farrar, 2005; 71; Carson and Hartz-Karp, 2005; 127; Cheng and Fiero, 2005; 169; Sokoloff, Steinberg and Pyser, 2005, 188; Scully and McCoy, 2005; 204

¹⁸⁵³ Button and Ryfe, 2005; 23; Cheng and Fiero, 2005; 167; Bonner, Carlitz, et al, 2005; 149; Charles, Sokoloff and Satullo, 2005; 63; Sokoloff, Steinberg and Pyser, 2005, 187; Carson and

organisations, without an overt participant hierarchy. The schedule and implementation of activities for conferences is usually very organised and structured.¹⁸⁵⁴ However, although the conversation is usually facilitated, the conversation within the conference format is typically free flowing. Physically, rather than theatre style, the room is set with tables of small groups of 8 to 12 people. Conferences can be sponsored and funded by state actors (for example public schools and libraries, local governments and environmental protection and planning agencies), civil society actors (churches, universities, NGOs) or economic actors.¹⁸⁵⁵ Deliberative conferences are meant to complement governance rather than to replace it.¹⁸⁵⁶ Deliberative conferences are less valuable for those policy questions that are restricted to 'yes or no' outcomes.¹⁸⁵⁷ Conference decisions are typically non-binding recommendations; although, the conference outcomes from those conferences sponsored by state actors are usually more influential than outcomes from conferences sponsored by non-state actors.¹⁸⁵⁸

Co-governance councils¹⁸⁵⁹ are unique among hybrid forums because they usually hold a legal mandate and their decisions are typically binding.¹⁸⁶⁰ Co-governance councils are generally regularized institutions rather than ad hoc assemblies.¹⁸⁶¹ Individual members often participate for a set term.¹⁸⁶² These

Hartz-Karp, 2005; 130; Karpowitz and Mansbridge, 2005; 239; Weiksner, 2005; 213; Soneryd and Weldon, 2003; 25; Diduck and Sinclair et al., 2007; 222; Okello and Beevers et. al., 2009; 219; Fishkin and Farrar, 2005; 71; Hendriks, 2005a; 81

¹⁸⁵⁴ Hendriks, 2005a; 81

¹⁸⁵⁵ Gastil and Keith, 2005; 9; Gastil and Keith, 2005; 10; Melville, Willingham, and Dedrick, 2005; 38; Button and Ryfe, 2005; 23; Scully and McCoy, 2005; 203

¹⁸⁵⁶ Hendriks, 2005a; 81

¹⁸⁵⁷ Hendriks, 2005a; 94

¹⁸⁵⁸ Button and Ryfe, 2005; 24; Hendriks, 2005a; 81

¹⁸⁵⁹ Gaventa, 2007; xiv

¹⁸⁶⁰ Mahmud, 2007; Coelho, Pozzoni and Montoya, 2005; Mahmud, 2007

¹⁸⁶¹ Cornwall and Coelho, 2007b; 1

councils are usually sponsored, convened and funded by state actors - oftentimes backed by legal or constitutional guarantees.¹⁸⁶³ Membership selection is often by stakeholder selection and usually includes public officials, civil society representatives, experts and sometimes lay citizens.¹⁸⁶⁴ Councils typically provide public administrative, monitoring or on-going policy formation roles.¹⁸⁶⁵ The format of council deliberative sessions is often formal and rigorous, led by a chair and run using structures like *Robert's Rule of Order*.¹⁸⁶⁶ A secretary manages attendance and takes and publishes minutes. Public officials are typically selected to act as president or chair council meetings.¹⁸⁶⁷

Quasi-legal processes have the character of a legal process, but are convened in political and administrative settings, rather than in a courtroom.¹⁸⁶⁸ Public hearings and public inquiries are examples of quasi-legal processes. These forums are sponsored and convened by state actors.¹⁸⁶⁹ Public officials use this forum model to gather information – both empirical and normative - from the public in order to better inform their own deliberations in institutional forums. Quasi-legal processes are rigidly structured and formal, but can include opportunities for participation, deliberative interaction and policy influence.¹⁸⁷⁰ While quasi-legal processes may include more than one event, they are ad hoc

¹⁸⁶² Coelho, Pozzoni and Montoya, 2005; 177

¹⁸⁶³ Cornwall and Coelho, 2007b; 1; Mahmud, 2007; 59; I would argue that those councils whose members are elected by the general public but who also reserves seats for those who have historically been excluded from politics - women, minorities, those with low income levels or special castes – are actually institutional forums rather than hybrid ones.

¹⁸⁶⁴ Mahmud, 2007; Coelho, Pozzoni and Montoya, 2005; Mahmud, 2007

¹⁸⁶⁵ Mahmud, 2007; Coelho, Pozzoni and Montoya, 2005; Mahmud, 2007

¹⁸⁶⁶ Mahmud, 2007; 65

¹⁸⁶⁷ Mahmud, 2007; 67; Coelho, Pozzoni and Montoya, 2005; 177

¹⁸⁶⁸ Soneryd and Weldon, 2003; 31

¹⁸⁶⁹ Soneryd and Weldon, 2003; Karpowitz and Mansbridge, 2005

¹⁸⁷⁰ Karpowitz and Mansbridge, 2005; 243

and are convened to discuss a specific public issue.¹⁸⁷¹ Participant selection is typically by open invitation.¹⁸⁷² Physically, the room is set-up like a courtroom - theatre style with a stage, raised platform or set of tables in the front of the room facing the audience. Public decision makers sit at the front of the room; experts and citizens sit in the audience.¹⁸⁷³ In turn, audience members approach the decision makers and offer their testimony and evidence.¹⁸⁷⁴ The organisation of quasi-legal processes is hierarchical with public decision makers in the seat of power. Quasi-legal processes are located at the more adversarial end of the hybrid forum spectrum and may be more effective when a public decision involves public conflict.¹⁸⁷⁵ These forums are opportunities for all sides of a dispute to present their viewpoints.¹⁸⁷⁶ Compared to the more consensus-based deliberative conferences, these hybrid forums may provide more opportunities for oppositional voices to be expressed and heard.¹⁸⁷⁷ In these circumstances, public officials act as arbitrator. Ultimately, after hearing the testimony and evidence, the decision makers deliberate (in an institutional forum) and reach a binding decision.¹⁸⁷⁸

Remote deliberations are unique hybrid forms because they are not conducted in face-to-face discussions. Examples of remote deliberative projects are on-line deliberations and televoting. For these hybrid forums, participants are sent briefing materials and encouraged to deliberate about the forum topic informally

¹⁸⁷¹ Soneryd and Weldon, 2003; Karpowitz and Mansbridge, 2005

¹⁸⁷² Soneryd and Weldon, 2003; Karpowitz and Mansbridge, 2005

¹⁸⁷³ Karpowitz and Mansbridge, 2005; 243

¹⁸⁷⁴ Karpowitz and Mansbridge, 2005; 243

¹⁸⁷⁵ Karpowitz and Mansbridge, 2005; 240; Mansbridge, 2007; 262

¹⁸⁷⁶ Soneryd and Weldon, 2003; Karpowitz and Mansbridge, 2005

¹⁸⁷⁷ Karpowitz and Mansbridge, 2005; 243; Mansbridge, 2007; 262

¹⁸⁷⁸ Karpowitz and Mansbridge, 2005

and independently with their family and friends.¹⁸⁷⁹ Sometimes participants are interviewed or surveyed before and after the process to determine if any preference shifts occurred – indicating informed and considered opinions.¹⁸⁸⁰ Remote deliberations reduce the costs of participation and can accommodate larger groups of participants.¹⁸⁸¹ Policy makers and experts can participate along with lay citizens in online deliberations.¹⁸⁸²

Pretty and Shah demonstrate that participation and deliberation can happen in the field at service delivery, project implementation or regulation enforcement.¹⁸⁸³ In-the-field deliberations occur between public service providers or regulators and lay citizens.¹⁸⁸⁴ Rather than coercing participants to implement externally designed solutions, it can be more efficient and cost effective for policy makers and users to together design the solutions that will be accepted and implemented by the participant even after the inspectors are gone.¹⁸⁸⁵ For example, rather than advising, paying or forcing farmers to adopt new water and soil conservation technologies, policy makers are supporting and working with farmers in Honduras to incorporate appropriate new technologies with locally accepted methods.¹⁸⁸⁶ Policy makers and users together, train, experiment and evaluate the success of new methods.¹⁸⁸⁷

¹⁸⁷⁹ Carson and Hartz-Karp, 2005; 126

¹⁸⁸⁰ Carson and Hartz-Karp, 2005; 124

¹⁸⁸¹ Bonner, Carlitz, et al, 2005; 142

¹⁸⁸² Bonner, Carlitz, et al, 2005; 143

¹⁸⁸³ Pretty and Shah, 1997

¹⁸⁸⁴ Pretty and Shah, 1997

¹⁸⁸⁵ Pretty and Shah, 1997; 53

¹⁸⁸⁶ Pretty and Shah, 1997; 39

¹⁸⁸⁷ Pretty and Shah, 1997; 51

Public meetings are sometimes ad hoc events focusing on a single forum topic and are sometimes regularized community based meetings.¹⁸⁸⁸ Like quasi-legal processes, public meetings are often set with a stage, raised platform or line of tables at the front of the room facing an audience sitting in a theatre style layout. In contrast to quasi-legal processes, however, public decision makers are not necessarily sitting at the front of the room hearing testimony and evidence from participants.¹⁸⁸⁹ Rather, the presenters in the front of the room might be lower-level public officials, experts or interest group or industry representatives. This means that, while public meetings might have opportunities for participation and deliberation, they are less likely than quasi-legal processes to be directly influential.¹⁸⁹⁰ Public meetings are often used by public officials to meet public consultation requirements and often form the public consultation portion of Environmental Impact Assessment (EIA) processes.¹⁸⁹¹ Often the people in the front of the room are providing information to the audience, hearing participant values and opinions and responding to questions.¹⁸⁹² People are invited to public meetings through open invitations and sometimes personal stakeholder invitations.¹⁸⁹³

The physical layout of the room for public meetings and quasi-legal processes is very different from that of deliberative conferences and co-governance councils. For deliberative conferences and co-governance councils, participants sit around tables for better interaction, dialogue and deliberation. Usually the chair of co-governance councils sits at the head of the table in order

¹⁸⁸⁸ Soneryd and Weldon, 2003; Diduck and Sinclair et al., 2007

¹⁸⁸⁹ Soneryd and Weldon, 2003; Diduck and Sinclair et al., 2007

¹⁸⁹⁰ Karpowitz and Mansbridge, 2005; 244

¹⁸⁹¹ Soneryd and Weldon, 2003; Diduck and Sinclair et al., 2007

¹⁸⁹² Soneryd and Weldon, 2003; Diduck and Sinclair et al., 2007

¹⁸⁹³ Soneryd and Weldon, 2003; Diduck and Sinclair et al., 2007

to run the meeting and simultaneously to establish hierarchy. For deliberative conferences, while introductory statements and presentations may come from the front of the room, there is no overt hierarchy among the deliberators. The theatre style physical layout of the room for public meetings and quasi-legal processes make them perfect settings for the exchange of information – not so much for interaction among participants – and the establishment of hierarchy.¹⁸⁹⁴ For public meetings, the people sitting in the front of the room make statements and speeches.¹⁸⁹⁵ The people sitting in the audience ask questions or make comments to which the people in the front of the room respond.¹⁸⁹⁶ For the most part, in public meetings, information goes from the front of the room to the audience.¹⁸⁹⁷ For quasi-legal processes, perhaps after an introductory statement, audience members address the people in the front of the room with testimony.¹⁸⁹⁸ With quasi-legal processes, the people in the front of the room are collecting information from the audience in order to better inform their subsequent deliberations.

Hybrid forums require resources and administration.¹⁸⁹⁹ Forum sponsors may be state, civil society or industry actors.¹⁹⁰⁰ Forum sponsors provide funding for event facilities, the retention of conveners and evaluators, audio-visual equipment, refreshments, participant compensation, participant training, travel,

¹⁸⁹⁴ Amer and Koontz, 2004; 475; Karpowitz and Mansbridge, 2005; 245

¹⁸⁹⁵ Amer and Koontz, 2004; 475

¹⁸⁹⁶ Amer and Koontz, 2004; 474

¹⁸⁹⁷ Amer and Koontz, 2004; 474

¹⁸⁹⁸ Karpowitz and Mansbridge, 2005; 245

¹⁸⁹⁹ Hendriks, 2005a; 94; Lukensmeyer, Goldman and Brigham, 2005; 162; Scully and McCoy, 2005; 209; Levine, Fung and Gastil, 2005; 275

¹⁹⁰⁰ Gastil and Keith, 2005; 15

accommodation, participant activities, materials and supplies.¹⁹⁰¹ In 2005, an entire consensus conference could cost between \$70,000 and \$200,000.¹⁹⁰² Eight planning cells, for about 200 citizens, could cost between \$180,000 and \$240,000.¹⁹⁰³ For 400 people to participate in the New South Wales Televote to, it cost the sponsor between \$15,500 and \$39,000.¹⁹⁰⁴ For the same project, the Citizens' Jury of 11 people cost between \$8,000 and \$12,000.¹⁹⁰⁵

From the cases reviewed for this chapter, it appears that good practice requires that sponsors retain neutral conveners and assemble a diverse advisory group.¹⁹⁰⁶ Advisory groups work to oversee the selection of participants, the development of presenter lists, the compilation of forum briefing materials, public and media relations and the selection of the forum convener and evaluator.¹⁹⁰⁷ Conveners organise, manage, facilitate and record the deliberative project. Conveners work with sponsors and advisory boards to develop the agenda, prepare background materials, recruit presenters, determine invitation lists and methods, manage participant data and agree on deliberative project goals.¹⁹⁰⁸ Often conveners invite participants, write Forum Reports, facilitate media coverage and disseminate forum outcomes.¹⁹⁰⁹ Levine, Fung and Gastil recognise the risks involved in having a small group of organisers who determine the invitation list, agenda and deliberative model.¹⁹¹⁰

¹⁹⁰¹ Hendriks, 2005a; 94; Lukensmeyer, Goldman and Brigham, 2005; 162; Scully and McCoy, 2005; 209; Levine, Fung and Gastil, 2005; 275; Crosby and Nethercut, 2005; 114; Coelho, Pozzoni and Montoya, 2005; 175; Mahmud, 2007; 59; Fishkin and Farrar, 2005

¹⁹⁰² Hendriks, 2005a; 94

¹⁹⁰³ Hendriks, 2005a; 94

¹⁹⁰⁴ Carson and Hartz-Karp, 2005; 125

¹⁹⁰⁵ Carson and Hartz-Karp, 2005; 125

¹⁹⁰⁶ Crosby and Nethercut, 2005; 114; Almer and Koontz, 2004; 476

¹⁹⁰⁷ Hendriks, 2005a; 83

¹⁹⁰⁸ Fishkin and Farrar, 2005; 73

¹⁹⁰⁹ Levine, Fung and Gastil, 2005; 275

¹⁹¹⁰ Mendonça, 2009; 213; Connelly, 2009; 189; Levine, Fung and Gastil, 2005; 275

However, they argue that the greater risk is a complete lack of competent organisation.¹⁹¹¹

Hybrid Forum Legitimacy Standard	
Conditions that Guide Deliberator Relations	
Free	Yes
Equal	Yes
Inclusive/ Representative	Representative
Reciprocal	Reciprocal/Authentic
Transformative	Yes
Conditions that Shape Deliberative Content	
Informed	Yes
Reasonable	Expanded
Early Participation	Yes
Conditions that Link the Forum to The Deliberative System	
Influenced	Yes
Justifiable/Accountable/ Influential	Influential
Public/ Transparent	Yes

EARLY PARTICIPATION

Most hybrid forum practitioners add a deliberative legitimacy condition that is not explicitly mentioned in deliberative theory. This legitimacy condition works to guide the content of deliberations. Hybrid forum practitioners argue that hybrid forums are most legitimate early in the decision making process when there are still different policy options available.¹⁹¹² Inclusive participation can happen at any time during the policy cycle - from planning and design through implementation and evaluation. Most deliberative practitioners argue that the public's participation should be invited early in each phase - before important

¹⁹¹¹ Levine, Fung and Gastil, 2005; 275

¹⁹¹² Hendriks, 2005a; 94; Rojanamon, Chaisomphob, and Bureekul, 2010; 13; O'Faircheallaigh, 2010; 19; Soneryd and Weldon, 2003; 30; Almer and Koontz, 2004; 476; Okello and Beevers et. al., 2009; 218; Soneryd and Weldon, 2003; 23; UNECE, 1998; Diduck and Sinclair et al., 2007; 225

decisions have been made that can constrain hybrid forum deliberation.¹⁹¹³ The Aarhus Convention and European Directives require that the public is invited to participate early – when options are still available.¹⁹¹⁴ Manin argues that participants ought to ‘have a genuine choice among different alternatives, all of which should seem realistically possible’.¹⁹¹⁵

FREE FROM COERCION

From the literature reviewed for this chapter, practitioners of hybrid forums appear less concerned with the risk of coercion than deliberative theorists.¹⁹¹⁶ Coercion can limit or corrupt deliberations. It can be used to limit participant inclusion or to alter the reasoned arguments put forward by participants.¹⁹¹⁷ Participant coercion can take the form of manipulation, threats, intimidation, propaganda, violence, murder, political imprisonment, violent rebellions, blackmail, excessive campaign donations, bribery and deception.¹⁹¹⁸ These forms of coercion do not always work; sometimes participants rise above attempts of coercion. States, including communist Romania, have been known to use force to limit public assembly, participation and deliberation.¹⁹¹⁹ Other

¹⁹¹³ Hendriks, 2005a; 96; Diduck and Sinclair et al., 2007; 225; Rojanamon, Chaisomphob, and Bureekul, 2010; 13; Bonner, Carlitz, et al, 2005; 148; Soneryd and Weldon, 2003; 30; Almer and Koontz, 2004; 476; Okello and Beevers et. al., 2009; 218

¹⁹¹⁴ European Directives 85/337/EEC, 96/82/EC, 2001/42/EC, 2003/4/EC, 2003/35/EC and 2004/35/EC; Soneryd and Weldon, 2003; 23

¹⁹¹⁵ Manin, 1987; 357

¹⁹¹⁶ Some theorists have broadened the concept of coercion and power to include all forms of inequality and exclusion. (Mendonça, 2009; 213; Connelly, 2009; 189; Lukes, 2005; Young, 1990; Young, 1996; 122; Dryzek, 2000; 70; Metze, 2009; 241; Sanders, 1997; 348; Hendriks, 2009; 174; Barber, 2003; 175; Young, 1996; 122; Levine, Fung and Gastil, 2005; 279; Cornwall and Coelho, 2007b; 13) Other forms of power are discussed in this chapter in the sections on inclusion and equality.

¹⁹¹⁷ Dryzek, 2000; 109

¹⁹¹⁸ Dryzek, 2000; 1; Hendriks, 2006, 492; Hendriks, 2009; Cohen, 1997; 74; Mendonça, 2009; 211; Rawls, 2005a; Habermas, 1998; Mansbridge, 1996; 47; Benhabib, 1996; 68; Rosenberg, 2007; 4; Button and Ryfe, 2005; 27; Connelly, 2009

¹⁹¹⁹ Georgescu, 1991; 236, 263-4; Gallagher, 2005; 55, 62, 67; Calinescu and Tismăneanu, 1991; 288

states may limit civil freedoms - like those of assembly, association, expression – during times of crisis or war.¹⁹²⁰

While the literature does not offer any remedies, practitioners and researchers do provide a small number of coercion examples, particularly in co-governance councils and public meetings. Mahmud is concerned that the powerful can use threats of support withdrawal to limit or alter the participation of the poor in co-governance councils.¹⁹²¹ Mohanty finds that, while men do not express overt antagonism to women participating in Indian co-governance councils, they sometimes act in ways that might be humiliating for women; they may act indifferent, amused or dismissive towards women.¹⁹²² These reactions can work to silence women in public settings.¹⁹²³ Mostly the forms of coercion mentioned by the practitioners and researchers reviewed for this chapter relate to information manipulation by state and industry actors in public meetings convened as part of EIA and project authorisation processes.¹⁹²⁴ The concern here is that these actors are deliberately misleading local residents by exaggerating the benefits of the project, while understating the risks.¹⁹²⁵ Perhaps when hybrid forums are convened more regularly, when they have more influence and when the stakes of the outcomes are greater, practitioners will be required to develop techniques and process to control forms of coercion.¹⁹²⁶

¹⁹²⁰ Gastil and Keith, 2005; 5

¹⁹²¹ Mahmud, 2007; 58

¹⁹²² Mohanty, 2007; 91

¹⁹²³ Mohanty, 2007; 91

¹⁹²⁴ Diduck and Sinclair et al., 2007; 229

¹⁹²⁵ Diduck and Sinclair et al., 2007; 229; O'Faircheallaigh, 2010; 21

¹⁹²⁶ of Levine, Fung and Gastil, 2005; 278

EQUAL

Practitioners have developed a number of techniques for hybrid forums that work to ensure the equality of participants. In the ideally legitimate deliberative project, all participants have equal opportunities to acquire knowledge, to speak, to be heard and to influence the outcome.¹⁹²⁷ Equality is important not only because participants deserve the mutual respect of free and equal citizens. Equality is important for deliberations because it means that a diverse range of perspectives, interests, opinions and ideas – even outlying ones - can be included in the deliberation; it improves the breadth and quality of reasoned deliberation. It is important that conveners give balance and equal weight to the many perspectives and opinions on the topic, or the deliberation loses legitimacy through the appearance of partisanship.¹⁹²⁸

In reality, equality in hybrid forums is rarely the case.¹⁹²⁹ Cornwall sees power and inequalities in the way issues are framed, in claims to authority, in technical language and in the labels, roles and stereotypes people place on each other.¹⁹³⁰ People do not have the same inclination or ability to understand the issues, challenge claims or offer ideas in ways that are persuasive to others.¹⁹³¹ The inequalities that exist in society do not disappear as participants enter the

¹⁹²⁷ Dryzek, 2000; 172; Dodge, 2009; 227; Rawls, 2005a; 23; Habermas, 1998; 315; Metze, 2009; 244; Mendonça, 2009; 211; Cohen, 1997; 74; Benhabib, 1996; 70; Fishkin and Farrar, 2005; 70; Diduck and Sinclair et al., 2007; 220

¹⁹²⁸ Hendriks, 2005a; 95

¹⁹²⁹ Dryzek, 2000; 70; Sanders, 1997; 349; Young, 2000, 2001; Hendriks, 2009; 177; Cornwall and Coelho, 2007b; 24

¹⁹³⁰ Cornwall and Coelho, 2007b; 11

¹⁹³¹ Dryzek, 2000; 70; Metze, 2009; 241; Sanders, 1997; 348; Hendriks, 2009; 174; Barber, 2003; 175; Young, 1996; 122; Levine, Fung and Gastil, 2005; 279; Cornwall and Coelho, 2007b; 13

forum door.¹⁹³² The experience of participating in a deliberative forum can be ‘extremely intimidating’ for some.¹⁹³³ Forms of power, domination and inequalities work to silence certain actors.¹⁹³⁴ The cases reviewed for this chapter highlight the financial, technical and political resource inequalities among participants.¹⁹³⁵ Government officials and project proponents often have seemingly unlimited resources from which to educate themselves and to develop strategies and arguments to support their case. At the same time individual citizens have limited resources to develop their understanding of the technical issues, to clarify their concerns and to protect their interests.¹⁹³⁶ Gastil and Keith admit that differences in power make legitimate deliberation difficult; however, they argue that ‘they don’t make it impossible, and they don’t make it useless.’¹⁹³⁷ While Cornwall and Coelho see invited spaces as ‘spaces of power’, they can also envision them as ‘spaces of possibility’ where ‘power takes a more productive and positive form.’¹⁹³⁸ Here I review some of the techniques used by conveners who strive for more legitimately equal hybrid forums.

For Mohanty, the state should be the most attractive external sponsor because forums sponsored by state actors ought to be ‘grounded in the normative principles of equality, justice and empowerment.’¹⁹³⁹ Mohanty hopes that state bureaucrats will mobilise and encourage participation by marginalised

¹⁹³² Sanders, 1997; 364; Cornwall and Coelho, 2007b; 12; Mahmud, 2007; 58); Coelho, 2007b; 36

¹⁹³³ Cornwall and Coelho, 2007b; 13

¹⁹³⁴ Gaventa, 2006b; Cornwall and Coelho, 2007b; 12

¹⁹³⁵ Diduck and Sinclair et al., 2007; 225; Coelho, Pozzoni and Montoya, 2005; 182; Cornwall and Coelho, 2007b; 8

¹⁹³⁶ Diduck and Sinclair et al., 2007; 225

¹⁹³⁷ Gastil and Keith, 2005; 16

¹⁹³⁸ Cornwall and Coelho, 2007b; 11

¹⁹³⁹ Mohanty, 2007; 93; Rojanamon, Chaisomphob, and Bureekul, 2010; 12

groups.¹⁹⁴⁰ Ultimately, she is disappointed when she sees state actors creating spaces for women, but doing nothing to empower their meaningful participation.¹⁹⁴¹ Mohanty complains that in its putative neutrality ‘the state sides with the dominant social forces, groups and individuals to avoid conflicts’ and as a result supports the silencing of women.¹⁹⁴² Cornwall and Coelho worry that state actors will resist the equal participation of citizen and civil society representatives into what they consider as *their* spaces, the spaces of the state.¹⁹⁴³

Many practitioners of hybrid forums encourage the use of professional (or at least trained) neutral facilitation to support participant equality.¹⁹⁴⁴ Neutral means that facilitators are working (or at least appearing) to give equal weight to all participants and participant opinions and ideas. Facilitators work to promote broad participation and to ensure that one or two individuals do not dominate the conversation.¹⁹⁴⁵ Some facilitators intentionally support participants who may be somehow disadvantaged in the conversation.¹⁹⁴⁶ Scully and McCoy suggest that forum facilitators ought to reflect the diversity of the community.¹⁹⁴⁷ In Citizens’ Juries participants have the ability to remove the

¹⁹⁴⁰ Mohanty, 2007; 93

¹⁹⁴¹ Mohanty, 2007; 90

¹⁹⁴² Mohanty, 2007; 90

¹⁹⁴³ Cornwall and Coelho, 2007b; 1

¹⁹⁴⁴ Melville, Willingham, and Dedrick, 2005; 44; Hendriks, 2005a; 81; Fishkin and Farrar, 2005; 74; Crosby and Nethercut, 2005; 113; Carson and Hartz-Karp, 2005; 130; Bonner, Carlitz, et al, 2005; 148; Sokoloff, Steinberg and Pyser, 2005, 188; Karpowitz and Mansbridge, 2005; 240; Cornwall and Coelho, 2007b; 25; Rojanamon, Chaisomphob, and Bureekul, 2010; 6; Lukensmeyer, Goldman and Brigham, 2005; 159; Almer and Koontz, 2004; 476

¹⁹⁴⁵ Fishkin and Farrar, 2005; 74; Crosby and Nethercut, 2005; 113; Sokoloff, Steinberg and Pyser, 2005, 191; Sokoloff, Steinberg and Pyser, 2005, 191

¹⁹⁴⁶ Levine, Fung and Gastil, 2005; 279; Cornwall and Coelho, 2007b; 16

¹⁹⁴⁷ Scully and McCoy, 2005; 200

facilitator if they feel he/she is not productively managing the process or is expressing a substantive policy bias.¹⁹⁴⁸

Not all of the forums reviewed for this chapter used neutral facilitators. Co-governance councils and public meetings are often led by a chairperson, who is most often a bureaucrat or elected official.¹⁹⁴⁹ From the literature reviewed for this chapter, as well as from my own experience, public officials who chair or facilitate hybrid forum sessions tend to dominate and direct group discussions. Rather than encouraging open dialogue, public officials with substantive knowledge of the forum topic are often the most vocal forum participants.¹⁹⁵⁰ Public officials who facilitate hybrid forum sessions often provide the official response to technical questions – limiting the ability of forum participants to provide their own knowledge.¹⁹⁵¹ Public officials often do not have the skills or training to facilitate group discussion.¹⁹⁵² Even when public officials avoid leading conversations, participants look to them for direction. If a public official acting as chair holds any resistance toward public participation in public affairs, they can neglect the hybrid forum – sometimes failing to prepare for, or even attend, meetings.¹⁹⁵³

A practice used by most deliberative conferences to promote equality is the idea of small group discussions.¹⁹⁵⁴ This practice works to ensure that everyone

¹⁹⁴⁸ Levine, Fung and Gastil, 2005; 280

¹⁹⁴⁹ Mahmud, 2007; 67

¹⁹⁵⁰ Mahmud, 2007; 64

¹⁹⁵¹ Cheng and Fiero, 2005; 169

¹⁹⁵² Coelho, Pozzoni and Montoya, 2005; 181

¹⁹⁵³ Mahmud, 2007; 67

¹⁹⁵⁴ Fishkin and Farrar, 2005; 73, Hendriks, 2005a; 87; Cheng and Fiero, 2005; 166; Sokoloff, Steinberg and Pyser, 2005, 188; Scully and McCoy, 2005; 200; Hendriks, 2005a; 84; Crosby and Nethercut, 2005; 113; Carson and Hartz-Karp, 2005; 131; Lukensmeyer, Goldman and Brigham, 2005; 154

has an opportunity to contribute their perspectives, concerns and ideas.¹⁹⁵⁵ It is often more comfortable for people to speak in groups of 5 to 10 people rather than in large plenary sessions.¹⁹⁵⁶ For some forums, small group membership rotates so that participants have more direct interaction with more participants and to 'minimize dysfunctional group dynamics, such as the formation of factions or hierarchies.'¹⁹⁵⁷ In order to maintain the diversity obtained during the participant invitation process, many conveners randomly assign or purposefully assign seats at tables or membership within teams to ensure diversity within workgroups.¹⁹⁵⁸ Usually after the small group discussions, all participants come back together to discuss and compare their group results.¹⁹⁵⁹

Hybrid forums often use ground rules to ensure that all participants have sufficient uninterrupted time to form and articulate their arguments.¹⁹⁶⁰ Sometimes the facilitator sets the ground rules for discussion.¹⁹⁶¹ Other times the participants establish their own set of ground rules.¹⁹⁶² Scully and McCoy suggest that when the participants set the ground rules they are more likely to be responsible for their implementation and the quality of the deliberation.¹⁹⁶³ Ground rules can include decision rules and rules of representation and reciprocity – for example avoiding interruption and listening to each other.¹⁹⁶⁴

¹⁹⁵⁵ Cheng and Fiero, 2005; 167; Scully and McCoy, 2005; 205; Rojanamon, Chaisomphob, and Bureekul, 2010; 6; Lukensmeyer, Goldman and Brigham, 2005; 159; Hendriks, 2005a; 87

¹⁹⁵⁶ Scully and McCoy, 2005; 205; Rojanamon, Chaisomphob, and Bureekul, 2010; 6

¹⁹⁵⁷ Hendriks, 2005a; 87

¹⁹⁵⁸ Carson and Hartz-Karp, 2005; 130; Sokoloff, Steinberg and Pyser, 2005, 193

¹⁹⁵⁹ Cheng and Fiero, 2005; 167

¹⁹⁶⁰ Scully and McCoy, 2005; 205

¹⁹⁶¹ Melville, Willingham, and Dedrick, 2005; 44; Cheng and Fiero, 2005; 168; Sokoloff, Steinberg and Pyser, 2005, 190

¹⁹⁶² Weiksner, 2005; 215; Scully and McCoy, 2005; 200; Mahmud, 2007; 65; Pretty and Shah, 1997; 48

¹⁹⁶³ Scully and McCoy, 2005; 200

¹⁹⁶⁴ Melville, Willingham, and Dedrick, 2005; 44

Other groups use civil training to reduce the equality gap in hybrid forums.¹⁹⁶⁵ Cornwall and Coelho assert that civic education ‘can enhance the skills and confidence of marginalized and excluded groups, enabling them to enter and engage [more equally] in participatory arenas’.¹⁹⁶⁶ The small city (140,000 residents) of Hampton, VA offers a Neighbourhood College, a Diversity College and a Youth Civic Engagement programme.¹⁹⁶⁷ As part of these programs, residents participate in evening workshops that focus on topics such as local government organisation, public safety, diversity training, public budgets and finance and meeting facilitation.¹⁹⁶⁸ They participate in lectures, group deliberations, public opinion collection activities, field trips and public action.¹⁹⁶⁹ In order to ensure equal participation in EIA processes, Diduck and Sinclair et al argue that either the government or the project proponent should provide interested or affected communities with the financial and technical support they need to retain the expertise needed to make sure their interests are equally protected.¹⁹⁷⁰

Individuals can learn and practice the deliberative skills required for hybrid forums by participating first in the more homogenous, egalitarian and protected associational forums – social movements and civic associations.¹⁹⁷¹ These forums are relatively safe spaces where people with shared interests and

¹⁹⁶⁵ Potapchuk, Calson and Kennedy, 2005; 258-261; Cornwall and Coelho, 2007b; 8; Mahmud, 2007; 73; Mahmud, 2007; 64; Almer and Koontz, 2004; 476

¹⁹⁶⁶ Cornwall and Coelho, 2007b; 8; Mahmud, 2007; 73

¹⁹⁶⁷ Potapchuk, Calson and Kennedy, 2005

¹⁹⁶⁸ Potapchuk, Calson and Kennedy, 2005; 258-261

¹⁹⁶⁹ Potapchuk, Calson and Kennedy, 2005; 261

¹⁹⁷⁰ Diduck and Sinclair et al., 2007; 229; Cornwall and Coelho, 2007b; 25; Almer and Koontz, 2004; 476

¹⁹⁷¹ Mahmud, 2007; 55; Mohanty, 2007; 76; Cornwall and Coelho, 2007b; 20; Mansbridge, 1996; 57; Fraser, 1992; 124

identities can develop strategies while practicing the art of deliberation.¹⁹⁷² Mobilisation can help ensure the consideration of the interests of the less powerful.¹⁹⁷³ Civil society actors can help to ensure that the less powerful have the technical knowledge required to effectively participate in complex deliberations.¹⁹⁷⁴ Collective actors can share resources; encourage each other; amplify shared interests; and lower participation costs.¹⁹⁷⁵ Cornwall and Coelho argue that marginalised groups can use social mobilisation to nurture new leaders, to improve their political skills and confidence and to seek representation in hybrid forums.¹⁹⁷⁶ Yet, at the same time, they argue that safe and relatively homogenised associational forums may not fully prepare marginalised actors to engage effectively in the more diverse and sometimes polarised atmosphere of hybrid forums.¹⁹⁷⁷ Cornwall and Coelho also worry that mobilisation, while enabling marginalised actors to find their collective voice, can also lead to the interest group conflicts that risk the legitimising elements of reciprocity, preference transformation and reasoned debate.¹⁹⁷⁸

Weiksner has observed that people are inclined to participate in different ways.¹⁹⁷⁹ One way to promote equality is to allow participants to participate in the way that is most comfortable and appropriate for them. Some people may want to observe the deliberation to become more informed.¹⁹⁸⁰ Others may want to anonymously voice their approval or disapproval of a comment – ‘like’

¹⁹⁷² Mansbridge, 1996; 57, Fraser, 1992; 124; Dryzek, 2000; 134; Mohanty, 2007; 76

¹⁹⁷³ Okello and Beevers et. al., 2009; 220; Mahmud, 2007; 72; Cornwall and Coelho, 2007b; 22; Stringer, Scriciu and Reed, 2009; 86

¹⁹⁷⁴ Stringer, Scriciu and Reed, 2009; 86

¹⁹⁷⁵ Coelho, 2007b; 36

¹⁹⁷⁶ Cornwall and Coelho, 2007b; 25; Mohanty, 2007; 76

¹⁹⁷⁷ Cornwall and Coelho, 2007b; 16

¹⁹⁷⁸ Cornwall and Coelho, 2007b; 16

¹⁹⁷⁹ Weiksner, 2005; 216

¹⁹⁸⁰ Weiksner, 2005; 216; Cornwall and Coelho, 2007b; 16; Bonner, Carlitz, et al, 2005; 150

or 'dislike' or applause and boos during a public meeting.¹⁹⁸¹ Others may want to comment on a proposal that has been offered, while some may want to offer new arguments and proposals or raise new issues.¹⁹⁸²

In order to minimise the disparity in resources, knowledge and deliberative skills, Coelho argues that the participants themselves should define the forum agenda.¹⁹⁸³ An agenda that expresses the interests of the historically marginalised may work to support the participation of those with less technical experience and fewer resources.¹⁹⁸⁴ Coelho, Pozzoni and Montoya argue that some highly specialized topics benefit little from citizen input because they lack the necessary expertise and information.¹⁹⁸⁵ They recommend that forum agendas are restricted to the discussions that require local knowledge and information about citizens' preferences.¹⁹⁸⁶

Unlike researchers of co-governance councils, practitioners and researchers of deliberative conferences do not address the empirical realities of equality in their forums. Deliberative conference practitioners describe the practices they use to minimise power imbalances and inequalities – neutral facilitation, small group discussions and ground rules - but it is not clear to what degree deliberative conferences achieve equality among their participants. These practitioners and researchers do assert, based on exit surveys, that those who participate in their forums enjoy the experience¹⁹⁸⁷; perhaps we can assume that participants would not enjoy their participation if they felt they had not been

¹⁹⁸¹ Weiksner, 2005; 216

¹⁹⁸² Weiksner, 2005; 216

¹⁹⁸³ Coelho, 2007b; 37

¹⁹⁸⁴ Coelho, 2007b; 37

¹⁹⁸⁵ Coelho, Pozzoni and Montoya, 2005; 182

¹⁹⁸⁶ Coelho, Pozzoni and Montoya, 2005; 182

¹⁹⁸⁷ Levine, Fung and Gastil, 2005; 272

treated equally. It may also be true that participation in deliberative conferences is less diverse. For the most part these practitioners and researchers describe difficulties with inclusivity in their forums, rather than equality.¹⁹⁸⁸ It may be the case that less diverse forums have fewer issues of power and inequality. Perhaps practitioners of deliberative conferences are not on the watch for expressions of power. It may also be the case that the issues deliberated in deliberative conferences were convened early in the decision process or in other ways that meant that the issues discussed were less directly threatening to individual and group interests. Expressions of power might be less necessary in less diverse and less controversial hybrid forums.

In contrast, the practitioners and researchers of co-governance councils describe significant power issues.¹⁹⁸⁹ While there is evidence that these councils manage to include marginalised actors, once participants enter the forum they are not all treated equally.¹⁹⁹⁰ Coelho, Pozzoni and Montoya find that the interventions of participants, other than public officials and experts, are often 'silently ignored'.¹⁹⁹¹ From their interviews, they found that those arguments that go straight to the point, do not digress, are relevant and not emotional are more carefully considered by participants.¹⁹⁹² The arguments of lay citizen participants, who typically have lower income and education levels, are not thought of as sufficiently structured, general, clear, rational or relevant to warrant consideration.¹⁹⁹³ Lay citizens are therefore unable to influence the

¹⁹⁸⁸ Bonner, Carlitz, et al, 2005; 149; Lukensmeyer, Goldman and Brigham, 2005; 1; Scully and McCoy, 2005; 209; Melville, Willingham, and Dedrick, 2005; 53

¹⁹⁸⁹ Mahmud, 2007; 66; Coelho, Pozzoni and Montoya, 2005

¹⁹⁹⁰ Coelho, Pozzoni and Montoya, 2005

¹⁹⁹¹ Coelho, Pozzoni and Montoya, 2005; 180

¹⁹⁹² Coelho, Pozzoni and Montoya, 2005; 180

¹⁹⁹³ Coelho, Pozzoni and Montoya, 2005; 179, 181

proposals of other participants in any meaningful way.¹⁹⁹⁴ Even when a majority of the participants opposed the view of the public officials, they were not able to sway the proposals of the government representatives.¹⁹⁹⁵ By inequitably considering the interventions of others, the council failed to expand its thinking beyond what the government could have accomplished on its own.¹⁹⁹⁶

Mahmud found that external social relationships were re-created in a set of Bangladeshi local health Community Groups.¹⁹⁹⁷ Unequal social relationships between rich and poor, young and old and women and men caused inequalities within the participator forum.¹⁹⁹⁸ Mohanty argues that local rural women in India are not familiar with the political language of the public sphere or state actors so when they do speak, their arguments are incomprehensible to men and public officials.¹⁹⁹⁹ Mahmud found that:

*Professional and higher social status members dominated deliberations at meetings, while poor members and women were silent. Hence, decisions were always by consensus, with almost no dissenting opinions or conflicting views.*²⁰⁰⁰

Levine, Fung and Gastil worry that when hybrid forums become more influential and when the policy 'stakes go up', those with more status will fight efforts to support marginalised participants.²⁰⁰¹ Cornwall and Coelho point out that strategies used to support less advantaged participants may over emphasis

¹⁹⁹⁴ Coelho, Pozzoni and Montoya, 2005; 181

¹⁹⁹⁵ Coelho, Pozzoni and Montoya, 2005; 181

¹⁹⁹⁶ Coelho, Pozzoni and Montoya, 2005; 181

¹⁹⁹⁷ Mahmud, 2007; 66

¹⁹⁹⁸ Mahmud, 2007; 66

¹⁹⁹⁹ Mohanty, 2007; 92

²⁰⁰⁰ Mahmud, 2007; 66

²⁰⁰¹ Levine, Fung and Gastil, 2005; 279

conflict between groups and diminish deliberation quality.²⁰⁰² Efforts to train subaltern participants to communicate with the powerful, in the ways of the powerful, may reduce authenticity and cloud the articulation of their perspectives, concerns and interests.²⁰⁰³

INCLUSIVE

For deliberative democrats, ideal legitimacy requires that all those who are subject to a policy decision have an opportunity to participate in policy deliberations.²⁰⁰⁴ Most practitioners and theorists understand that it is rare for *all* impacted people to be able to participate in micro hybrid forums.²⁰⁰⁵ For some, legitimacy based on inclusion may be better gained in the unregulated discursive arenas – everyday talk and broadcasted discourse.²⁰⁰⁶ Those who seek legitimacy in hybrid forums use various techniques to ensure that as many impacted citizens as possible can participate or that those bound or affected by an outcome are well represented.²⁰⁰⁷

While it may not always be the case, many practitioners assume that larger forums can mean more diversity and can therefore expand and improve the quality of the reasoned discussion and outcomes.²⁰⁰⁸ Larger and more diverse

²⁰⁰² Cornwall and Coelho, 2007b; 13

²⁰⁰³ Cornwall and Coelho, 2007b; 13

²⁰⁰⁴ Dryzek, 2000; Hendriks, 2009; Metze, 2009; Habermas, 1998; 315; Elster, 1998; 8; Benhabib, 1996; 70; Rosenberg, 2007; 9; Mansbridge, 2007; 253; Shapiro, 1999; 33; Young, 1999; 155; Button and Ryfe, 2005; 27; Levine, Fung and Gastil, 2005; 273; Stringer, Scrieci and Reed, 2009; 77; Diduck and Sinclair et al., 2007; 220

²⁰⁰⁵ Hendriks, 2006; 492; Benhabib, 1996; 73-74

²⁰⁰⁶ Hendriks, 2006; 494; Mansbridge, 2007; 266; Dodge, 2009

²⁰⁰⁷ Crosby and Nethercut, 2005; 113; Almer and Koontz, 2004; 477; According to Crosby's Jefferson Centre, the largest number participants that can maintain quality deliberations is twenty-four people. (Crosby and Nethercut, 2005; 113)

²⁰⁰⁸ Bonner, Carlitz, et al, 2005; 148; Cheng and Fiero, 2005; 169; Sokoloff, Steinberg and Pyser, 2005, 187; Lukensmeyer, Goldman and Brigham, 2005; 161; Scully and McCoy, 2005; 204

forums can mean that more voices are heard and that more people are practicing the democratic norm of self-determination.²⁰⁰⁹ Large and diverse forums are seen as credible and representative in the eyes of participants of other forums, the discursive arena and decisions makers; and, can therefore improve a forum's ability to influence public opinion, action and decision.²⁰¹⁰ Larger forums may provide decision makers the mandate they need – allowing them to feel more comfortable incorporating forum outcomes into policy.²⁰¹¹ Diverse forums work to include those who have been historically excluded from the policy process.²⁰¹² Larger forums may increase public support – ensuring that the general public has a stake in the implementation of forum outcomes.²⁰¹³ An increase in the frequency of forum events also increases the numbers of forum participants – potentially expanding democracy²⁰¹⁴ and working to make hybrid forums more significant and credible in the eyes of the public and of decision makers.²⁰¹⁵

The good news is that empirical evidence shows that, when good opportunities are offered, people want to participate.²⁰¹⁶ Some researchers have found a 'thirst' to participate in hybrid forums.²⁰¹⁷ Those people invited to participate in

²⁰⁰⁹ Lukensmeyer, Goldman and Brigham, 2005; 157

²⁰¹⁰ Carson and Hartz-Karp, 2005; 124; Lukensmeyer, Goldman and Brigham, 2005; 158; Bonner, Carlitz, et al, 2005; 150; Melville, Willingham, and Dedrick, 2005; 53; Cornwall and Coelho, 2007b; 9, 22; Fishkin and Farrar, 2005; 71; Scully and McCoy, 2005; 202; Weiksner, 2005; 215; Potapchuk, Calson and Kennedy, 2005; 261; Crosby and Nethercut, 2005; 113

²⁰¹¹ Carson and Hartz-Karp, 2005; 134

²⁰¹² Coelho, 2007b; 34; Mahmud, 2007; 62; Cornwall and Coelho, 2007b; 24

²⁰¹³ Lukensmeyer, Goldman and Brigham, 2005; 157; Sokoloff, Steinberg and Pyser, 2005, 193; Cheng and Fiero, 2005; 165; Pretty and Shah, 1997; 52

²⁰¹⁴ Dryzek, 2000; 29

²⁰¹⁵ Levine, Fung and Gastil, 2005; 275; Melville, Willingham, and Dedrick, 2005; 53

²⁰¹⁶ Hendriks, 2005a; 98; Sokoloff, Steinberg and Pyser, 2005, 193; Levine, Fung and Gastil, 2005; 272; Levine, Fung and Gastil, 2005; 272

²⁰¹⁷ Sokoloff, Steinberg and Pyser, 2005, 193; Levine, Fung and Gastil, 2005; 272; Gastil and Keith, 2005; 7; Hendriks, 2005a; 90; Scully and McCoy, 2005; 199; Lukensmeyer, Goldman and Brigham, 2005; 154; Weiksner, 2005; 220; Carson and Hartz-Karp, 2005; 133; Cheng and Fiero, 2005; 168; Rojanamon, Chaisomphob, and Bureekul, 2010; 6

consensus conferences and planning cells more often than not choose to participate.²⁰¹⁸ After completing a hybrid forum, many participants state that they are willing to participate in similar deliberative processes in the future.²⁰¹⁹ Coelho, Pozzoni and Montoya's research in São Paulo, Brazil demonstrates that a majority of volunteer civil society representatives regularly attend co-governance council meetings, despite the fact that meetings are scheduled during their workday.²⁰²⁰ Levine, Fung and Gastil point out that in the United States 25 percent of adults consistently report having participated in a meeting to discuss a public issue during the past year.²⁰²¹ From Mahmud's research we learn that people were 'enthusiastic' about their selection for participation in local co-governance councils.²⁰²² Council members wanted to participate because they thought that the councils were a good cause and that their participation might benefit the community and might raise their personal status.²⁰²³ Council members even declined compensation for their participation; their only demand was for public officials to take seriously their recommendations for action.²⁰²⁴ People include themselves in deliberative projects if they can reasonably expect that they will be treated fairly and with respect and that they will be given opportunities to contribute to the conversation.²⁰²⁵ People include themselves, if they can reasonably expect that the forum results will influence policy and public action.²⁰²⁶ Melville, Willingham,

²⁰¹⁸ Hendriks, 2005a; 90

²⁰¹⁹ Carson and Hartz-Karp, 2005; 134; Hendriks, 2005a; 91; Bonner, Carlitz, et al, 2005; 146; Levine, Fung and Gastil, 2005; 272

²⁰²⁰ Coelho, Pozzoni and Montoya, 2005; 180

²⁰²¹ Levine, Fung and Gastil, 2005; 272

²⁰²² Mahmud, 2007; 63

²⁰²³ Mahmud, 2007; 63

²⁰²⁴ Mahmud, 2007; 64

²⁰²⁵ Weiksner, 2005; 215

²⁰²⁶ Mahmud, 2007; 64; Melville, Willingham, and Dedrick, 2005; 42; Levine, Fung and Gastil, 2005; 273

and Dedrick argue that people participate in the first place as long as forum agenda items are timely, relevant and directly link to their own issues, concerns and interests.²⁰²⁷ Voluntary public participation is expensive; it has to be worth it for people to include themselves.²⁰²⁸

For those conveners who consider diversity when designing hybrid forums, diversity often refers to a variety of participant viewpoints and life circumstances.²⁰²⁹ Many of those who convene deliberative conferences work to bring together people representing the various roles of public decision making – a mix of policymakers, experts, interest groups, industry representatives, activists, neighbourhood or village representatives and individual citizens.²⁰³⁰ Others work to bring together service providers and beneficiaries – for example teachers and parents or health care workers and patients or the police and at risk populations.²⁰³¹ When designing diverse forums, practitioners sometimes consider participant demographics like gender, education and income levels, racial and ethnic backgrounds and age.²⁰³² Co-governance councils that make an effort to ensure diverse forums often seek representation from diverse social movements, civil rights and religious groups, trade unions, local elected officials and non-governmental service providers.²⁰³³ Rather than based on policy impact or interest, Dryzek suggests that hybrid

²⁰²⁷ Melville, Willingham, and Dedrick, 2005; 42; Weiksner, 2005; 214; Hendriks, 2005a; 92; Coelho, 2007b; 37

²⁰²⁸ Coelho, Pozzoni and Montoya, 2005; 179; Mahmud, 2007; 58; Okello and Beevers et. al., 2009; 224; Coelho, 2007b; 37; Weiksner, 2005; 215; Potapchuk, Calson and Kennedy, 2005; 263

²⁰²⁹ Melville, Willingham, and Dedrick, 2005; 44; Potapchuk, Calson and Kennedy, 2005; 262

²⁰³⁰ Sokoloff, Steinberg and Pyser, 2005, 191; Potapchuk, Calson and Kennedy, 2005; 258; Gastil and Keith, 2005; 11; Cheng and Fiero, 2005; 170; Carson and Hartz-Karp, 2005; 130; Diduck and Sinclair et al., 2007; 220

²⁰³¹ Scully and McCoy, 2005; 200

²⁰³² Scully and McCoy, 2005; 205; Lukensmeyer, Goldman and Brigham, 2005; 162; Melville, Willingham, and Dedrick, 2005; 41

²⁰³³ Coelho, 2007b; 34; Mahmud, 2007; 60

forum participants could be selected based on the discourse they represent.²⁰³⁴ In some forum models, policymakers, experts, industry, interest groups and citizens deliberate together on the same level.²⁰³⁵ In others, policymaker, expert, industry and civil society actors are given the roles of presenter and technical resource and ordinary and unaffiliated citizens, with no particular expertise or knowledge, deliberate.²⁰³⁶

Conveners of the various hybrid forum models use one or a combination of three methods to invite participants – open invitations, random selection and stakeholder selection.²⁰³⁷ People are often invited to participate in quasi-legal processes, remote deliberations and public meetings through open invitation. Open invitations usually involve announcements in newspapers or on websites, announcements from service providers to beneficiaries, mass mailings and word-of-mouth.²⁰³⁸ Forum conveners that use open invitations can develop participant targets that represent the diversity of the community and implement recruitment strategies that emphasise diversity - including grassroots organisation, personal invitations and media campaigns.²⁰³⁹

²⁰³⁴ Dryzek and Niemeyer, 2008; 486

²⁰³⁵ Weiksner, 2005; 220; Mahmud, 2007; 60; Carson and Hartz-Karp, 2005; 130

²⁰³⁶ Potapchuk, Calson and Kennedy, 2005; 263; Hendriks, 2005a; 96

²⁰³⁷ Button and Ryfe, 2005; 22; Charles, Sokoloff and Satullo, 2005; 63; Carson and Hartz-Karp, 2005; 129, 133

²⁰³⁸ Button and Ryfe, 2005; 23; Cheng and Fiero, 2005; 167; Bonner, Carlitz, et al, 2005; 149; Charles, Sokoloff and Satullo, 2005; 63, 187; Carson and Hartz-Karp, 2005; 130; Weiksner, 2005; 213; Karpowitz and Mansbridge, 2005; 239, 241;

²⁰³⁹ Lukensmeyer, Goldman and Brigham, 2005; 158; Scully and McCoy, 2005; 204; Lukensmeyer, Goldman and Brigham, 2005; 158; Participant registration is important to track diversity targets and to then modify recruitment strategies. (Sokoloff, Steinberg and Pyser, 2005, 191; Lukensmeyer, Goldman and Brigham, 2005; 158; Weiksner, 2005; 214)

For deliberative conferences, participants are often chosen by random selection.²⁰⁴⁰ Random sampling resulting in a valid sample size of the population is thought to produce a forum that better represents the diversity of the community.²⁰⁴¹ When sample sizes are small, conveners sometimes use stratified random sampling to ensure a sample that represents the demographics (gender, age, education, race or ethnicity) and sometimes the political attitudes of the population.²⁰⁴² Random sampling is thought to serve reasoned deliberation, because in contrast to open invitations, randomly filled forums are more likely to include a larger proportion of more open-minded nonpartisans.²⁰⁴³

Conveners of co-governance councils and in-the-field deliberations often select participants through stakeholder selection.²⁰⁴⁴ Here forum conveners identify and specifically invite the individuals and organisations likely to be impacted by a public policy area.²⁰⁴⁵ Sometimes organisations elect members to represent them in the hybrid forum, other times associational representatives are appointed internally and sometimes individual members are selected by public officials.²⁰⁴⁶ Stakeholder selection is valuable when forum conveners want to

²⁰⁴⁰ Button and Ryfe, 2005; 22; Fishkin and Farrar, 2005; 71; Hendriks, 2005a; 81; Carson and Hartz-Karp, 2005; 124; Charles, Sokoloff and Satullo, 2005; 63; Recruitment for randomly selected participants is often conducted over the telephone or by mass mailings (or sometimes with a combination of the two) from a random sample of telephone numbers or addresses. (Charles, Sokoloff and Satullo, 2005; 63; Fishkin and Farrar, 2005; 74; Carson and Hartz-Karp, 2005; 133)

²⁰⁴¹ Fishkin and Farrar, 2005; 71; Crosby and Nethercut, 2005; 113; Carson and Hartz-Karp, 2005; 126

²⁰⁴² Hendriks, 2005a; 82; Crosby and Nethercut, 2005; 111; Carson and Hartz-Karp, 2005; 126

²⁰⁴³ Hendriks, 2005a; 82

²⁰⁴⁴ Charles, Sokoloff and Satullo, 2005; 63; Button and Ryfe, 2005; 23; Carson and Hartz-Karp, 2005; 130; Cheng and Fiero, 2005; 167; Mahmud, 2007; 59; Rojanamon, Chaisomphob, and Bureekul, 2010; 6

²⁰⁴⁵ Button and Ryfe, 2005; 23; Carson and Hartz-Karp, 2005; 130; Cheng and Fiero, 2005; 167

²⁰⁴⁶ Button and Ryfe, 2005; 22; Mahmud, 2007; 59; Rojanamon, Chaisomphob, and Bureekul, 2010; 6; Coelho, Pozzoni and Montoya, 2005; Coelho, 2007b; Mahmud, 2007

include those people who have traditionally been excluded from the policy process – women, minorities and the poor.²⁰⁴⁷ The organisations and stakeholders invited to participate are usually determined by public officials.²⁰⁴⁸

Some are concerned that the various types of forum invitations may not result in legitimate forums. Levine, Fung and Gastil worry that, when open invitations are used and the stakes are high, organisations will work to stack the forum with their own partisans.²⁰⁴⁹ Cornwall and Coelho worry that open invitations favour those with the most resources.²⁰⁵⁰ Open invitations announced in the newspaper will not reach those who do not read the paper – even if the announcements are not hidden in a small column near the back of the paper.²⁰⁵¹

Invitations to randomly selected individuals are supposed to result in more diverse forums, but they can also have their own problems.²⁰⁵² Telephone invitations tend to favour older populations, who still use landlines and are more likely to be home, and the better educated, who are more likely to speak with the inviter.²⁰⁵³ There is always an element of self-selection - even with invitations to randomly selected individuals.²⁰⁵⁴ Those for whom the costs of participation are high; or whose issues are not listed on the agenda; or who are uncomfortable in a conference meeting like setting; or who worry that they will

²⁰⁴⁷ Mohanty, 2007; 76; Lukensmeyer, Goldman and Brigham, 2005; 1; Mahmud, 2007; 60; Coelho, Pozzoni and Montoya, 2005; 177

²⁰⁴⁸ Coelho, Pozzoni and Montoya, 2005; 180

²⁰⁴⁹ Levine, Fung and Gastil, 2005; 278

²⁰⁵⁰ Cornwall and Coelho, 2007b; 15

²⁰⁵¹ Okello and Beevers et. al., 2009; 222

²⁰⁵² They are more expensive and more difficult to implement. (Levine, Fung and Gastil, 2005; 279)

²⁰⁵³ Fishkin and Farrar, 2005; 74

²⁰⁵⁴ Carson and Hartz-Karp, 2005; 124; Levine, Fung and Gastil, 2005; 272

not fit-in with the group will not accept the invitation and will refuse to participate. Empirically, those who accept randomly offered invitations tend to be more politically active and better educated.²⁰⁵⁵

Invitations that are offered to stakeholders or stakeholder representatives can also have legitimacy issues. There is the risk that representatives represent their own individual interests or the interests of their organisation, rather than the interests of the people they were selected to represent.²⁰⁵⁶ Some of the stakeholder associations selected to participant are themselves not internally democratic or necessarily transparent.²⁰⁵⁷ There is the risk that individuals selected to participate in a forum will not communicate with their stakeholders to better understand their issues and interests.²⁰⁵⁸ Interest groups tend to hold a narrow focus and may marginalise general values.²⁰⁵⁹ Government officials and NGOs tasked with selecting individuals and organisations to hold seats on councils often select those with whom they have relationships, political alliances and shared interests.²⁰⁶⁰ This means that council membership may favour the educated, already influential, professional and well-off.²⁰⁶¹ One researcher found that the women who were selected to sit on a committee were chosen only to meet procedural requirements.²⁰⁶² Many of these women were not even aware that they were members of the committee; others did not attend meetings, but they would sign committee papers and endorse committee

²⁰⁵⁵ Fishkin and Farrar, 2005; 74

²⁰⁵⁶ Levine, Fung and Gastil, 2005; 278; Cornwall and Coelho, 2007b; 14, 15; Coelho, 2007b;

38

²⁰⁵⁷ Levine, Fung and Gastil, 2005; 278

²⁰⁵⁸ Cornwall and Coelho, 2007b; 1

²⁰⁵⁹ Levine, Fung and Gastil, 2005; 279

²⁰⁶⁰ Mahmud, 2007; 62, 72; Coelho, Pozzoni and Montoya, 2005; 180; Coelho, 2007b; 48

²⁰⁶¹ Mahmud, 2007; 61, 72; Mohanty, 2007; 84; Cornwall and Coelho, 2007b; 15

²⁰⁶² Mohanty, 2007; 85

decisions.²⁰⁶³ Often times, husbands, brothers or sons would attend meetings on behalf of their wife, sister or mother.²⁰⁶⁴ The educated women of the community who know their rights are often considered a 'nuisance' and are not selected to participate on committees.²⁰⁶⁵

Hybrid forum conveners use a variety of other techniques to improve the inclusivity of their forums. According to Scully and McCoy, the best strategy for including significant numbers of people from traditionally excluded groups, is to ensure that a diverse set of community leaders from every sector of the community participate in the planning, organisation and facilitation of the forum.²⁰⁶⁶ Cornwall and Coelho suggest creating forum agendas that specifically address the issues of the difficult to reach.²⁰⁶⁷ Some conveners use a variety of hybrid forums, supplemented with non-deliberative data collection methods, to increase the inclusivity of their deliberative projects.²⁰⁶⁸ In order to improve the legitimacy condition of inclusivity, participants of deliberative conferences are sometimes compensated for their participation.²⁰⁶⁹ Compensation is meant to reduce the cost of participation, to encourage the participation of individuals with low-income and to make the participants feel that they and their ideas are valued.²⁰⁷⁰

²⁰⁶³ Mohanty, 2007; 85; Mahmud, 2007; 63

²⁰⁶⁴ Mohanty, 2007; 85

²⁰⁶⁵ Mohanty, 2007; 88

²⁰⁶⁶ Scully and McCoy, 2005; 203; Karpowitz and Mansbridge, 2005; 240

²⁰⁶⁷ Cornwall and Coelho, 2007b; 15; Coelho, 2007b; 37

²⁰⁶⁸ Carson and Hartz-Karp, 2005; 124, 130, 133; Rojanamon, Chaisomphob, and Bureekul, 2010; 5; Sokoloff, Steinberg and Pyser, 2005, 188; Hendriks, 2005a; 97

²⁰⁶⁹ Fishkin and Farrar, 2005; 71; Hendriks, 2005a; 86; For example, in 2001 the jurors of a Citizens' Jury received \$150 a day for their participation. (Crosby and Nethercut, 2005; 113)

²⁰⁷⁰ Fishkin and Farrar, 2005; 71; Okello and Beevers et. al., 2009; 224; Hendriks, 2005a; 86

For some the costs to participate are a real barrier to inclusion.²⁰⁷¹ The opportunity costs of preparing for and attending forums can be enormous for volunteer participants, depending on the complexity of the issues, the complexity of the informational materials and the number of forum sessions.²⁰⁷² This is in contrast to those participants who are paid for the time they spend working on forum activities – for example, public officials, experts, industry representatives and professional civil society and interest group representatives. Meetings can be particularly difficult for volunteers to attend if they are scheduled during work hours; although, these hours may be more convenient for the professional participants.²⁰⁷³ People may be less likely to participate in forum venues that are at some distance, difficult to reach or in unfamiliar settings.²⁰⁷⁴ These opportunity costs do not even include the real costs of participation – for example, transportation, lodging, childcare and meal expenses.²⁰⁷⁵ Other barriers to participation may include literacy issues and language issues for those potential participants who do not speak, much less have the ability to deliberate complex issues in, the dominant language.²⁰⁷⁶ Conveners must especially consider these barriers to participation and inclusion for deliberative projects that include more than one event; attrition of volunteer participation can disrupt deliberations.

Another significant barrier to participation relates to the cultural attitudes of the community. For example, Mahmud says that in Bangladesh the people expect

²⁰⁷¹ Mahmud, 2007; 58; Almer and Koontz, 2004; 491

²⁰⁷² Coelho, Pozzoni and Montoya, 2005; 179; Mahmud, 2007; 58

²⁰⁷³ Coelho, Pozzoni and Montoya, 2005; 179

²⁰⁷⁴ Okello and Beevers et. al., 2009; 224; Mahmud, 2007; 58

²⁰⁷⁵ Okello and Beevers et. al., 2009; 224; Mahmud, 2007; 71

²⁰⁷⁶ Weiksner, 2005; 225; Charles, Sokoloff and Satullo, 2005; 63; Okello and Beevers et. al., 2009; 222

state actors to provide services, protect rights and make decisions. Lay people cannot even conceive of a role for themselves in policymaking.²⁰⁷⁷ Poor people especially do not see that they have the responsibility, the ability or the resources necessary to participate in public deliberation.²⁰⁷⁸ Cornwall and Coelho, argue that people need to first see themselves as citizens, rather than as beneficiaries or public clients, before they will experience the call to participate.²⁰⁷⁹ Mohanty sees that poverty, caste hierarchies, patriarchy, stereotypes of women's public roles and apathetic bureaucrats result in low levels of meaningful civic participation by Indian women – even when they are invited to participate.²⁰⁸⁰

Most researchers see it as a challenge to engage diverse cross sections of the community in hybrid forums.²⁰⁸¹ The forums hosted in the established democracies struggle to interest minority groups, the poor, young people, those with little civic experience and those uncomfortable interacting in public.²⁰⁸² In developing states, the challenge is to include the poor, lower classes, low-castes and women.²⁰⁸³ Coelho, Pozzoni and Montoya also find it difficult to interest disabled and ill people, those who live a distance from the forum and the elderly.²⁰⁸⁴ In contrast, those who do participate tend to be well-educated,

²⁰⁷⁷ Mahmud, 2007; 57

²⁰⁷⁸ Mahmud, 2007; 57

²⁰⁷⁹ Cornwall and Coelho, 2007b; 8

²⁰⁸⁰ Mohanty, 2007; 81

²⁰⁸¹ Melville, Willingham, and Dedrick, 2005; 53; Carson and Hartz-Karp, 2005; 135

²⁰⁸² Bonner, Carlitz, et al, 2005; 149; Lukensmeyer, Goldman and Brigham, 2005; 1; Scully and McCoy, 2005; 209; Coelho offers an exception to this finding; according to her in the São Paulo Health Councils an important percentage of those who do participate are those with low levels of income and education. (Coelho, 2007b; 37)

²⁰⁸³ Mohanty, 2007; 76; Cornwall and Coelho, 2007b; 3

²⁰⁸⁴ Coelho, Pozzoni and Montoya, 2005; 177

from the dominant ethnic and cultural group, already civically active and from the middle class or wealthy.²⁰⁸⁵

RECIPROCAL

In order for hybrid forums to be legitimate, practitioners – at least deliberative conference practitioners - agree with theorists that the deliberations ought to be guided by reciprocity; individuals must offer fair terms that they can justify with reasons that others can accept.²⁰⁸⁶ This means that participants must be willing to listen to and consider the terms that others may be reasonably expected to accept.²⁰⁸⁷ Participants must learn about each other's experiences, perspectives, interests and ideas.²⁰⁸⁸ Charging participants to listen and to speak to each other with trust and mutual respect ensures participant equality, which means that deliberative outcomes are more likely based on their merits, not on the qualities of the person who presents the argument.²⁰⁸⁹ Speaking and listening with mutual respect can improve the quality of deliberation; when participants listen and speak with mutual respect they are more likely to uncover perspectives and ideas that they had not considered before.²⁰⁹⁰ Reciprocity reduces polarisation among participants and allows for constructive deliberation

²⁰⁸⁵ Melville, Willingham, and Dedrick, 2005; 53; Charles, Sokoloff and Satullo, 2005; 64; Sokoloff, Steinberg and Pyser, 2005, 191; Scully and McCoy, 2005; 209; Levine, Fung and Gastil, 2005; 272; 10; Almer and Koontz, 2004; 476

²⁰⁸⁶ Dryzek, 2000; 1; Benhabib, 1996; 68; Hendriks, 2009; 174; Mendonça, 2009; 211; Sanders, 1997; 348

²⁰⁸⁷ Rawls, 2005b; 463

²⁰⁸⁸ Melville, Willingham, and Dedrick, 2005; 50

²⁰⁸⁹ Melville, Willingham, and Dedrick, 2005; 44; Sokoloff, Steinberg and Pyser, 2005, 186; Scully and McCoy, 2005; 205; Weiksner, 2005; 226; Fishkin and Farrar, 2005; 71, 76; Cheng and Fiero, 2005; 167; Scully and McCoy, 2005; 205

²⁰⁹⁰ Fishkin and Farrar, 2005; 71; Cheng and Fiero, 2005; 166; Crosby and Nethercut, 2005; 113; Potapchuk, Calson and Kennedy, 2005; 263; Rojanamon, Chaisomphob, and Bureekul, 2010; 6; Lukensmeyer, Goldman and Brigham, 2005; 157; Cheng and Fiero, 2005; 166

even in the face of controversy.²⁰⁹¹ When forum participants are open with each other about their perspectives, interests, concerns and ideas, hybrid forum outcomes are less strategic, less irrational, more collectively consistent and more informed.²⁰⁹²

Deliberative conferences use facilitation, public recording and ground rules to encourage participants to listen and speak to each other with respect.²⁰⁹³ Participant proposals and arguments are often recorded and categorised on flipcharts by a scribe.²⁰⁹⁴ It is important to create an instant record – visible to the participants – so that all voices are captured, nothing is lost and participants can make sure their contributions have been recorded correctly.²⁰⁹⁵ Participants can see conflicts and commonalities as they emerge.²⁰⁹⁶ Recording the deliberations may also minimise repeat statements and the rehashing of already addressed issues.²⁰⁹⁷

Mansbridge argues that in reality some hybrid forums are not characterised by reciprocity.²⁰⁹⁸ Conflict and negative emotions may be an important part of quasi-legal processes like public hearings – especially when the hybrid forum agenda includes high stakes topics.²⁰⁹⁹ She argues that the quality of the deliberations in these forums may actually be higher than the forums without

²⁰⁹¹ Fishkin and Farrar, 2005; 71; Scully and McCoy, 2005; 205; Cheng and Fiero, 2005; 166; Sokoloff, Steinberg and Pyser, 2005, 190

²⁰⁹² Habermas, 1998; 299; Barber, 2003; 174; Young, 1996; 120; Rosenberg, 2007; 5; Button and Ryfe, 2005; 28; Dryzek, 2000; 43; Benhabib, 1996; 71; Fishkin and Farrar, 2005; 76; Hendriks, 2009; 175; Mansbridge, 1999; 221

²⁰⁹³ Melville, Willingham, and Dedrick, 2005; 44

²⁰⁹⁴ Carson and Hartz-Karp, 2005; 130, 133; Melville, Willingham, and Dedrick, 2005; 45; Karpowitz and Mansbridge, 2005; 240; Rojanamon, Chaisomphob, and Bureekul, 2010; 6; Mahmud, 2007; 68; Lukensmeyer, Goldman and Brigham, 2005; 155

²⁰⁹⁵ Lukensmeyer, Goldman and Brigham, 2005; 159; Almer and Koontz, 2004; 476

²⁰⁹⁶ Lukensmeyer, Goldman and Brigham, 2005; 155

²⁰⁹⁷ Bonner, Carlitz, et al, 2005; 150

²⁰⁹⁸ Mansbridge, 2007; 262; Sanders, 1997; 348; Hendriks, 2006; 498

²⁰⁹⁹ Mansbridge, 2007; 262

conflict, because more people are compelled to participate and because participants invest more energy and resources to the process.²¹⁰⁰

TRANSFORMATIVE

Open debate in hybrid forums means that participants can hear the perspectives and interests of others, expanding the group's knowledge about the agenda topic.²¹⁰¹ Reasoned deliberation tends to steer people to 'enlarged thinking' and to consider outcomes geared to the interests of the community and away from simple, uninformed self-interest.²¹⁰² Ultimately, by listening, considering the needs of others and seeking common ground, the process of deliberations transforms the knowledge, views, understanding and preferences of participants.²¹⁰³ Cornwall and Coelho suggest that new norms of conduct emerge as participants are encouraged to form their positions during the conversation rather than to argue for the pre-prepared positions they brought with them to the forum.²¹⁰⁴

Practitioners find empirical evidence that participant preferences are transformed out of engaging in hybrid forums.²¹⁰⁵ Melville, Willingham, and Dedrick assert that participation in deliberative forums does not dramatically

²¹⁰⁰ Mansbridge, 2007; 262

²¹⁰¹ Rawls, 2005a; 53; Dryzek, 2000; 172; Benhabib, 1996; 71; Melville, Willingham, and Dedrick, 2005; 49

²¹⁰² Carson and Hartz-Karp, 2005; 125; Eckersley, 2000; Benhabib, 1996; 72; Melville, Willingham, and Dedrick, 2005; 49; Crosby and Nethercut, 2005; 112; Lukensmeyer, Goldman and Brigham, 2005; 156

²¹⁰³ Rawls, 2005a; 30; Dryzek, 2000; 1; Hendriks, 2009; 174; Cohen, 1997; 75; Dodge, 2009; 228; Habermas, 1998; 337; Mansbridge, 1996; 47; Young, 1996; 125; Levine, Fung and Gastil, 2005; 274

²¹⁰⁴ Cornwall and Coelho, 2007b; 16

²¹⁰⁵ Melville, Willingham, and Dedrick, 2005; 50; Crosby and Nethercut, 2005; 111; Karpowitz and Mansbridge, 2005; 246; Weiksner, 2005; 223; Scully and McCoy, 2005; 209; Gastil and Keith, 2005; 7

change the views of participants, but it does *alter* them.²¹⁰⁶ By comparing pre- and post-forum questionnaires, evidence shows that – after deliberation – participant views are clearly more informed, consistent and more measured.²¹⁰⁷ Those who gain new information and learn from the deliberative process are those who are more likely to shift their preferences.²¹⁰⁸ For one deliberative poll, Fishkin and Farrar found that 40% of participants completely switched their position after participating in reasoned deliberations.²¹⁰⁹ This result is even more remarkable when one considers that deliberative poll participants are not instructed to consider the common good and are not encouraged to reach any form of agreement.²¹¹⁰

Well run hybrid forums are ‘schools for citizenship’.²¹¹¹ Those who participate in good deliberative forums tend to leave the process with a greater sense of and a greater commitment to their role as citizens.²¹¹² Participants complete hybrid forums more knowledgeable about, interested in and with a better appreciation for public policy.²¹¹³ Most participants report that, while the deliberation process can be exhausting and intense, participation in deliberative forums is a deeply

²¹⁰⁶ Melville, Willingham, and Dedrick, 2005; 46

²¹⁰⁷ Melville, Willingham, and Dedrick, 2005; 50; Lukensmeyer, Goldman and Brigham found that, when compared to the general population, people who had participated in a forum on American Social Security Reform were better informed about the topic. (Lukensmeyer, Goldman and Brigham, 2005; 160)

²¹⁰⁸ Fishkin and Farrar, 2005; 76; Carson and Hartz-Karp, 2005; 125; Hendriks, 2005a; 90; Lukensmeyer, Goldman and Brigham, 2005; 160

²¹⁰⁹ Fishkin and Farrar, 2005; 70; Carson and Hartz-Karp, 2005; 127, 134;

²¹¹⁰ Fishkin and Farrar, 2005; 74

²¹¹¹ Melville, Willingham, and Dedrick, 2005; 48; Bonner, Carlitz, et al, 2005; 149; Cornwall and Coelho, 2007b; 23

²¹¹² Melville, Willingham, and Dedrick, 2005; 50; Charles, Sokoloff and Satullo, 2005; 66; Potapchuk, Calson and Kennedy, 2005; 259

²¹¹³ Melville, Willingham, and Dedrick, 2005; 47; Fishkin and Farrar, 2005; 76; Hendriks, 2005a; 91; Hendriks, 2005a; 91; Lukensmeyer, Goldman and Brigham, 2005; 160; Bonner, Carlitz, et al, 2005; 146; Coelho, Pozzoni and Montoya, 2005; 181; Scully and McCoy, 2005; 206; , 2005; 224; Mahmud, 2007; 68; Levine, Fung and Gastil, 2005; 278; O’Faircheallaigh, 2010; 22; Almer and Koontz, 2004; 488

fulfilling and satisfying experience.²¹¹⁴ Evidence suggests that those who participate in deliberative forums – especially those with lower incomes - gain confidence and a greater sense of political efficacy.²¹¹⁵ Those who contribute to public decisions are found to be more committed to their implementation.²¹¹⁶ Participants become more engaged in public issues and debate.²¹¹⁷

Out of their participation in well run hybrid forums, people learn to better understand, trust and appreciate each other and each other's positions – even without agreement.²¹¹⁸ This leads to a sense of mutual respect and connectedness among participants outside of the forum.²¹¹⁹ The solidarity reached in these forums helps parties to overcome their differences and 'create partially new identities for themselves that encompass more compatible interests.'²¹²⁰ Some people may participate because engaging in hybrid forums can be fun and social.²¹²¹ Out of their participation, individuals can, build social capital and expand their networks and circle of contacts, often to include more diversity.²¹²²

²¹¹⁴ Hendriks, 2005a; 91; Bonner, Carlitz, et al, 2005; 146; Lukensmeyer, Goldman and Brigham, 2005; 156; Coelho, Pozzoni and Montoya, 2005; 181; Levine, Fung and Gastil, 2005; 272; Cornwall and Coelho, 2007b; 23

²¹¹⁵ Charles, Sokoloff and Satullo, 2005; 65; Fishkin and Farrar, 2005; 76; Hendriks, 2005a; 91; Melville, Willingham, and Dedrick, 2005; 49; Mahmud, 2007; 68

²¹¹⁶ Carson and Hartz-Karp, 2005; 135

²¹¹⁷ Fishkin and Farrar, 2005; 76; Melville, Willingham, and Dedrick, 2005; 48; Carson and Hartz-Karp, 2005; 134; Bonner, Carlitz, et al, 2005; 146; Weiksner, 2005; 215; Levine, Fung and Gastil, 2005; 272; Cornwall and Coelho, 2007b; 10; Mahmud, 2007; 68

²¹¹⁸ Melville, Willingham, and Dedrick, 2005; 47; Carson and Hartz-Karp, 2005; 135; Bonner, Carlitz, et al, 2005; 146; Weiksner, 2005; 213; Pretty and Shah, 1997; 52; Rojanamon, Chaisomphob, and Bureekul, 2010; 3

²¹¹⁹ Melville, Willingham, and Dedrick, 2005; 49

²¹²⁰ Karpowitz and Mansbridge, 2005; 245

²¹²¹ Coelho, Pozzoni and Montoya, 2005; 181

²¹²² Melville, Willingham, and Dedrick, 2005; 49; Fishkin and Farrar, 2005; 77; Carson and Hartz-Karp, 2005; 135; Scully and McCoy, 2005; 199; , Calson and Kennedy, 2005; 259; Cornwall and Coelho, 2007b; 19

These may be pleasant outcomes for participants, but Button and Ryfe worry that overtime groups that have bonded in hybrid forums may become 'more exclusive and homogeneous' causing minority participants or those with minority viewpoints to end their participation.²¹²³ Karpowitz and Mansbridge worry that an informal format, an atmosphere of 'friendship and neighbourliness', common values and solidarity may discourage openness and make it difficult for participants to confront conflict.²¹²⁴ Cornwall and Coelho point out that there are times actors are not willing to transform their knowledge, perspectives or ideas.²¹²⁵ They argue that attempts to force preference transformation on participants depoliticize the deliberative process that by its very nature is political.²¹²⁶ The educational, civic and transformational aspects of deliberative processes should not be considered the aim of public deliberation – evoking Arnstein's experience of community processes that disguise therapy for democracy.²¹²⁷ People do not participate in public deliberations to learn how to be better citizens, or how to make decisions or even to see situations from a new perspective; they participate to contribute to and influence public outcomes. Transformation is an important indicator of legitimate deliberative processes, but it is too often the goal. This can leave participants angry and frustrated.

²¹²³ Button and Ryfe, 2005; 24

²¹²⁴ Karpowitz and Mansbridge, 2005; 244, 246

²¹²⁵ Cornwall and Coelho, 2007b; 16

²¹²⁶ Cornwall and Coelho, 2007b; 16

²¹²⁷ Cornwall and Coelho, 2007b; 24; Arnstein, 1971

INFORMED

More than theorists, practitioners emphasise the legitimacy condition that hybrid forum participants ought to be informed about the forum topic.²¹²⁸ Quality reasoned deliberation requires access to accurate, complete and relevant information.²¹²⁹ Information for hybrid forums can be provided by any type of actor – state, commercial, civil society activists and individual citizens. While it is impossible to guarantee that all participants are informed equally, conveners attempt to minimize the gap in knowledge and expertise between participants by providing information about the topic as part of the deliberative process.²¹³⁰ Shared information provides a common understanding and language and ensures that participants have the information they need to reason together.²¹³¹

For some practitioners, the *goal* of public participation is sometimes simply to inform stakeholders or to collect information from stakeholders.²¹³² The Aarhus Convention and European Directives certainly emphasise the importance of access to public information.²¹³³ I argue that, while the exchange of information is a required activity for deliberative processes, the goal of hybrid forum participation is to influence public opinion and public outcomes – not just to inform participants.

²¹²⁸ Melville, Willingham, and Dedrick, 2005; 41; Scully and McCoy, 2005; 200; Fishkin and Farrar, 2005; 71; Carson and Hartz-Karp, 2005; 127; Stringer, Scriciu and Reed, 2009; 87; Almer and Koontz, 2004; 476; Rojanamon, Chaisomphob, and Bureekul, 2010; 3; Pretty and Shah, 1997; 54; Okello and Beevers et. al., 2009; 218; Diduck and Sinclair et al., 2007; 220; Soneryd and Weldon, 2003; 23; Sokoloff, Steinberg and Pyser, 2005, 186

²¹²⁹ Melville, Willingham, and Dedrick, 2005; 41; Scully and McCoy, 2005; 200; Fishkin and Farrar, 2005; 71; Carson and Hartz-Karp, 2005; 127; Potapchuk, Calson and Kennedy, 2005; 263; Hendriks, 2005a; 81; Almer and Koontz, 2004; 476

²¹³⁰ Melville, Willingham, and Dedrick, 2005; 41; Carson and Hartz-Karp, 2005; 127

²¹³¹ Cheng and Fiero, 2005; 169; Sokoloff, Steinberg and Pyser, 2005, 188; Scully and McCoy, 2005; 204; Fishkin and Farrar, 2005; 71

²¹³² Rojanamon, Chaisomphob, and Bureekul, 2010; 2; Pretty and Shah, 1997; 54; Soneryd and Weldon, 2003; 34

²¹³³ UNECE, 1998; 5; European Directives 85/337/EEC, 2001/42/EC, 2003/4/EC; 2003/35/EC, 2004/35/EC; Okello and Beevers et. al., 2009; 217; Soneryd and Weldon, 2003; 23

Hybrid forum conveners work to ensure that participants have the information they need to reason together about the forum topic. Conveners work to develop materials, web pages, reference guides; recruit presenters or witnesses and organise fieldtrips.²¹³⁴ All forum produced information should offer a balance of positions on the topic; provide comprehensive, relevant and accurate information; offer a spectrum of perspectives; and should be accessible to many different types of people with varying levels of education.²¹³⁵ Data may include relevant demographic data, budget and financial data, baseline conditions, trends, maps, models, project, plans or policy descriptions, regulatory and legal information, risk analyses or information about similar policy efforts.²¹³⁶ Presenters may include relevant public officials, academics, activists and industry and interest group representatives.²¹³⁷ Conveners ought to be forthright, realistic and clear about the opportunities to participate, process details and purpose of the deliberation and what elements of the policy or project are open to change.²¹³⁸ Participants should be made aware of any statues, court orders or administrative rules that restrict the changes that can be proposed.²¹³⁹ Often, as part of the process, participants are given an opportunity in the plenary session or from their workgroups to ask questions of the panel of experts.²¹⁴⁰ Conveners want to provide enough information so that

²¹³⁴ Diduck and Sinclair et al., 2007; 228; Hendriks, 2005a; 84; Carson and Hartz-Karp, 2005; 127; Melville, Willingham, and Dedrick, 2005; 41; Weiksner, 2005; 216

²¹³⁵ Fishkin and Farrar, 2005; 71; Carson and Hartz-Karp, 2005; 130; Bonner, Carlitz, et al, 2005; 148; Lukensmeyer, Goldman and Brigham, 2005; 158; Scully and McCoy, 2005; 200; Cheng and Fiero, 2005; 166; Diduck and Sinclair et al., 2007; 228; Hendriks, 2005a; 84

²¹³⁶ Potapchuk, Calson and Kennedy, 2005; 263; Diduck and Sinclair et al., 2007; 224; Cheng and Fiero, 2005; 169

²¹³⁷ Hendriks, 2005a; 81; Fishkin and Farrar, 2005; 73; Carson and Hartz-Karp, 2005; 131; Lukensmeyer, Goldman and Brigham, 2005; 158; Sokoloff, Steinberg and Pyser, 2005, 188

²¹³⁸ Bonner, Carlitz, et al, 2005; 148; Cheng and Fiero, 2005; 168; Sokoloff, Steinberg and Pyser, 2005, 186, 191; Levine, Fung and Gastil, 2005; 273

²¹³⁹ Cheng and Fiero, 2005; 168

²¹⁴⁰ Fishkin and Farrar, 2005; 73; Crosby and Nethercut, 2005; 113; Carson and Hartz-Karp, 2005; 131; Lukensmeyer, Goldman and Brigham, 2005; 158; Hendriks, 2005a; 81

participants do not have to research the topic on their own, without overloading their preparation time.²¹⁴¹ Many conveners work with a diverse external advisory group tasked with reviewing and reaching agreement on the materials and presenters involved in the process.²¹⁴²

Most practitioners of hybrid forums express the importance of using facilitators with no expertise or special knowledge about the forum topic.²¹⁴³ It is important for the participants to receive their information from the process and from each other rather than from the facilitator.²¹⁴⁴ Facilitators with no special knowledge about a topic can ask the ‘dumb questions’ from jargon-using-experts that other people would like to ask but are afraid or embarrassed to ask themselves.

REASONABLE

Outcomes of hybrid forum deliberation must be based on the ‘better argument’ and justifiable in ways that others – especially those subject to the outcome - can accept.²¹⁴⁵ Because they are seen as more legitimate, hybrid forums that are based on reason are more likely to influence other deliberative forums and arenas, including decision makers.²¹⁴⁶ In practice deliberation requires

²¹⁴¹ Melville, Willingham, and Dedrick, 2005; 41; Briefing materials are sometimes provided to participants a week or so before the event giving people sufficient time to inform and education themselves. (Fishkin and Farrar, 2005; 73; Carson and Hartz-Karp, 2005; 130; Lukensmeyer, Goldman and Brigham, 2005; 158)

²¹⁴² Fishkin and Farrar, 2005; 71; Crosby and Nethercut, 2005; 113; Carson and Hartz-Karp, 2005; 126

²¹⁴³ Melville, Willingham, and Dedrick, 2005; 44; Hendriks, 2005a; 83; Fishkin and Farrar, 2005; 74; Scully and McCoy, 2005; 200

²¹⁴⁴ Fishkin and Farrar, 2005; 74

²¹⁴⁵ Dryzek, 2000; 1; Benhabib, 1996; 68; Hendriks, 2009; 174; Mendonça, 2009; 211; Connelly, 2009; 186

²¹⁴⁶ Hendriks, 2009; 175; Hendriks, 2006; 491; Dodge, 2009; 228; Connelly, 2009; 186; Benhabib, 1996; 68; Rosenberg, 2007; 9; Mansbridge, 2007; 252; Young, 1999; 152; Cohen, 1997; 72; Gastil and Keith, 2005; 5; Button and Ryfe, 2005; 27; Fishkin and Farrar, 2005; 70; Crosby and Nethercut, 2005; 112; Bonner, Carlitz, et al, 2005; 150

informed, substantive and thoughtful discussion.²¹⁴⁷ As part of public deliberation citizens form and test their views and ideas with each other.²¹⁴⁸ Participants analyse the information and the ways it relates to the forum topic.²¹⁴⁹ Finally, although in practice these steps seem to occur simultaneously rather than sequentially, participants reach and justify conclusions.

In contrast to deliberative theory, practitioners do not even consider restricting hybrid forum communications to reasoned argument.²¹⁵⁰ Participants are not instructed to refrain from other forms of communication – like storytelling, greeting or rhetoric.²¹⁵¹ In practice, participants are often asked about their individual interests, concerns, hopes, experiences values and priorities.²¹⁵² Participants are often asked to describe the ways that the forum topic impacts their personal lives.²¹⁵³ Participants of hybrid forums sometimes express emotion, especially when they perceive that their interests are at risk.²¹⁵⁴ In practice, hybrid forums are often a combination of *dialogue* and *deliberation*.²¹⁵⁵ Dialogue or civic dialogue often refers to collective communications that are primarily interested in sharing information about experiences, perspectives and

²¹⁴⁷ Levine, Fung and Gastil, 2005; 274; Melville, Willingham, and Dedrick, 2005; 41; Scully and McCoy, 2005; 200; Fishkin and Farrar, 2005; 71; Carson and Hartz-Karp, 2005; 127; Potapchuk, Calson and Kennedy, 2005; 263; Sokoloff, Steinberg and Pyser, 2005, 191; Okello and Beevers et. al., 2009; 218

²¹⁴⁸ Gastil and Keith, 2005; 14; Melville, Willingham, and Dedrick, 2005; 42

²¹⁴⁹ Melville, Willingham, and Dedrick, 2005; 45; Scully and McCoy, 2005; 200; Carson and Hartz-Karp, 2005; 125; Fishkin and Farrar, 2005; 71; Crosby and Nethercut, 2005; 114; Sokoloff, Steinberg and Pyser, 2005, 191

²¹⁵⁰ Fishkin and Farrar, 2005; 74

²¹⁵¹ Fishkin and Farrar, 2005; 74; Sokoloff, Steinberg and Pyser, 2005, 191; Melville, Willingham, and Dedrick, 2005; 42; Scully and McCoy, 2005; 200; Charles, Sokoloff and Satullo, 2005; 65

²¹⁵² Melville, Willingham, and Dedrick, 2005; 45; Sokoloff, Steinberg and Pyser, 2005, 187; Karpowitz and Mansbridge, 2005; 245; Diduck and Sinclair et al., 2007; 226; Rojanamon, Chaisomphob, and Bureekul, 2010; 2;

²¹⁵³ Melville, Willingham, and Dedrick, 2005; 42; Cheng and Fiero, 2005; 169

²¹⁵⁴ Karpowitz and Mansbridge, 2005; 243

²¹⁵⁵ Scully and McCoy, 2005; 201

values, usually across difference, in order to reach mutual understanding.²¹⁵⁶ In contrast, from a rigorous definition, deliberation encourages critical thought and rigorous reasoned argument.²¹⁵⁷ In practice, both forms of communication are often present in hybrid forums.

Drawing from Habermas's *Theory of Communicative Action*, Soneryd and Weldon differentiate between the three actor-world relations to describe the types of claims that are appropriate for collective reasoned deliberations in hybrid forums – the objective, social and subjective worlds.²¹⁵⁸ The *objective world* describes facts that are either true or false.²¹⁵⁹ The *social world* relates to norms about the right and wrong ways for people behave.²¹⁶⁰ Claims articulated from the *subjective world* refer to individual experiences that can be either sincere or insincere.²¹⁶¹ In general, scientific and legal institutions are most used to defend public decisions in modern democracies.²¹⁶² These institutions appear to rely on the objective facts, the impartialities and the generalities of the objective world.²¹⁶³ In reality, however, they are based on normative claims and assumptions that are sometimes 'hidden or at least not explicitly expressed.'²¹⁶⁴ While scientific and legal information is often presented as true and evident, participants ought to be instructed that even this information is contestable.²¹⁶⁵ In contrast, *local knowledge* is explicitly based

²¹⁵⁶ Walsh, 2007, Gastil and Keith, 2005; 8 and Levine, Fung and Gastil, 2005; 282; Scully and McCoy, 2005; 201

²¹⁵⁷ Scully and McCoy, 2005; 201

²¹⁵⁸ Habermas, 1984; 106; Soneryd and Weldon, 2003; 19-20; Rojanamon, Chaisomphob, and Bureekul, 2010; 6; Stringer, Scriciu and Reed, 2009; 87

²¹⁵⁹ Habermas, 1984; 11 Soneryd and Weldon, 2003; 19

²¹⁶⁰ Habermas, 1984; 50 Soneryd and Weldon, 2003; 20

²¹⁶¹ Habermas, 1984; 90 in Soneryd and Weldon, 2003; 20

²¹⁶² Stringer, Scriciu and Reed, 2009; 87; Soneryd and Weldon, 2003; 19

²¹⁶³ Soneryd and Weldon, 2003; 19

²¹⁶⁴ Soneryd and Weldon, 2003; 19

²¹⁶⁵ Habermas, 1987a; 118

on the normative and subjective claims that are particular to a specific time and place, rather than, on generalised objective claims.²¹⁶⁶ It is important for participants to describe their subjective and social worlds because hybrid forums deal with specific public issues located in a particular time and place.²¹⁶⁷ This means that inclusive and diverse forums, as well as, free and equal opportunities for all to participate are important elements of quality deliberations. Deliberative democracy and public involvement are an attempt to widen the knowledge base used in public decision making to explicitly include all three worlds.²¹⁶⁸

The objective, social and subjective claims relevant to the forum topic must be presented, discussed, understood, contested, considered and absorbed by the participants.²¹⁶⁹ Participants ought to be given an opportunity to ask questions, to contest claims and to clarify their understanding of the information.²¹⁷⁰ Once participants present, debate and fully and equally consider the relationships between their life experience, their values, their understanding of the world and their opinions on the agenda topic, hybrid forum participants must analyse the information.²¹⁷¹ Participants explore possible options for common ground and a

²¹⁶⁶ Soneryd and Weldon, 2003; 20; Stringer, Scriciu and Reed, 2009; 87; Okello and Beevers et. al., 2009; 218

²¹⁶⁷ Scully and McCoy, 2005; 200; Sokoloff, Steinberg and Pyser, 2005, 187; Melville, Willingham, and Dedrick, 2005; 41

²¹⁶⁸ Soneryd and Weldon, 2003; 22; Charles, Sokoloff and Satullo, 2005; 65; Habermas, 1987a; 118; Rojanamon, Chaisomphob, and Bureekul, 2010; 2; Stringer, Scriciu and Reed, 2009; 87

²¹⁶⁹ Scully and McCoy, 2005; 201; Carson and Hartz-Karp, 2005; 125; O'Faircheallaigh, 2010; 19; Stringer, Scriciu and Reed, 2009; 87; Rojanamon, Chaisomphob, and Bureekul, 2010; 2; Okello and Beevers et. al., 2009; 217; Diduck and Sinclair et al., 2007; 220; Sokoloff, Steinberg and Pyser, 2005, 186

²¹⁷⁰ Diduck and Sinclair et al., 2007; 228; Habermas, 1987a; 118; Rojanamon, Chaisomphob, and Bureekul, 2010; 3

²¹⁷¹ Melville, Willingham, and Dedrick, 2005; 45; Rojanamon, Chaisomphob, and Bureekul, 2010; 3; Pretty and Shah, 1997; 54

way forward and consider the consequences of their choices.²¹⁷² Participants must use their own judgement to evaluate arguments and to separate facts from rhetoric.²¹⁷³ Rather than holding fast to and defending the solution ideas they walked in with, participants may discover new perspectives, issues and ideas.²¹⁷⁴ Rather than a competition to win the debate, deliberations are ultimately based on reasoned argument.²¹⁷⁵

The information collected for the analysis in hybrid forums is often both qualitative and quantitative and may require both types of data analysis.²¹⁷⁶ Participants may use rating systems to explore preferences and priorities or they may identify and catalogue important themes relevant for the forum topic.²¹⁷⁷ Participants may consider the costs and benefits and the risks and opportunities of a particular policy approach.²¹⁷⁸ Participants must be willing to accept the risks and consequences of their decisions.²¹⁷⁹ Participants may use techniques such as mind mapping, diagramming, computer modelling and matrices.²¹⁸⁰ With sufficient time to study and reflect and with focus and purpose, participants must critically weigh arguments.²¹⁸¹

²¹⁷² Scully and McCoy, 2005; 200; Melville, Willingham, and Dedrick, 2005; 45; Rojanamon, Chaisomphob, and Bureekul, 2010; 3; Pretty and Shah, 1997; 54; Okello and Beevers et. al., 2009; 217

²¹⁷³ Carson and Hartz-Karp, 2005; 125

²¹⁷⁴ Hendriks, 2005a; 96

²¹⁷⁵ Hendriks, 2005a; 96

²¹⁷⁶ Carson and Hartz-Karp, 2005; 124

²¹⁷⁷ Lukensmeyer, Goldman and Brigham, 2005; 159; Weiksner, 2005; 215; Sokoloff, Steinberg and Pyser, 2005, 190; Melville, Willingham, and Dedrick, 2005; 45

²¹⁷⁸ Melville, Willingham, and Dedrick, 2005; 45

²¹⁷⁹ Melville, Willingham, and Dedrick, 2005; 41

²¹⁸⁰ Carson and Hartz-Karp, 2005; 131

²¹⁸¹ Fishkin and Farrar, 2005; 71; Crosby and Nethercut, 2005; 114; Sokoloff, Steinberg and Pyser, 2005, 191; Hendriks, 2005a; 81; Bonner, Carlitz, et al, 2005; 150; Lukensmeyer, Goldman and Brigham, 2005; 159; Cheng and Fiero, 2005; 169; Weiksner, 2005; 214; Diduck and Sinclair et al., 2007; 220; Melville, Willingham, and Dedrick, 2005; 41

Collaborative learning offers a systematic approach to situation analysis for hybrid forums.²¹⁸² Collaborative learning requires that participants understand the normative values, related issues, scientific information and various perspectives that are related to an issue.²¹⁸³ In addition to constructive dialogue, the collaborative learning approach is based on systems thinking and marginal feasible improvements.²¹⁸⁴ Those who use systems thinking see a particular situation as a multidisciplinary complex system of 'interrelationships, feedback loops and multiple linkages.'²¹⁸⁵ Policy issues rarely follow simple linear cause-and-effect sequences.²¹⁸⁶ Specific techniques used for systems thinking analysis include concept, situation, geographic and social network mapping.²¹⁸⁷ By analysing situations in this way, people may discover new ways of seeing the issues and identify whole new possibilities for action.²¹⁸⁸ From a collaborative learning approach, it is not productive for participants to present and argue for 'what they want', rather with Collaborative Learning participants consider the real-world constraints surrounding an issue and seek feasible and marginal improvements to the issue.²¹⁸⁹

In addition to supporting participant equality, facilitation and group work can improve the quality of hybrid forum deliberation.²¹⁹⁰ Facilitators can use language and procedures that help the participants explore and understand; to be productive; and to feel comfortable with their differences, as well as, their

²¹⁸² Cheng and Fiero, 2005

²¹⁸³ Cheng and Fiero, 2005; 166

²¹⁸⁴ Cheng and Fiero, 2005; 166

²¹⁸⁵ Cheng and Fiero, 2005; 166

²¹⁸⁶ Cheng and Fiero, 2005; 166

²¹⁸⁷ Cheng and Fiero, 2005; 166

²¹⁸⁸ Cheng and Fiero, 2005; 166

²¹⁸⁹ Cheng and Fiero, 2005; 167

²¹⁹⁰ Crosby and Nethercut, 2005; 113; Potapchuk, Calson and Kennedy, 2005; 263; Rojanamon, Chaisomphob, and Bureekul, 2010; 6; Lukensmeyer, Goldman and Brigham, 2005; 157

commonalities.²¹⁹¹ Facilitators ask questions that focus the discussion and bring out relevant information.²¹⁹² Facilitators remind the participants of the agenda item being discussed and help to focus the conversation.²¹⁹³ Facilitators organise activities, keep time and help the participants reach their deliberative outcome.²¹⁹⁴ Fishkin and Farrar recommend that facilitators are trained to refrain from encouraging consensus among participants.²¹⁹⁵ In group discussions, participants can connect their personal experience with the forum informational materials and the initial presentations.²¹⁹⁶ Intense, focused and detailed investigation and deliberation may be better suited in smaller groups.²¹⁹⁷

Levine, Fung and Gastil agree with Hendricks.²¹⁹⁸ When a hybrid forum is well organised, they say that participants make excellent deliberators.²¹⁹⁹ Researchers have found that hybrid forum participants are willing and capable deliberators; they take their role as deliberators seriously.²²⁰⁰ 'They can absorb relevant background materials, seriously consider relevant facts, incorporate and balance a variety of legitimate perspectives and opinions, and make tough choices with full awareness of constraints.'²²⁰¹

²¹⁹¹ Karpowitz and Mansbridge, 2005; 238

²¹⁹² Melville, Willingham, and Dedrick, 2005; 45

²¹⁹³ Crosby and Nethercut, 2005; 113; Cheng and Fiero, 2005; 167; Rojanamon, Chaisomphob, and Bureekul, 2010; 3

²¹⁹⁴ Levine, Fung and Gastil, 2005; 273

²¹⁹⁵ Fishkin and Farrar, 2005; 74

²¹⁹⁶ Sokoloff, Steinberg and Pyser, 2005, 188

²¹⁹⁷ Carson and Hartz-Karp, 2005; 127

²¹⁹⁸ Levine, Fung and Gastil, 2005; 273

²¹⁹⁹ Levine, Fung and Gastil, 2005; 273

²²⁰⁰ Hendriks, 2005a; 90, 98; Levine, Fung and Gastil, 2005; 272

²²⁰¹ Levine, Fung and Gastil, 2005; 273

CONSENSUS AND THE COMMON GOOD

In contrast to deliberative theorists, most practitioners of hybrid forums have reached the conclusion that full consensus on the common good is rare; many instead focus on what they call common ground.²²⁰² Common ground is not consensus, agreement nor compromise.²²⁰³ Rather,

*Common ground is defined as actions or policies that are acceptable to a group whose individual members may still cherish differing values and hold different opinions but have a shared frame of reference or sense of direction.*²²⁰⁴

Common ground is a way forward. In order to discover common ground, it is important for participants to be open to each other and to seek mutual understanding.²²⁰⁵ Common ground is necessary when a common way forward is required and no decision – or the status quo – is fundamentally a decision.²²⁰⁶ ‘Common ground recognizes the need for joint action but does not overemphasize either the potential for conflict or the potential for commonality.’²²⁰⁷ Ultimately, hybrid forums work to provide coherent direction and plans for action or change.²²⁰⁸

For Karpowitz and Mansbridge, understanding the conflicts related to an issue is as important as building solidarity and uncovering unexpected points of

²²⁰² Melville, Willingham, and Dedrick, 2005; 47; Levine, Fung and Gastil, 2005; 273; Cheng and Fiero, 2005; 169; Carson and Hartz-Karp, 2005; 131; Rojanamon, Chaisomphob, and Bureekul, 2010; 3; Okello and Beevers et. al., 2009; 217

²²⁰³ Melville, Willingham, and Dedrick, 2005; 47

²²⁰⁴ Melville, Willingham, and Dedrick, 2005; 47

²²⁰⁵ Levine, Fung and Gastil, 2005; 274

²²⁰⁶ Barber, 2003; 120; Melville, Willingham, and Dedrick, 2005; 47; Okello and Beevers et. al., 2009; 218

²²⁰⁷ Karpowitz and Mansbridge, 2005; 247; Fishkin and Farrar, 2005; 76

²²⁰⁸ Sokoloff, Steinberg and Pyser, 2005, 187; Scully and McCoy, 2005; 200

common interest.²²⁰⁹ The participants of a deliberative project in Princeton, NY became frustrated and angry when they felt compelled to reach consensus rather than dealing with valid public conflict.²²¹⁰ Karpowitz and Mansbridge worry that a focus on forum consensus leads participants to avoid, overshadow and ignore deeply held conflicts in interest.²²¹¹ A lack of expressed conflict in a hybrid forum should not be mistaken for consensus. Overlooked objections can fuel frustration, anger and opposition with the final outcome.²²¹² Karpowitz and Mansbridge argue that sometimes common interest and mutual understanding can only be discovered or created from political struggle.²²¹³ Hybrid forum conveners ought to resist the pull to ignore conflict or to hope that conflict will go away or prove unimportant.²²¹⁴ Rather than striving for consensus, participants may be better served if they clarify their differences and conflict, as well as, their commonalities – as an outcome.²²¹⁵

INFLUENCED

For the most part, the practical literature on hybrid forums does not explicitly refer to one of the legitimacy conditions that guide the relationship between the forum and the deliberative system – influenced. Hybrid forums are rarely fully inclusive which means that they are more likely representative. In this thesis, I argue that for representative hybrid forums to be legitimate they must demonstrate that the participants have considered the constellation of

²²⁰⁹ Karpowitz and Mansbridge, 2005; 238; Okello and Beevers et. al., 2009; 217

²²¹⁰ Karpowitz and Mansbridge, 2005; 243

²²¹¹ Karpowitz and Mansbridge, 2005; 238; Levine, Fung and Gastil, 2005; 274

²²¹² Karpowitz and Mansbridge, 2005; 246

²²¹³ Karpowitz and Mansbridge, 2005; 245

²²¹⁴ Karpowitz and Mansbridge, 2005; 238; Potapchuk, Calson and Kennedy, 2005; 259;

Sokoloff, Steinberg and Pyser, 2005, 188

²²¹⁵ Karpowitz and Mansbridge, 2005; 247; Potapchuk, Calson and Kennedy, 2005; 259; Okello and Beevers et. al., 2009; 217

discourses raised in the public sphere. One way to ensure that the discourses of the public sphere are considered in hybrid forums is to invite forum presenters - who together represent the diversity of discourses in the public sphere - to put forward their arguments to the hybrid forum participants.²²¹⁶ Hartz-Karp provided the participants of her deliberative conference the results of a telephone random-sample survey conducted as part of her deliberative project.²²¹⁷ This element of her deliberative project provided hybrid forum participants information about the public's values, attitudes and issues around the forum topic.²²¹⁸ Or perhaps forum participants could be provided the results of discourse analyses illustrating the constellation of discourses in the public sphere related to the forum topic.²²¹⁹ I maintain that as a public and representative forum, in order to be legitimate, hybrid forums – like institutional ones – ought to demonstrate that they have considered and have been influenced by the opinions, preferences and values of the public sphere.

INFLUENTIAL

In addition to being *influenced* by the public sphere, legitimate hybrid forums must make a difference by *influencing* the deliberative system. With the exception of co-governance models with a legal mandate, hybrid forums usually result in non-binding outcomes.²²²⁰ Unlike institutional forums, which are accountable to the deliberative system in order to justify collectively binding decisions, hybrid forum are accountable to the deliberative system in order to

²²¹⁶ Hendriks, 2005a; 81; Fishkin and Farrar, 2005; 73; Carson and Hartz-Karp, 2005; 131; Lukensmeyer, Goldman and Brigham, 2005; 158; Sokoloff, Steinberg and Pyser, 2005, 188

²²¹⁷ Carson and Hartz-Karp, 2005, 139

²²¹⁸ Carson and Hartz-Karp, 2005, 139

²²¹⁹ Dryzek and Niemeyer, 2008; 486

²²²⁰ Button and Ryfe, 2005; 24

influence public opinion and action.²²²¹ For the most part, when forum practitioners speak about ‘influence’ they are referring to either 1) the direct influence of hybrid forums on the institutional forums that ultimately make and direct public policy and public action or 2) the influence of hybrid forums on the public sphere with the intention of mobilising the public for change or action or to indirectly pressure institutional forums to decide in the favour of the hybrid forum.²²²²

For hybrid forum practitioners, the more nearly hybrid forums align with the deliberative legitimacy standards the more likely the forum is considered legitimate in the eyes of the public and of public decision makers and the more likely the forum influences the deliberative system. Larger, more diverse, well represented and more frequent forums are more credible in the eyes of public officials and can cause pressure on public officials to take action.²²²³ Those forums where participants have free and equal opportunities to contribute and shape the forum’s outcomes, and where participants are open-minded and treat each other with mutual respect are more likely to be influential. Forum outcomes that are based on informed reason are more likely to influence public decisions and actions. Finally, those forums that are transparent and that expose and promote their process and their substantive outcomes are more likely to be influential.

²²²¹ O’Faircheallaigh, 2010; 19; Rojanamon, Chaisomphob, and Bureekul, 2010; 2; Okello and Beevers et. al., 2009; 218; Diduck and Sinclair et al., 2007; 220

²²²² Scully and McCoy, 2005; 202

²²²³ Melville, Willingham, and Dedrick, 2005; 53; Crosby and Nethercut, 2005; 113; Lukensmeyer, Goldman and Brigham, 2005; 158

In order to be legitimate in the eyes of the participants, hybrid forums must be able to deliver outcomes important enough for their participation. Because people voluntarily participate in hybrid forums, often with very high direct and indirect costs of participation, it is necessary for the hybrid forum to make a difference.²²²⁴ Given that hybrid forums rarely produce binding-decisions, their value is in their influence. Button and Ryfe argue that ‘one way to keep them involved is to promise them a real input into decision-making processes.’²²²⁵ It can be very discouraging for people to engage themselves, get excited about new policy ideas and maybe even reach consensus only to just watch and wait as their input is halted by non-consideration from public decision makers.²²²⁶

For the most part, practitioners agree that it is rare for hybrid forums to have a direct impact on the institutional forums that create public policy.²²²⁷ Some examples of hybrid forums that have successfully influenced public decision makers, include: 1999 *21st Century Town Meeting* in Washington, D.C. to help create the budget and strategic plan for the district²²²⁸; 2003 *National Issues Forum* to create development principles for a waterfront in Philadelphia²²²⁹; 1999 *Study Circles* to address bullying in a New Hampshire school district²²³⁰; and 2003 *Dialogue with the City* to create a sustainable development plan for Perth, Australia²²³¹. It is true that the precise influence of hybrid forums is difficult to quantify, because forums are just one part of a larger more complex

²²²⁴ Button and Ryfe, 2005; 24; Cornwall and Coelho, 2007b; 9

²²²⁵ Button and Ryfe, 2005; 24; Rojanamon, Chaisomphob, and Bureekul, 2010; 2

²²²⁶ Charles, Sokoloff and Satullo, 2005; 66

²²²⁷ Hendriks, 2005a; 92; Levine, Fung and Gastil, 2005; 276; Amer and Koontz, 2004; 474; Soneryd and Weldon, 2003; 23

²²²⁸ Lukensmeyer, Goldman and Brigham, 2005; 154

²²²⁹ Sokoloff, Steinberg and Pyser, 2005, 192

²²³⁰ Scully and McCoy, 2005; 199

²²³¹ Carson and Hartz-Karp, 2005; 133

political process.²²³² Even if a forum does have an impact on public decisions, the final decision may take place long after the deliberations – making it difficult to show a direct relationship.²²³³ Actors may be more successful influencing public policy from the discursive arena than from hybrid forums.²²³⁴ Hendriks argues that only a few consensus conferences have provided support for reforms already in progress or have triggered the creation of new legislation or changes to existing legislation.²²³⁵ Citizens Jury recommendations to elected officials and agencies have failed to have any significant impact.²²³⁶

Most practitioners agree that, for hybrid forums to be influential, it is important to involve key decision makers early in the process - - preferably as sponsors or in other leadership roles.²²³⁷ Public officials can be involved as co-sponsors, as members of the advisory committee, as recipients of regular project briefings, as presenters or as active participants in the deliberations.²²³⁸ Public decision makers who sponsor deliberative projects are more likely to consider and use forum recommendations.²²³⁹ Those forums that are sponsored by non-state actors can be relatively weak.²²⁴⁰ In these cases, it is important that the organisation include key decision makers in the planning of the project or in the deliberations themselves.²²⁴¹ Conveners work to secure a commitment from relevant decision makers and public providers to participate and to consider the

²²³² Bonner, Carlitz, et al, 2005; 146

²²³³ Bonner, Carlitz, et al, 2005; 146

²²³⁴ Amer and Koontz, 2004; 474; Dryzek, 2000; 103; Hendriks, 2006; 486, 500; Hendriks, Dryzek, and Hunold, 2007; 367

²²³⁵ Hendriks, 2005a; 92

²²³⁶ Crosby and Nethercut, 2005; 114

²²³⁷ Scully and McCoy, 2005; 204; Hendriks, 2005a; 96; Coelho, 2007b; 37; Melville, Willingham, and Dedrick, 2005; 51; Cornwall and Coelho, 2007b; 18; Lukensmeyer, Goldman and Brigham, 2005; 161

²²³⁸ Hendriks, 2005a; 96

²²³⁹ Lukensmeyer, Goldman and Brigham, 2005; 157

²²⁴⁰ Hendriks, 2005a; 92; Levine, Fung and Gastil, 2005; 277; Button and Ryfe, 2005; 24

²²⁴¹ Hendriks, 2005a; 92; Lukensmeyer, Goldman and Brigham, 2005; 157

outcomes of the deliberations.²²⁴² Lukensmeyer, Goldman and Brigham argue that by participating in - or at least witnessing - a legitimate forum, decision makers are moved to follow-through on the deliberative result.²²⁴³ Mahmud argues that excluding public officials from participatory processes can create hostility and conflict and ultimately undermine the influence of the forum.²²⁴⁴ Hendriks argues that it is more difficult to influence public officials when they have been excluded – or insulated - from active participation in the discussions.²²⁴⁵

There are some drawbacks to early and leadership involvement from state actors for hybrid forums. Dryzek and Hendriks argue that close ties to state actors make the forum more venerable to the imperatives of the state.²²⁴⁶ Often state actors resist innovation, restrict what is possible and can ultimately discourage participation.²²⁴⁷ Cornwall and Coelho worry that public officials can introduce bureaucratic restrictions and limitations on outcomes, effectively limiting the forum agenda and shrinking the scope for creativity, spontaneity, change and innovative solutions.²²⁴⁸

Participation with state actors is about re-educating bureaucratic inclinations and restructuring official norms and rules that tend to restrict inclusive participation.²²⁴⁹ Forum conveners may have to overcome resistance to – and

²²⁴² Lukensmeyer, Goldman and Brigham, 2005; 158; Sokoloff, Steinberg and Pyser, 2005, 192; Scully and McCoy, 2005; 204; Mahmud, 2007; 55; Levine, Fung and Gastil, 2005; 277

²²⁴³ Lukensmeyer, Goldman and Brigham, 2005; 160

²²⁴⁴ Mahmud, 2007; 73

²²⁴⁵ Hendriks, 2005a; 96

²²⁴⁶ Dryzek, 2000; 110-111; Hendriks, 2005a; 88

²²⁴⁷ Cornwall and Coelho, 2007b; 8

²²⁴⁸ Cornwall and Coelho, 2007b; 8, 21

²²⁴⁹ Cornwall and Coelho, 2007b; 20; Stringer, Scricciu and Reed, 2009; 87; Almer and Koontz, 2004; 489

even hostility for - inclusive participation in policy making.²²⁵⁰ This paradigm shift is all the more complicated and important when a community is characterise by distrust between the state actors and society, corruption, a scarcity of resources, inefficiency, little public involvement and authoritarian and paternalistic tendencies.²²⁵¹ Some potential sponsors may see deliberative projects as too costly or not effective enough to justify the costs.²²⁵² In some cases, hybrid forums are convened just to fulfil regulatory requirements rather than to facilitate meaningful public influence.²²⁵³ Or worse, sometimes hybrid forums seek to manipulate participants in order to change their behaviour to align with state imperatives – what Arnstein called therapy.²²⁵⁴ Hendricks found that powerful policymakers resent extending the decision process beyond technocrats and experts to civil society associations or lay citizens.²²⁵⁵ Policymakers may begrudge their new role as presenter or technical resource, rather than as deliberator and decider.²²⁵⁶ The thinking in some situations is that individuals are the recipients and beneficiaries of public services; they ought to be grateful and should not claim their rights to participation and opposition.²²⁵⁷ Some public officials may be reluctant to engage with hybrid forums because it leaves them open to uncertainty, review and accountability – especially when the forum outcomes might run counter to their imperatives.²²⁵⁸

²²⁵⁰ Mahmud, 2007; 58; Sokoloff, Steinberg and Pyser, 2005, 193; Melville, Willingham, and Dedrick, 2005; 53; Cornwall and Coelho, 2007b; 18; Okello and Beevers et. al., 2009; 220; Stringer, Scrieciu and Reed, 2009; 87; Almer and Koontz, 2004; 488

²²⁵¹ Gaventa, 2006a; 13; Cornwall and Coelho, 2007b; 22; Coelho, Pozzoni and Montoya, 2005; 175; Stringer, Scrieciu and Reed, 2009; 87; Almer and Koontz, 2004; 474

²²⁵² Scully and McCoy, 2005; 209

²²⁵³ Almer and Koontz, 2004; 476; Carson and Hartz-Karp, 2005; 136; Cornwall and Coelho, 2007b; 24; Pretty and Shah, 1997; 54; Dryzek, 2000; 50

²²⁵⁴ Arnstein, 1969

²²⁵⁵ Hendriks, 2005a; 95; Coelho, 2007b; 48; Stringer, Scrieciu and Reed, 2009; 87

²²⁵⁶ Hendriks, 2005a; 95; Although, this may be less of an issue in those forums where policymakers are equal deliberators with lay citizens. (Weiksner, 2005; 220; Mahmud, 2007; 60)

²²⁵⁷ Mahmud, 2007; 58

²²⁵⁸ Sokoloff, Steinberg and Pyser, 2005, 193; Stringer, Scrieciu and Reed, 2009; 87

According to Hendricks, elites raise concerns about citizens' ability to understand and analyse complex materials and issues.²²⁵⁹ Hendricks says that elites question the accountability and authority of unelected citizens who make decisions that affect the general public.²²⁶⁰ She says that policymakers are uncomfortable with the communicative process of deliberation; they are more comfortable with the competitive process between contesting interest groups.²²⁶¹ To summarize, Hendricks argues that the deliberative 'approach is the antithesis of elite, technocratic, and activist understandings of policymaking.'²²⁶² However, she also asserts that when politicians are committed to a deliberative project or to public participation in general, hybrid forums do have the potential to shape public policy at both the local and national levels.²²⁶³

For forum outcomes to influence public decisions, forum conveners are sometimes required to lobby decision makers. Decision makers must be encouraged, persuaded and sometimes pressured to consider forum outcomes and incorporate them in public policy.²²⁶⁴ This may be difficult for a number of reasons. Deliberative outcomes based on reason cannot always be expressed in the coherent and consistent sound-bite format often needed to catch the attention of politicians.²²⁶⁵ Accurate, comprehensive and comprehensible hybrid forum reporting is difficult; some forum outcomes include unresolved

²²⁵⁹ Hendriks, 2005a; 95; Karpowitz and Mansbridge, 2005; 244; Potapchuk, Calson and Kennedy, 2005; 263; Mahmud, 2007; 58

²²⁶⁰ Hendriks, 2005a; 95

²²⁶¹ Hendriks, 2005a; 96

²²⁶² Hendriks, 2005a; 82

²²⁶³ Hendricks, 2005; 92, 93; Crosby and Nethercut, 2005; 114; Bonner, Carlitz, et al, 2005; 147; Cornwall and Coelho, 2007b; 18, 20, 23; Coelho, 2007b; 36; Mahmud, 2007; 73; Stringer, Scriciu and Reed, 2009; 87

²²⁶⁴ Levine, Fung and Gastil, 2005; 276

²²⁶⁵ Crosby and Nethercut, 2005; 114; Levine, Fung and Gastil, 2005; 276

conflict among the participants and outcomes based on objective, subjective and social world input are typically expressed in both qualitative and quantitative ways.²²⁶⁶ Deliberative project conveners, who work to help participants open their thinking and reach common ground, may not be specifically trained in the techniques of political lobbying.²²⁶⁷ The participants of deliberative projects - that intentionally try to recruit participation beyond competing partisan groups - may not share the intensity of purpose that is often required to pressure public officials.²²⁶⁸ Melville, Willingham, and Dedrick argue that new innovative Forum Report formats may need to be developed.²²⁶⁹ These reports must be more accessible and persuasive to public decision makers – especially given the complexity of forum outcomes.²²⁷⁰

When lobbying public officials to consider a forum outcome, Hendriks reminds us that conveners are competing with other forms of advice from political parties, professional lobbyists, constituents, interest groups and expert committees.²²⁷¹ Public officials must take into consideration many policy inputs and sometimes competing interests.²²⁷² Forum recommendations may be more successful for local issues, rather than regional or national issues where the competition may be stronger.²²⁷³ EIA legislation directs decision makers to 'take into consideration' the statements of the public; however, legal directives provide little guidance for decision makers who must analyse all of the

²²⁶⁶ Carson and Hartz-Karp, 2005; 124; Karpowitz and Mansbridge, 2005

²²⁶⁷ Crosby and Nethercut, 2005; 114; Levine, Fung and Gastil, 2005; 276

²²⁶⁸ Crosby and Nethercut, 2005; 114

²²⁶⁹ Melville, Willingham, and Dedrick, 2005; 54; Almer and Koontz, 2004; 476

²²⁷⁰ Melville, Willingham, and Dedrick, 2005; 54; Almer and Koontz, 2004; 476

²²⁷¹ Hendriks, 2005a; 91; O'Faircheallaigh, 2010; 20

²²⁷² Hendriks, 2005a; 81

²²⁷³ Hendriks, 2005a; 93; Lukensmeyer, Goldman and Brigham, 2005; 162

information gathered, including competing evidence, interests and values.²²⁷⁴

Soneryd and Weldon propose that participatory directives should be modified to include guidelines for analysing and integrating the publics' input.²²⁷⁵

Hybrid forums with a legal mandate are more likely to have their outcomes influence public policy.²²⁷⁶ In this way, policy elites are obliged to consider and incorporate forum outcomes into public decisions.²²⁷⁷ However in reality, even with a legal mandate, forum outcomes can still be undermined.²²⁷⁸ Those hybrid forums with a legal mandate must be empowered with the resources and authority to conduct deliberations and to implement and monitor outcomes.²²⁷⁹

Levine, Fung and Gastil imagines that hybrid forum models – other than co-governance councils - could be given the authority to make final policy decisions – perhaps subject to veto authority from an institutional forum.²²⁸⁰ At the very minimum, public officials might be made to respond – before making their final decision - to each of the concerns, proposals and interests raised during a hybrid forum.²²⁸¹

Rather than working directly to influence decision makers, some hybrid forum conveners work to influence the public.²²⁸² The thinking behind this strategy is that with enough public support, decision makers will be pressured to consider

²²⁷⁴ Soneryd and Weldon, 2003; 34

²²⁷⁵ Soneryd and Weldon, 2003; 34

²²⁷⁶ Cornwall and Coelho, 2007b; 22

²²⁷⁷ Levine, Fung and Gastil, 2005; 276; Cornwall and Coelho, 2007b; 25

²²⁷⁸ Coelho, Pozzoni and Montoya, 2005; 176; Mahmud, 2007; 59-60

²²⁷⁹ Cornwall and Coelho, 2007b; 25; Levine, Fung and Gastil, 2005; 277; Mahmud, 2007; 71

²²⁸⁰ Levine, Fung and Gastil, 2005; 277

²²⁸¹ Levine, Fung and Gastil, 2005; 277; Diduck and Sinclair et al., 2007; 220; Gutmann and Thompson, 1996; 91

²²⁸² Scully and McCoy, 2005; 202

forum outcomes in the final policy.²²⁸³ According to Hendricks, Danish consensus conferences stimulate public debate in discursive everyday talk, broadcasted discourse, as well as, in other hybrid forums throughout the country.²²⁸⁴ For this strategy to work, it is important to attract the attention of the media.²²⁸⁵ As with decision maker influence, larger, fairer, reasoned and transparent forums are more likely to attract the media attention necessary to gain public support for forum outcomes.²²⁸⁶

PUBLIC/TRANSPARENT

Hybrid forum practitioners agree with deliberative theorists that in order for a public deliberation process to be legitimate its process and substantive outcomes must be made public.²²⁸⁷ As long as a hybrid forum is transparent, those who do not actually participate in the forum can still judge the legitimacy of the forum process and the legitimacy of the substantive outcome.²²⁸⁸ Participants who are required to publicly defend their positions are less likely to base their ideas on offensive or purely self-interested arguments.²²⁸⁹ Hybrid forums must advertise or promote their outcomes if they have any intention of influencing other forums and arenas, including decision makers.²²⁹⁰

²²⁸³ Lukensmeyer, Goldman and Brigham, 2005; 161; Weiksner, 2005; 216; Crosby and Nethercut, 2005; 114

²²⁸⁴ Hendriks, 2005a; 91

²²⁸⁵ Lukensmeyer, Goldman and Brigham, 2005; 157; Melville, Willingham, and Dedrick, 2005;

53

²²⁸⁶ Lukensmeyer, Goldman and Brigham, 2005; 157

²²⁸⁷ Benhabib, 1996; 71; Mansbridge, 1999; 221; Barber, 2003; 174; Rosenberg, 2007; 6; Shapiro, 1999; 35; Young, 1999; 152; Button and Ryfe, 2005; 28; Levine, Fung and Gastil, 2005; 275; Habermas, 1998; 2; Rawls, 2005a; Lukensmeyer, Goldman and Brigham, 2005; 161

²²⁸⁸ Rawls, 2005a

²²⁸⁹ Mansbridge, 2007; 253; Dryzek, 2000; 42; Barber, 2003; 174; Rawls, 2005a; 54; Rehg, 1998; xvii

²²⁹⁰ Lukensmeyer, Goldman and Brigham, 2005; 158; Levine, Fung and Gastil, 2005; 275; Mahmud, 2007; 72

Often at the end of the hybrid forum, forum information, key themes and ideas, areas of conflict and results are summarised and published in a Forum Report that is distributed to the forum participants, the public and key decision makers.²²⁹¹ Hybrid forums produce ‘enormous amounts’ of quantitative and qualitative data that must somehow be aggregated in a readable and digestible way.²²⁹² Information about the forum process and participations should also be transparent so that the public and public decision makers can gauge the legitimacy of the process, including the diversity and demographic representation of the forum.²²⁹³ Almer and Koontz argue that forum transcripts provide evidence of the hybrid forum and can be used by decision makers to better understand the claims and arguments raised during deliberations.²²⁹⁴

Many of the forum conveners in the more established democracies work to have forum information, proceedings and results broadcasted through the discursive arena and distributed to institutional forum participants.²²⁹⁵ Informational materials and Forum Reports can be distributed to the broader public through grocery stores, community centres, informational centres, community events and libraries.²²⁹⁶ Mahmud argues that it is important for the forum to build alliances with participating NGO’s, who can help to inform and mobilise the public in support of the forum’s outcomes.²²⁹⁷ Media coverage – print, radio and television – and purpose built websites can more strongly

²²⁹¹ Sokoloff, Steinberg and Pyser, 2005, 190; Melville, Willingham, and Dedrick, 2005; 45; Hendriks, 2005a; 86, 87; Carson and Hartz-Karp, 2005; 130; Lukensmeyer, Goldman and Brigham, 2005; 160; Scully and McCoy, 2005; 204; Weiksner, 2005; 214

²²⁹² Hendriks, 2005a; 87; Carson and Hartz-Karp, 2005; 124; Almer and Koontz, 2004; 477

²²⁹³ Weiksner, 2005; 225

²²⁹⁴ Almer and Koontz, 2004; 477

²²⁹⁵ Levine, Fung and Gastil, 2005; 277

²²⁹⁶ Hendriks, 2005a; 86; Lukensmeyer, Goldman and Brigham, 2005; 160; Melville, Willingham, and Dedrick, 2005; 45; Okello and Beevers et. al., 2009; 221; Diduck and Sinclair et al., 2007;

227

²²⁹⁷ Mahmud, 2007; 72

connect the hybrid forum to the public and to local and national policy makers – improving the forum’s chances of influencing policy.²²⁹⁸ However, in reality, forum conveners often find it difficult to attract the media attention needed to impact the discursive arena.²²⁹⁹ Often times, Forum Reports are distributed to policy makers in institutional forums.²³⁰⁰ Forum convenors and participants can provide forum materials and directly lobby members of institutional forums and key decision makers.²³⁰¹

ENVIRONMENTAL ASSESSMENT CASE STUDIES

Any of the hybrid forum models can be used to deliberate about development projects at various phases throughout the life of a project. However, the hybrid forum models that most broadly engage the public and are most commonly used for EIA processes are quasi-legal processes and public meetings.²³⁰² The Aarhus Convention and various European directives guarantee the public’s right to participate in environmental decision making.²³⁰³ In these statutes, public participation includes public notification, public access to information and opportunities for the public to express its opinion – either in writing or through public enquiry.²³⁰⁴ These directives do not mandate hybrid forums (public

²²⁹⁸ Fishkin and Farrar, 2005; 73; Lukensmeyer, Goldman and Brigham, 2005; 158; Levine, Fung and Gastil, 2005; 277; Melville, Willingham, and Dedrick, 2005; 46; Carson and Hartz-Karp, 2005; 133; Sokoloff, Steinberg and Pyser, 2005, 188; Charles, Sokoloff and Satullo, 2005; 61; The local newspaper co-sponsored two hybrid forums in Philadelphia ensuring credible exposure to a large group of people beyond the forum itself. (Sokoloff, Steinberg and Pyser, 2005, 186; Charles, Sokoloff and Satullo, 2005; 61)

²²⁹⁹ Gastil and Keith, 2005; 7; Melville, Willingham, and Dedrick, 2005; 53; Crosby and Nethercut, 2005; 115; Okello and Beevers et. al., 2009; 221

²³⁰⁰ Lukensmeyer, Goldman and Brigham, 2005; 160; Carson and Hartz-Karp, 2005; 130; Hendriks, 2005a; 81; Scully and McCoy, 2005; 204

²³⁰¹ Fishkin and Farrar, 2005; 73; Sokoloff, Steinberg and Pyser, 2005, 192; Mahmud, 2007; 68; Melville, Willingham, and Dedrick, 2005; 45; Hendriks, 2005a; 86

²³⁰² Almer and Koontz, 2004; 473

²³⁰³ Directive 85/337/EEC was amended with Directives 97/11/EC, 2003/35/EC and 2009/31/EC; Stringer, Scriciu and Reed, 2009; 77

²³⁰⁴ Cherp, 2001; 346

debates, meetings, hearings, inquires) nor do they provide a definition or guidelines for hybrid forums as part of the EIA process.²³⁰⁵ Here I describe a few case study examples of EIA hybrid forums and provide a brief analysis of the general legitimacy of EIA hybrid forums based on the standard developed in Chapter 6 and in this chapter. For the legitimacy analysis, it should be noted that EIA hybrid forum researchers and practitioners do not explicitly discuss the legitimacy conditions of free from coercion, reciprocal, transformative and influenced by the deliberative system in their reports.

When Manchester Airport wanted to build a new runway, they were subjected to an EIA process and public inquiry - a quasi-legal processes hybrid forum.²³⁰⁶ The negative impacts, described in the 1993 EIA Report, were loss of wildlife and countryside, including 4 hectare of woodland, 43 ponds, grassland and an important badger sett.²³⁰⁷ Local residents initiated a nine-month long public inquiry and hired legal and scientific experts to help them oppose the project.²³⁰⁸ Ultimately, the project application was approved by the Secretaries of State for Transportation and the Environment in January 1997.²³⁰⁹

In Sweden, a public meeting was held in 1997 to discuss the EIA Report for a project extending an existing runway at the Örebro Airport.²³¹⁰ The Report had concluded that the runway extension would cause no serious negative impact on the environment, animals, vegetation or humans.²³¹¹ Representatives from the Company and from the Franchise Board for Environmental Protection, as

²³⁰⁵ Stringer, Scricciu and Reed, 2009; 86

²³⁰⁶ Soneryd and Weldon, 2003; 23

²³⁰⁷ Soneryd and Weldon, 2003; 30

²³⁰⁸ Soneryd and Weldon, 2003; 31

²³⁰⁹ Soneryd and Weldon, 2003; 31

²³¹⁰ Soneryd and Weldon, 2003; 23

²³¹¹ Soneryd and Weldon, 2003; 25

well as, about 50 local residents attended the public meeting.²³¹² The Company and public officials provided information about the project, listened to the statements from the local people and responded to questions.²³¹³ In September 2000, despite protests from local residents, the Swedish government issued the permit allowing the runway extension.²³¹⁴

Diduck and Sinclair et al. studied two hydroelectric projects in India. The Vishnuprayag 400 MW hydroelectric project was approved in November 1995 - before public consultation for EIA Processes were required in India; this meant that public meetings were not held as part of the EIA process.²³¹⁵ However, after considerable controversy over the Company's catchment area treatment plan, the Forest Department convened a series of village consultations over the course of 18 months.²³¹⁶ This deliberative project considered project issues like soil erosion, road construction, deforestation and landslides.²³¹⁷ Ultimately, the Company was required by the Forest Department to revise their plan based on citizen comment.²³¹⁸ A series of public meetings were held as part of the EIA process for the 520MW Tapovan-Vishnugad hydroelectric project.²³¹⁹ By then, in 2003, the various State Pollution Control Boards are responsible for convening mandatory EIA public meetings.²³²⁰ In February 2005, the project received project approval from the Ministry of Environment and Forests.²³²¹ This approval was appealed by a local activist based on inadequate public

²³¹² Soneryd and Weldon, 2003; 25

²³¹³ Soneryd and Weldon, 2003; 25

²³¹⁴ Soneryd and Weldon, 2003; 25

²³¹⁵ Diduck and Sinclair et al., 2007; 225

²³¹⁶ Diduck and Sinclair et al., 2007; 224

²³¹⁷ Diduck and Sinclair et al., 2007; 224

²³¹⁸ Diduck and Sinclair et al., 2007; 224

²³¹⁹ Diduck and Sinclair et al., 2007; 228

²³²⁰ Diduck and Sinclair et al., 2007; 222

²³²¹ Diduck and Sinclair et al., 2007; 226

notice of public meetings and access to EIA documents.²³²² In May 2005, the National Environment Appellate Authority rejected the appeal because it had been filed too late.²³²³

Rojanamon, Chaisomphob, and Bureekul studied the authorisation process for a small hydroelectric project in the Nan Province, Thailand.²³²⁴ This deliberative project was unique; rather than public meetings or quasi-legal processes this project convened a series of four focus group deliberative conferences and administered a non-deliberative survey to collect the opinions about the project from local residents and stakeholders.²³²⁵ Communication about the project was broadcasted to the impacted villages by a mobile exhibition and the dissemination of brochures to village leaders.²³²⁶ During the focus group, the facilitators provided information about the development and collected qualitative data about the public's opinions, concerns and interests.²³²⁷

Public meetings were organised to discuss the development of a tourist complex, the reconstruction of a ski lift and a hydroelectric energy project in three separate designated protected areas in Bulgaria.²³²⁸ The EIA Report for the tourist complex argued that the project would result in no negative impacts on the environment.²³²⁹ The local municipality and the Ministry of the Environment sponsored the public meetings and local residents and

²³²² Diduck and Sinclair et al., 2007; 227

²³²³ Diduck and Sinclair et al., 2007; 227

²³²⁴ Rojanamon, Chaisomphob, and Bureekul, 2010; 1

²³²⁵ Rojanamon, Chaisomphob, and Bureekul, 2010; 1

²³²⁶ Rojanamon, Chaisomphob, and Bureekul, 2010; 4

²³²⁷ Rojanamon, Chaisomphob, and Bureekul, 2010; 3

²³²⁸ Almer and Koontz, 2004; 480-4

²³²⁹ Almer and Koontz, 2004; 481

representatives from NGOs, government and business attended.²³³⁰ Those who lived or were located local to the proposed tourist complex supported the project because they thought it would bring prosperity to the area.²³³¹ Those from outside of the region opposed the project because of the anticipated changes and risks to the natural environment.²³³² Researchers found that no NGOs or local residents attended the public meetings for the proposed ski lift, probably because the new ski lift was replacing an older one and because there were no legal means to stop the project anyway.²³³³ This meant that there were no major disagreements during the ski lift public meeting.²³³⁴ Environmental NGOs were not present at the public meetings convened for the hydro-electric project either – again this meant there were little substantive arguments at the hearings.²³³⁵ However, the NGOs did protest the hydro-electric project in the broadcasted discursive arena – on websites and through the local media.²³³⁶ While the EIA Report found that there would be no negative impacts on the environment, the environmental NGOs complained in these other venues that protected rare and endangered species were at risk from the project and that the project would not bring sustainable employment to the area.²³³⁷

In 2005, a participatory process was initiated in the Sadova Forest District of Romania to establish an Association of Local Forest Owners (ALFO) to collectively address land degradation issues.²³³⁸ Deforestation, overgrazing,

²³³⁰ Almer and Koontz, 2004; 481

²³³¹ Almer and Koontz, 2004; 481

²³³² Almer and Koontz, 2004; 481

²³³³ Almer and Koontz, 2004; 483

²³³⁴ Almer and Koontz, 2004; 483

²³³⁵ Almer and Koontz, 2004; 484

²³³⁶ Almer and Koontz, 2004; 484

²³³⁷ Almer and Koontz, 2004; 484

²³³⁸ Stringer, Scriciu and Reed, 2009; 81-83

and the breakdown of the irrigation system have led to desertification and land degradation in the area.²³³⁹ The land restitution and redistribution programme after the collapse of Communism had distributed the land in small fragmented plots scattered across several locations to nearly all the families in the community – including to some families who no longer lived in the area.²³⁴⁰ The participatory process included seven public meetings between April and October 2006.²³⁴¹ While they were at first reluctant - given their experience with communist land confiscation and collective farming - the private forest owners ultimately formed the ALFO and established a development plan to rehabilitate the degraded areas.²³⁴²

It is clear from the description of EIA processes reviewed for this chapter that proponent led EIA processes and hybrid forums favour the interests of the proponent over those of the impacted population.²³⁴³ One participant complained that a proponent representative for the Örebro Airport intentionally used specific technical language that was incomprehensible by the lay participants.²³⁴⁴ The proponent has the resources to develop their understanding of the issues, to implement a comprehensive strategy to ensure that the company's interests are considered and to advance arguments that can influence public decision makers. Company representatives are paid as part of their salaries to participate in hybrid forums.²³⁴⁵ On the other hand, any time

²³³⁹ Stringer, Scricciu and Reed, 2009; 81

²³⁴⁰ Stringer, Scricciu and Reed, 2009; 81

²³⁴¹ Stringer, Scricciu and Reed, 2009; 83

²³⁴² Stringer, Scricciu and Reed, 2009; 83

²³⁴³ Soneryd and Weldon, 2003; 29; Diduck and Sinclair et al., 2007; 225

²³⁴⁴ Soneryd and Weldon, 2003; 29

²³⁴⁵ Coelho, Pozzoni and Montoya, 2005; 179; Mahmud, 2007; 58

spent by the impacted public preparing for or attending hybrid forums is spent on a voluntary basis with large direct and indirect participation costs.²³⁴⁶

Empirical evidence demonstrates that, for proponent led EIA hybrid forums, project owners are not sufficiently inviting stakeholders to participate; people complain that they receive their invitation either too late or from unofficial sources.²³⁴⁷ Rather than large and diverse hybrid forums, proponents who lead their hybrid forums have an incentive to hope for small non-controversial events. They are, however, required to inform and invite – usually by public announcement in a local newspaper - local residents who live near the proposed project or who may be impacted by it.²³⁴⁸ Almer and Koontz found that the Ministry of the Environment completed the standard notification procedure for the three Bulgarian deliberative projects; they published announcements in local newspapers and the government bulletin and sent invitations to potentially interested NGOs.²³⁴⁹ They did not however, make any additional effort to improve public knowledge about the hybrid forums.²³⁵⁰ The researchers argue that this - and the fact that the public meetings were held onsite in some very remote locations - resulted in low turnout by residents and NGOs at two of the three meetings.²³⁵¹ Residents complained of inadequate notice for the August 2004 public meeting to discuss the Tapovan-Vishnugad hydroelectric project.²³⁵² Some residents complained that project supporters were invited to the meeting, but that other members of the community knew

²³⁴⁶ Coelho, Pozzoni and Montoya, 2005; 179; Mahmud, 2007; 58

²³⁴⁷ Diduck and Sinclair et al., 2007; 224, 228; Soneryd and Weldon, 2003; 25; Rojanamon, Chaisomphob, and Bureekul, 2010; 7

²³⁴⁸ Diduck and Sinclair et al., 2007; 222; Rojanamon, Chaisomphob, and Bureekul, 2010; 6

²³⁴⁹ Almer and Koontz, 2004; 486

²³⁵⁰ Almer and Koontz, 2004; 486

²³⁵¹ Almer and Koontz, 2004; 486

²³⁵² Diduck and Sinclair et al., 2007; 228

nothing about it.²³⁵³ For the 1997 proposed extension of the Örebro Airport in Sweden, local residents had similar complaints.²³⁵⁴ One resident complained that he had only heard of the public meeting two days before and only from a neighbour; he had missed the small public notice printed somewhere in the newspaper a couple of days before the meeting.²³⁵⁵ He argued that as an impacted resident he should have received a personal invitation to the public meeting.²³⁵⁶ During the EIA for the hydroelectric dam in the Nan Providence, significantly more men than women participated in the focus groups about the project, even though the invitation to participate was randomly distributed.²³⁵⁷ The researchers argued that more men than women participated because the invitation was made to individual households and 'in Thai society most village women tend to let their husband be the representative of their family.'²³⁵⁸

Researchers argue that NGO and interest group involvement in hybrid forums improves the chance that the interests of individuals and the affected public are heard and considered.²³⁵⁹ In 2005, civic associations emerged in the Chamoli district of India to support residents dealing with issues – like expropriation, project monitoring and future development - as a result of the Tapovan-Vishnugad hydroelectric project.²³⁶⁰ These associations helped each of the affected villages to establish land-price and development advisory

²³⁵³ Diduck and Sinclair et al., 2007; 228

²³⁵⁴ Soneryd and Weldon, 2003; 25

²³⁵⁵ Soneryd and Weldon, 2003; 25; Diduck and Sinclair et al., 2007; 222; Okello and Beevers et. al., 2009; 219

²³⁵⁶ Soneryd and Weldon, 2003; 25

²³⁵⁷ Rojanamon, Chaisomphob, and Bureekul, 2010; 6

²³⁵⁸ Rojanamon, Chaisomphob, and Bureekul, 2010; 6

²³⁵⁹ Okello and Beevers et. al., 2009; 224

²³⁶⁰ Diduck and Sinclair et al., 2007; 228

committees.²³⁶¹ The researchers of the Sadova Forest deliberative project speculate that the absence of civil society representation in the process meant that existing power imbalances between citizens and state actors were preserved and that some important substantive issues were not considered or addressed.²³⁶² Stringer, Scrieciu and Reed found that as a result of these hybrid forums, a level of trust and a shared purpose was developed among a set of diverse participants including individual forest owners, forest management companies, experts and local, regional and national public officials.²³⁶³ All participants raised concerns and contributed ideas.²³⁶⁴ However, the individual land owners appeared to exert little influence over the more technical outcomes and important bio-diversity issues were not raised during the process.²³⁶⁵ Stringer, Scrieciu and Reed argue that had civil society actors been part of the process they might have empowered the contributions of the non-state actors and the participants might have taken a more holistic approach to the deliberations – considering environmental, as well as, economic issues.²³⁶⁶ The researchers propose that these failures in the process highlight the need for institutionalised participation and inclusive and systematic representation based on a broad consideration of the integrated aspects of a singular policy issue.²³⁶⁷

²³⁶¹ Diduck and Sinclair et al., 2007; 228

²³⁶² Stringer, Scrieciu and Reed, 2009; 86

²³⁶³ Stringer, Scrieciu and Reed, 2009; 86

²³⁶⁴ Stringer, Scrieciu and Reed, 2009; 86

²³⁶⁵ Stringer, Scrieciu and Reed, 2009; 86

²³⁶⁶ Stringer, Scrieciu and Reed, 2009; 86

²³⁶⁷ Stringer, Scrieciu and Reed, 2009; 87

A number of the case studies reviewed for this project complain that the information about proposed projects is often inadequate.²³⁶⁸ Information about projects is sometimes withheld or difficult to obtain until after considerable public protest, the approvals have been granted and sometimes after the work had been started.²³⁶⁹ Legal requests for information are ignored.²³⁷⁰ Half of the respondents for a Kenyan survey about EIA processes described the public participation events as insufficiently transparent, accommodating and credible.²³⁷¹ Stakeholders in each of the Bulgarian case studies found weaknesses in the three EIA documents, including lack of evidence to support claims, broad generalisations, outdated and incomplete information and insufficient investigations.²³⁷² Restricted viewing times and high photocopying costs mean that EIA documents were essentially inaccessible.²³⁷³ Information that is provided is often abstruse, incomplete and biased in favour of the project – underestimating negative impacts and overestimating the positive ones.²³⁷⁴ EIA Reports are difficult to read because they contain ‘superfluous information and obvious bias.’²³⁷⁵ Materials sometimes lack suitable background and technical information as well as adequate citation.²³⁷⁶ Unreadable information leads to reader frustration and disinterest that ultimately amounts to a lack of information.²³⁷⁷

²³⁶⁸ Diduck and Sinclair et al., 2007; 225; Soneryd and Weldon, 2003; 23

²³⁶⁹ Diduck and Sinclair et al., 2007; 225; Rojanamon, Chaisomphob, and Bureekul, 2010; 12; Okello and Beevers et. al., 2009; 221

²³⁷⁰ Diduck and Sinclair et al., 2007; 225

²³⁷¹ Okello and Beevers et. al., 2009; 223

²³⁷² Almer and Koontz, 2004; 486; Soneryd and Weldon, 2003; 23

²³⁷³ Almer and Koontz, 2004; 487; Okello and Beevers et. al., 2009; 221

²³⁷⁴ Okello and Beevers et. al., 2009; 223; Soneryd and Weldon, 2003; 23; Diduck and Sinclair et al., 2007; 227

²³⁷⁵ Okello and Beevers et. al., 2009; 222

²³⁷⁶ Okello and Beevers et. al., 2009; 222

²³⁷⁷ Okello and Beevers et. al., 2009; 222

Soneryd and Weldon argue that, in EIA hybrid forums, deliberative reasons that relate to subjective life experiences are not considered on the same terms as reasons put in scientific or professional formats.²³⁷⁸ Stringer, Scricciu and Reed also found that scientific knowledge overshadowed local knowledge in deliberations.²³⁷⁹ Objective world factual arguments seem to be the only type of argument that can be handled by scientific and legal expert systems – the dominate institutions of public decision making.²³⁸⁰ Even when lay people present arguments in objective world terms, they are dismissed because they are not considered qualified experts.²³⁸¹ Soneryd and Weldon offer two examples. In the Örebro Airport Expansion EIA case, local residents provided empirical evidence of decibel levels above the legal limit and they expressed concerns about the impacts of increased Nitrogen Oxide emissions on human health.²³⁸² The Company argued that the local people had not taken the decibel level measurements correctly and referred back to the EIA Report when it argued that the NOx levels would be significantly lower than applicable limits.²³⁸³ The Company's theoretical arguments were favoured over the lay citizens' empirical evidence. For the Manchester Airport Expansion project, residents knew that their arguments about the project's impact on the quality of their life would receive scant attention. Instead they invested significant amounts of money to hire legal and scientific experts to prove that the expansion would impact the legally protected *great crested newt*.²³⁸⁴ Soneryd and Weldon argue that these examples demonstrate the inability of expert

²³⁷⁸ Soneryd and Weldon, 2003; 32

²³⁷⁹ Stringer, Scricciu and Reed, 2009; 87

²³⁸⁰ Soneryd and Weldon, 2003; 33

²³⁸¹ Soneryd and Weldon, 2003; 30

²³⁸² Soneryd and Weldon, 2003; 28

²³⁸³ Soneryd and Weldon, 2003; 28

²³⁸⁴ Soneryd and Weldon, 2003; 32

systems to take into account contextual knowledge, which means that factual objective scientific expert statements tend to be favoured over subjective life experience statements.²³⁸⁵ They worry that meaningful public participation in hybrid forums is thwarted because of different and incompatible knowledge systems – expert vs. lifeworld.²³⁸⁶ According to Soneryd and Weldon, if the public is going to participate in public policymaking, scientists and experts will have to ‘be less illiterate about public understandings’.²³⁸⁷

These cases studies demonstrate that people are not invited to participate in hybrid forums early enough in the design and development of projects to make any meaningful difference. For the Vishnuprayag hydroelectric EIA process, people in the affected villages were never formally informed of the proposed project.²³⁸⁸ Most of them learned about the project by word-of-mouth or when they saw the work being done for the project.²³⁸⁹ The project owner and the government withheld information and public notice of project decisions until after approvals had been obtained and in some instances until after work had begun – in either case public notice was stalled until it was too late for public input.²³⁹⁰ Okello and Beevers et al have observed that, in reality, public involvement in EIA processes often occurs after the purpose of the policy or project has been defined and the proponent has narrowed in on a specific policy or project design.²³⁹¹ Almer and Koontz found that all the Bulgarian public meetings were held to late in the EIA process for any meaningful public

²³⁸⁵ Soneryd and Weldon, 2003; 32; Stringer, Scrieciu and Reed, 2009; 87

²³⁸⁶ Soneryd and Weldon, 2003; 33; Charles, Sokoloff and Satullo, 2005; 65

²³⁸⁷ Soneryd and Weldon, 2003; 34

²³⁸⁸ Diduck and Sinclair et al., 2007; 224

²³⁸⁹ Diduck and Sinclair et al., 2007; 224

²³⁹⁰ Diduck and Sinclair et al., 2007; 225

²³⁹¹ Okello and Beevers et. al., 2009; 223; Almer and Koontz, 2004; 476

participation.²³⁹² In contrast, Rojanamon, Chaisomphob, and Bureekul argue that the deliberative project to discuss the hydroelectric project in the Nan Province, Thailand resulted in public acceptance because people had access to project information and were given an opportunity to present their concerns and ideas at an early stage of project development.²³⁹³

For a number of the EIA cases reviewed for this chapter, participants complained that public decisions were not based on public comment or on environmental concern.²³⁹⁴ Alma and Koontz point out that, empirically, public meetings have been shown to be an inadequate model for incorporating public opinion and concerns into the final decision; the substantive content of public meetings has no demonstrable influence on public decisions.²³⁹⁵ They found that decision-makers do not attend public meetings; they instead rely on meeting transcripts that are often incomplete and inaccurate.²³⁹⁶ Soneryd and Weldon argue that decisions are not even based on scientific knowledge.²³⁹⁷ Participants complain that public consultations were arranged only because they were required by legislation.²³⁹⁸ According to the people who participated in the EIA public meetings for the Örebro Airport expansion, their participation had no impact on the final decision to permit the extensions.²³⁹⁹ As a matter of fact of the 204 cases that had been managed by the Franchise Board for Environmental Protection, only one project had been rejected; 190 of them had

²³⁹² Almer and Koontz, 2004; 486

²³⁹³ Rojanamon, Chaisomphob, and Bureekul, 2010; 13

²³⁹⁴ Soneryd and Weldon, 2003; 26

²³⁹⁵ Amer and Koontz, 2004; 475-6, 484

²³⁹⁶ Almer and Koontz, 2004; 490

²³⁹⁷ Soneryd and Weldon, 2003; 25

²³⁹⁸ Soneryd and Weldon, 2003; 29

²³⁹⁹ Soneryd and Weldon, 2003; 25

been permitted without restrictions.²⁴⁰⁰ Most participants of the EIA process for the Tapovan-Vishnugad hydroelectric project complained that their concerns were not addressed in the final permitting of the project.²⁴⁰¹ In general, studies show that EIA public participation plays only a minor role in final permitting decisions.²⁴⁰² Projects are permitted because they were consistent with the economic state imperative described by Dryzek.²⁴⁰³ Given the force of economics in decision making, the possibilities for public influence are small.²⁴⁰⁴ Ultimately, this can damage the relationship between citizens' and state actors – especially their level of trust.²⁴⁰⁵ Soneryd and Weldon argue that changes must be made to EIA regulations to make it more difficult for public decision makers to ignore the public when they are invited to participate in the decision making process.²⁴⁰⁶

Even when institutional forums make public decisions influenced by public input, ensuring the implementation and enforcement of decisions can be challenging. Participants of the Örebro Airport Expansion EIA claimed that the airport was not complying with current take-off and landing restrictions.²⁴⁰⁷ They questioned the ability of the Franchise Board for Environmental Protection to monitor and enforce the expanded permitting restrictions.²⁴⁰⁸ The company that won the permit to build the Vishnuprayag hydroelectric project in the Chamoli District of India was allowed between 50 and 75 blasts per day for project

²⁴⁰⁰ Svenning, 1996; 165 cited in Soneryd and Weldon, 2003; 27

²⁴⁰¹ Diduck and Sinclair et al., 2007; 228

²⁴⁰² Soneryd and Weldon, 2003; 35

²⁴⁰³ Dryzek, 2000; 83; Soneryd and Weldon, 2003; 27

²⁴⁰⁴ Soneryd and Weldon, 2003; 35

²⁴⁰⁵ and Sinclair et al., 2007; 228

²⁴⁰⁶ Soneryd and Weldon, 2003; 35

²⁴⁰⁷ Soneryd and Weldon, 2003; 29

²⁴⁰⁸ Soneryd and Weldon, 2003; 29

construction.²⁴⁰⁹ 'In the end, the company did not follow the terms of their licence and continued blasting as much as 125 times per day.'²⁴¹⁰ Okello and Beevers et al blame inefficient law enforcement, under resourced legal departments and a sluggish bureaucracy for the inability of state actors to monitor and enforce permit violations.²⁴¹¹

When participation in hybrid forums fails to influence policy outcomes, participants often find better results participating in other deliberative venues and arenas.²⁴¹² Participants appeal outcomes in the courts (an institutional forum).²⁴¹³ Participants sign petitions, write letters to the newspapers, demonstrate, participate in protest marches, block construction traffic and go on hunger strikes (broadcasted discursive arena).²⁴¹⁴ People directly lobby elected officials (more private hybrid forums).²⁴¹⁵ However, in general, Diduck and Sinclair et al. have found that public officials respond better to the participation and deliberation of commercial associations than to those of civil society associations and lay citizens regardless of the venues used by the participants.²⁴¹⁶

For the Bulgarian case studies, the researchers found incomplete and inaccurate meeting transcripts.²⁴¹⁷ Bulgarian regulations require that a public

²⁴⁰⁹ Diduck and Sinclair et al., 2007; 224

²⁴¹⁰ Diduck and Sinclair et al., 2007; 224

²⁴¹¹ Okello and Beevers et. al., 2009; 221

²⁴¹² Cornwall and Coelho, 2007b; 21; Sokoloff, Steinberg and Pyser, 2005, 186; Diduck and Sinclair et al., 2007; 225

²⁴¹³ Soneryd and Weldon, 2003; 26; Diduck and Sinclair et al., 2007; 224

²⁴¹⁴ Soneryd and Weldon, 2003; 26; Diduck and Sinclair et al., 2007; 224; Karpowitz and Mansbridge, 2005; 242

²⁴¹⁵ Soneryd and Weldon, 2003; 26; Diduck and Sinclair et al., 2007; 227; Sokoloff, Steinberg and Pyser, 2005, 186

²⁴¹⁶ Diduck and Sinclair et al., 2007; 225

²⁴¹⁷ Almer and Koontz, 2004; 486

official chair EIA public meetings.²⁴¹⁸ In some cases, the same public official chaired the meeting and took minutes.²⁴¹⁹ This meant that the minutes were incomplete summations of participant comments.²⁴²⁰

For hybrid forums to play a significant role in public policy formation, Cornwall and Coelho argue that three conditions are required: public officials committed to open and inclusive policymaking; well-organised civil society actors with the ability to mobilise citizens; and effective forum designs with the ability to influence resource allocation as well as policy design.²⁴²¹ Cornwall and Coelho find that the normative expectations of deliberative and participatory democracy fall short in real life experiences of hybrid forums.²⁴²² When deliberation goes wrong it can lead to disillusionment, meaningless dialogue, increased cynicism, decreased trust, frustration and bungled outcomes.²⁴²³ Bad deliberation is sometimes a cover for the 'uninterrupted workings of political and economic elites'.²⁴²⁴ Bad hybrid forums make it more difficult for conveners to propose public deliberation in the future.²⁴²⁵ Carson and Hartz-Karp already find evidence that traditional tick-list rubber-stamp consultation processes are using the language of deliberation, but not its practices.²⁴²⁶ Participants have grown sceptical and weary of meaningless community engagement processes and outcomes.²⁴²⁷ However, Cornwall and Coelho remain optimistic that practitioner

²⁴¹⁸ Almer and Koontz, 2004; 486

²⁴¹⁹ Almer and Koontz, 2004; 486

²⁴²⁰ Almer and Koontz, 2004; 486

²⁴²¹ Cornwall and Coelho, 2007b; 23; Gaventa, 2007; xvi

²⁴²² Cornwall and Coelho, 2007b; 21

²⁴²³ Gastil and Keith, 2005; 16; Carson and Hartz-Karp, 2005; 136; Karpowitz and Mansbridge, 2005; 246; Almer and Koontz, 2004; 477

²⁴²⁴ Gastil and Keith, 2005; 16; Carson and Hartz-Karp, 2005; 136

²⁴²⁵ Karpowitz and Mansbridge, 2005; 246; Almer and Koontz, 2004; 476

²⁴²⁶ Carson and Hartz-Karp, 2005; 136; Cornwall and Coelho, 2007b; 24; Almer and Koontz, 2004; 476; Pretty and Shah, 1997; 54; Dryzek, 2000; 50

²⁴²⁷ Lukensmeyer, Goldman and Brigham, 2005; 154; Almer and Koontz, 2004; 477

efforts are making incremental changes – especially in what they see as ‘a growing sense of entitlement to participate’.²⁴²⁸

²⁴²⁸ Cornwall and Coelho, 2007b; 21