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7 Committee Governance in Consensus Cultures: An Exploration of Best Practice Cases in Germany and Norway

In consensual democracies deliberation partly takes place outside the public sphere, for example institutionalized in public committees where scientists, civil servants and interest representatives participate. Committees of this kind usually contribute advice in the early stages of the policy-making process, that is, before the government puts concrete policy proposals on the table (Christensen & Holst, 2017). Accordingly, they have – at their best – been regarded as vibrant examples of ‘input democracy’ (Goodin, 2004). In the following, two such committees, one German and one Norwegian, are selected for closer scrutiny. Albeit different in a range of respects, they both, in distinctive ways, illustrate dilemmas and tensions in achieving best practice committee governance in consensus democratic cultures.

7.1 Two Committees

12 August 2011, soon after the terrorist attacks on the Government Complex in Oslo and at the Labour party youth camp on Utøya island 22 July 2011,¹ the centre-left cabinet of Jens Stoltenberg created a public inquiry commission to review the attacks, gain knowledge of what happened and recommend better policies for future emergencies and prevention. The 22 July Commission (or the Gjørsv Commission, after its chair, Alexandra Bech Gjørsv) submitted its report a year later (13 August 2012). Embraced by commentators and politicians across the spectrum, it was conceived to set a new standard for national public inquiries of this kind. The report gave a thorough description and background of the events of 22 July and concluded, devastatingly, that the attacks on the Government Complex could have been prevented and that the perpetrator could have been stopped earlier at Utøya that day. Its purportedly ‘most important recommendation’ was ‘that leaders at all levels of the administration work systematically to strengthen their own and their organization’s fundamental attitudes and culture in respect to: the acknowledgement of risk, implementation capacity, interaction, utilization of information and communication technology and result-oriented leadership’ (NOU 2012:14, p. 458). Against this background, a set of more

1 In the attacks the far-right terrorist Anders Behring Breivik first detonated a van bomb next to the Government quarter in Oslo, killing eight people, before he shot dead 69 participants at the Utøya camp.

concrete measures were recommended for the police, the Armed Forces, the public health service, the rescue agencies and security and intelligence. Amendments of penal provisions were also proposed. The 22 July report received wide public attention, and its criticism of the existing administrative regime played a role in the 2013 elections, the offshoot of which was the establishment of Erna Solberg's conservative cabinet. The report resulted furthermore in a white paper,² more inquiry committees and new legislation³ and is still a key reference in policy and regulatory discussions.

Finally, the 22 July Commission stands out as a good candidate for a best practice case, not only because it was – and still is – almost univocally conceived to be so but because of its apparent extraordinary participatory and epistemic credentials. The commission and the secretariat were crowded with high-ranking experts. At the same time affected sectors and actors were given access and voice both through representation at the commission table, surveys and interviews conducted by the commission, an unusual openness policy while the commission was still in session and a wide-reaching post hoc hearing among stakeholders.

In Germany, decades of fierce conflicts and deep divides on the question of the final storage of nuclear waste led to the set-up of another advisory committee that was to develop a procedure for finding the safest possible final repository of highly radioactive waste between April 2014 and July 2016. In the hope of reaching closure on these issues the 'Final Storage Committee' ('Kommission zur Lagerung hochradioaktiver Abfälle', in short 'Endlagerkommission') had the mandate to decide on criteria for selecting a final repository, to develop formats for public participation within the site selection process and to evaluate its own statutory basis.

This committee is not the first to tackle the issue of final storage of nuclear waste in Germany but had several predecessors. Yet, none of these inquiry and advisory committees had been able to settle the pronounced conflicts and divides over the issue that go back to the late 1970s, when policy-makers neglected environmental concerns and decided without further public involvement on 'Gorleben' as the German site for final waste storage. Since then, nuclear waste-producing energy firms have invested billions into exploring this site, while its suitability has been heavily questioned particularly by environmental groups and the Green party. In the wake of cross-party agreement on phasing out nuclear power in July 2011, there was a window of opportunity to find a joint way forward by setting up an advisory committee that could review past approaches and build bridges between the deeply divided camps of Gorleben-supporters and Gorleben-opponents. Part of the formula was to limit the committee's mandate to developing *criteria* for the site selection search (not suggesting

² Meld. St. 21 (2012–2013) Terrorberedskap – Oppfølging av NOU (2012:14) Rapport fra 22. juli-kommisjonen.

³ See for example Prop. 131L (2012–2013). Endringer i straffeloven 1902 og straffeloven 2005 mv. (forberedelse av terror m.m.).

a site for a final repository) and to assume a ‘white landscape’, which neither pre-selects nor precludes the highly contested site of Gorleben. Just as important was an institutional set-up that fulfils the highest democratic standards and emphasizes the role of scientific expertise: the committee was broadly and inclusively composed of interest groups and experts as well as politicians from all kinds of political parties, and its members were jointly chosen by the two chambers of parliament. The committee allowed for additional expert and public input through several channels and maintained an extensive and unprecedented level of transparency. The German media generally complimented the committee’s participatory approach, its exceptional strive for transparency and its attempt to reconcile both academic and societal concerns on the issue.

The 22 July Commission and the Final Storage Committee were different in several ways: they were established as a result of unique lines of events, dealt with different questions and policy areas and had different regulatory mandates and compositions. However, both committees were supposed to develop a consensual trajectory on highly sensitive and contested issues that affected a large range of different agents, and they stood out, as we will see, at first glance at least, as best practice cases. But how successful were these committees actually? And according to which standards? What would it mean to be ‘successful’ and ‘best practice’ in this context?

In this chapter we dig deeper into these questions by means of an investigation of these two committees. More specifically, we provide a reading of the Final Storage Committee and the 22 July Commission as possible best practice instances of a certain consensus-democratic culture and ‘civic epistemology’ that Germany and Norway share. The German and the Norwegian political systems are interestingly similar when it comes to the central logic of both political coordination and knowledge validation. This is reflected institutionally in the two countries’ policy advice systems. Both in Germany and Norway, a certain variant of deliberative consultative body, the so-called ‘hybrid advisory committee’ (Krick, 2015) that assembles a range of different agents – academics, stakeholders, civil servants – has for decades been a site of conflict resolution, knowledge-production and ‘input democracy’ with considerable currency (see e.g. Christiansen et al., 2010; Jasanoff, 2005; Christensen & Holst, forthcoming; Goodin, 2004). On the basis of the overlapping political and epistemological cultures of the two countries, a set of legitimacy criteria can be explicated – standards or parameters of what ‘best practice’ would amount to in this cultural setting.

In our analysis we apply these indicators to the actual practices of our two presumed high-achieving committees, and we ask: *How and to what extent do the outlined consensus culture criteria and actual practices overlap? Which normative tensions and goal conflicts come to the fore, and how can they be understood?*

In the first section of the chapter we flesh out our notion of Germany and Norway as consensual political and epistemological regimes and show how our investigations add value to institutionalist theory and scholarship. The second part of the chapter outlines our analytical framework and spells out the indicators for empirical analysis.

In line with this framework, section three presents a detailed analysis of the two committees. In the fourth and final section we discuss our findings as an expression of internal tensions in these consensual regimes' conception of legitimacy.

7.2 Consensus-Oriented Political and Epistemological Systems

Consensus democracies are known to follow a logic of decision-making that is cooperative, consensual and integrative, in contrast to the majoritarian and competitive logic of the Westminster model (Lijphart, 2012; see also Mansbridge, 1983). Such logic or rationale of decision-making is spurred by institutional features of political systems that shape and reinforce political cultures of communication. Norway and Germany interestingly share consensus- and compromise-inducing features on the 'executive-parties dimension' in Lijphart's (2012) model – referring to voting systems of proportional representation that lead to multiparty systems and frequent coalition governments as well as a rather corporatist interest group system. These institutional factors systematically distribute power and lead to a considerable need for coordination and for equivalent mediation mechanisms. The consensual, inclusive *political* cultures consequently tend to produce consensus-seeking *knowledge* cultures in which evidence is validated and objectivity is constructed on the grounds of negotiated, collective reasoning and encompassing representation of all relevant voices and viewpoints (Straßheim & Kettunen, 2014, p. 269f.).

Consensus-seeking systems of sense-making have been described in terms of 'civic epistemologies' (Jasanoff, 2005, 2011; see also Beck, 2012) – that is, as embedded in a particular consensus-oriented culture of public knowledge validation – but recently also as constituting a special kind of 'knowledge regime' (Campbell & Pedersen, 2014), referring to the characteristics of national fields of policy research institutions that produce policy-relevant ideas. Accordingly, we could, and we will here, see 'hybrid' or 'mixed' advisory committees as expressions of a certain agreement-oriented, negotiation-friendly civic epistemology and knowledge regime – as embedded not only in a political consensus culture and system but also in a particular epistemic culture and institutional field of policy-relevant knowledge production directed towards broad compromises across sectors, interests, perspectives and competences.

Importantly, such committees consist of academics and of societal stakeholders such as interest groups and NGOs, often accompanied by representatives from competent governmental departments. Thus they differ substantially from 'purely scientific', 'technical' committees (Brown, 2008). Hybrid committees ideally serve the double function of mediating societal interests and conflicts *and* generating reliable, credible and useful policy advice, and thus potentially providing epistemic *and* democratic legitimacy. While this type of consultative arena has recently come under pressure from expertization trends (Gornitzka & Krick, 2017; Tellmann, 2016), it still

has considerable currency in both countries (Christiansen et al., 2010; Jasanoff, 2005; Krick, 2015).

This focus on public epistemic culture and the organization of knowledge and policy advice contributes to an important empirical widening and renewal of the broad stream of institutionalist scholarship and theory. Much has been written within this branch of literature on welfare and policy-making institutions and ‘varieties of capitalism’ (e.g. Hall & Soskice, 2001; Esping-Andersen, 2009). Yet, without an analysis of the knowledge basis of political approaches and policy solutions and the culture, institutions and mechanisms through which it is shaped, our understanding of both policy and politics, and in the end also of societal developments at large, remains meagre (Christensen, Holst, & Gornitzka, 2017). ‘Knowledge regimes’, argue Campbell and Pedersen, ‘are just as important for modern political economies as policymaking and production regimes at least insofar as knowledge regimes produce the ideas that inform what political and economic elites do’ (Campbell & Pedersen, 2014, p. 6).

More particularly, the investigations and approach of this chapter add value to our understanding of the normative underpinnings of a core institution – the system of hybrid commissions – of consensus-oriented knowledge regimes as we find them in Germany and Norway. The chapter does so by giving flesh to the legitimacy ideals that these regimes are founded on but also by analyzing the varied, tension-ridden ways these ideals play out in practice. In accordance with insights from sociological institutionalism, our contribution thus introduces ‘a cultural turn’ to the study of knowledge regimes, which thus far has been more focused on the organizational features of such regimes than on their ideational basis and moral grammar, reflecting the insight that ‘human behaviour’ is guided not only by ‘formal rules and practices’ but also by the ‘symbol systems, cognitive scripts and moral templates’ that provide its ‘frames of meaning’ (Hall & Taylor, 1996, p. 947).

7.3 The Methodological Approach and Analytical Framework

This study follows the interpretive methodology of comparative case analysis. The Final Storage Committee study is mainly based on data from participant observations and video analyses of committee meetings, interviews with committee members, committee documents, verbatim transcripts of committee sessions, the committee’s final report and policy documents on the committee by civil society actors and media. The study of the 22 July Commission is based on a reading of the commission report, relevant additional regulatory and policy documents, nearly 100 hearing reports, media contributions, independently authored books on the 22 July attack and existing

research on the Norwegian commission (NOU)⁴ system and the 22 July incident. In addition, background information has been provided by key actors in this system – top civil servants, committee leaders and central interest group representatives – in ongoing interviews.⁵

In our interpretations we follow a joint analytical framework that specifies categories for assessing the two normative dimensions of the democratic and epistemic legitimacy of policy advice and corresponding indicators (see Table 7.1). First, from a perspective of *consensus-democratic legitimacy* (dimension 1), the inclusiveness and equality of participation of the affected interests within these committees are important (see Fung, 2006; Jasanoff, 2005; Lentsch & Weingart, 2011a, 2011b; Mansbridge et al., 2012; Young, 2000); in structural terms, this is reflected by an inclusive, balanced composition that builds on the notions of *affectedness* (1) and *representativeness* (2). This means, first, that at least all those interests that are ‘seriously’ and ‘constantly’ affected by a policy issue should be included in policy development (see Fung, 2013, p. 247; Goodin, 2007; Rowe & Frewer, 2000; Young, 2000, pp. 5–6) through representation at the committee table and/or in other ways, for instance, in public hearings. Second, it means that those agents need to be generally acknowledged as authorized to speak for their constituency and accountable to those they claim to represent (Urbinati & Warren, 2008, p. 405; Mansbridge et al., 2012; Fung, 2006, 2013). In procedural terms, the equality of participation depends on *fair and inclusive procedures of communication* (3) that are characterized by mutual respect and reason-based deliberation and that give an equal voice to all (Fung, 2006; Mansbridge et al., 2012; Young, 2000). It also depends on *integrative decision rules* (4) that facilitate consensual closure and do not favour competitive majority decisions, such as decisions by the absence of open dissent or by allowing minority statements to accompany an overall joint solution (Krick, 2017; Lentsch & Weingart, 2011a, 2011b; Lijphart, 2012; Olsen, 1972). Although policy advisory committees are institutions that build on delegated participation through societal stakeholders, first and foremost, broad public acceptance of policy advice and thus participatory legitimacy can further be enhanced when these processes allow for *direct and broad access for lay citizens’ input* (5) (Fung, 2006; Jasanoff, 2011; Rowe & Frewer, 2000). While a certain degree of *transparency* of the committee-internal advisory processes is not a normative means in itself, it is conditional to some of the normative qualities that we look at. It certainly is an important precondition of public scrutiny in general and of lay citizen input and the accountability of stakeholders in particular and will thus be considered in these contexts.

⁴ The committees produce reports in the series called Norges offentlige utredninger (Official Norwegian Reports).

⁵ The interviews have been conducted as part of the research project *Expertization of Public Inquiry Commissions in a Europeanized Administrative Order* (2016–2020); see <http://www.sv.uio.no/arena/english/research/projects/eurex/>

Table 7.1. Normative dimensions, analytical criteria and indicators

Analytical criteria	Indicators
Dimension I: Democratic legitimacy – Inclusiveness and equality of participation	
1. Representation of seriously and permanently affected interests	Those interests that are deeply and permanently affected by the mandate of the committee are represented by at least one agent Absence of public claims to representation by further societal groups
2. Authorization and accountability of stakeholders ⁶	Committee members and those giving hearing reports have financial or organizational ties with their constituency: a) Home organization is a membership organization b) Individual has a mandate from the umbrella organization c) Home organization covers a considerable share of those affected by the issue, stands for a general interest or advocates interests that a large part of the population shares d) Home organization is internally democratic (i.e. elects leadership at a grassroots level)
3. Deliberative procedures of collective decision-making	Communicative procedures are characterized by: a) Fair and equal, respectful, open and reasoned debate b) Open dispute and confrontation on all relevant issues
4. Inclusive decision rules	Decision rules that avoid majority voting and facilitate agreement: 'unanimity', 'absence of open dissent', 'nostrification', 'written consent', 'consensus-minus-one', 'minority statements' etc.
5. Access points for lay citizen perspectives	a) Institutionalized possibilities for lay public input exist b) The committee's consultation processes are sufficiently transparent to allow scrutiny c) Lay citizens are selected in a balanced and representative way d) Institutional responsiveness within the committee to these viewpoints
Dimension II: Epistemic legitimacy – The reliability of the expertise	
1. Plurality of expert viewpoints on the problem	A large range of relevant expert positions are given voice: a) Members represent a plurality of expert viewpoints on the issue b) The committee consults further external expertise where deemed necessary

⁶ This criterion is not to be applied to academics in advisory committees but to those that can be viewed as stakeholders because they advocate societal *interests*.

Analytical criteria	Indicators
2. Deliberative procedures of collective decision-making	Communicative procedures are characterized by: a) Fair and equal, respectful, open and reasoned debate b) Open dispute and confrontation on all relevant issues (s. criterion I.3) Plus: c) Serious and intensive dealing with experts' opinions in the committee
3. Competent and experienced experts	Members have acquired a professional track record of proficiency and practice in the relevant knowledge domain(s) Relevant knowledge domains are: a) expertise on the respective policy-issue(s) to be regulated and b) political-administrative expertise on procedures, rules, responsibilities and public involvement in policy-making and implementation
4. Academic credentials and independence (of the academic experts within the committee)	a) Academic credentials: 'Academics' hold at least a PhD and work in research, i.e. have a position at a research institution and a considerable and ongoing track-record of peer reviewed publications and research projects b) Independence: An independent academic works at an independent research institution (i.e. one that is not solely financed by a private company, a particular industrial branch or part of public administration) and does not appear to have any private stakes in the policy issues at hand
5. Consensual closure on the result	The committee's results are accepted jointly without open opposition

For *sound policy expertise* in consensus-oriented knowledge cultures (dimension II), it is important to include *all relevant expert standpoints* (1) on the problem at hand and also to allow a *fair and thorough processes of deliberation* (2) within which biases can be dealt with, conflicts and contradictions can be resolved by different forms of reasoning and all relevant voices can be heard (Beck, 2012; Fricker, 1998; Fung, 2006; Goldman, 2001; Jasanoff, 2005; Lentsch & Weingart, 2011a, 2011b; Mansbridge et al., 2012; Young, 2000). To have epistemic authority, the advisors themselves need to be *competent and experienced* (3) vis-à-vis the issue of contestation – that is, they need to provide a professional track record of proficiency and practice in the particular knowledge field that the committee addresses (Goldman, 2001; Holst & Molander, 2017; Lentsch & Weingart, 2011b, p. 361). Within hybrid advisory committees, this standard is not only applicable to participants with an academic background but also to stakeholders who often provide important policy-relevant information and can fulfil the double role of expert and representative within these committees (Krick, 2015). The *academic* experts in advisory committees should furthermore be scrutinized in terms of their autonomy from private interests and their academic credentials (4),

for which affiliations at universities and research centres as well as a track record of academic publications and research projects can be indicators (Goldman, 2001; Lentsch & Weingart, 2011a, 2011b). Finally, group approval or *consensual closure* (5) at the end of the committee's consultations can be seen as a further indicator of particularly reliable expertise from a consensus-oriented perspective on validity claims (Fricker, 1998; Jasanoff, 2011, p. 31; Lentsch & Weingart, 2011a, 2011b).

In the following section an analysis and review of the two committees are presented indicator by indicator: In what respects can they be regarded as 'best practice'?

7.4 Case Analyses

7.4.1 The Final Storage Committee

The Final Storage Committee was composed of 34 members, out of which two took turns in chairing the committee, eight represented the first chamber of parliament (Bundestag), eight represented governments of the German constituent states (Länder), eight represented academia and eight represented societal interests. These groups are stipulated in the committee's statutory basis, the Site Selection Bill, which further determines that the last group consists of two representatives each of environmental associations, religious communities, industry and trade unions. The representatives of Bundestag comprised all parties with seats in parliament at the time of set-up in proportion to their factions' size. The two-headed chair was made up of members of the two largest parties, one Social Democrat and one Christian Democrat, who did not hold an office or parliamentary mandate during the phase of committee consultation.

The structure of the committee was a result of public claims during the legislative process that led to its set-up: A 'civil society forum' had been heard during the legislative process that led up to the Site Selection Bill, as a result of which the political agents in the committee-to-be (i.e. Bundestag and Bundesrat representatives) were stripped of their voting rights, while their number, as well as the number of academics, was raised. Early in the process, environmental groups and the anti-nuclear movement decided not to take part in this civil society forum, neither as members of the committee nor as experts in the committee's hearings.⁷ As a result, the two committee-seats reserved for environmental groups were not resumed within the stipulated period but instead

⁷ This joint decision reflects a very conflictual and long history of the problem of nuclear waste storage that was for a long time characterized by the neglect and arrogance of the elites towards environmental concerns and obviously resulted in a complete loss of trust of advocates of these concerns towards state institutions.

with some delay after all other members had already been appointed by Bundestag and Bundesrat and only after the governing parties together with the Greens formally appealed to the environmental groups to participate in April 2014 (Bundestag, 2016).

The stakeholders in the Final Storage Committee on the whole represented interests that were especially affected by the issue, yet with some limitations: First, the particular affectedness of the churches and their members by the issue of final waste storage is not immediately apparent. One could however argue for their status of representing a majority of 'the people', with 60% Christian affiliation in Germany; moreover they have traditionally been called upon in Germany to speak on behalf of ethical concerns. Second, in comparison to the economic interests of the employees and managers of energy companies, the 'general public' and future generations were underrepresented given the high risks related to the issues the committee had to deal with, the time horizon and the comparatively small share of committee members that can reasonably be understood as acting on behalf of the whole society and its common health and security concerns (i.e. environmental groups, political parties and, with reservations and from a certain perspective, the churches).

The committee anticipated further claims to representation by arranging workshops that specifically targeted potentially affected regions and municipalities as well as younger adults. Yet, while these participatory formats gathered input, their contribution did of course not in any way come close to committee membership rights.

The majority of stakeholders in the committee were well authorized and accountable and can be deemed legitimate representatives of the interests they were supposed to advocate. Some were directly authorized by and accountable to their constituency, such as representatives of the trade unions, parties and the government, one of the church representatives and one of the representatives of environmental associations (BUND). Yet, 50% of the interest groups' representatives were characterized by accountability deficits: they either did not have any affiliation with the organization they were supposed to speak on behalf of (Georg Milbradt for the churches), simply represented the management of one private company (delegates of Eon and RWE) or spoke on behalf of a foundation ('Deutsche Umweltstiftung').

Open and fair deliberation was fostered and achieved to a considerable extent within the Final Storage Committee. Judging from video and minutes' analyses of selected sessions as well as four interviews with committee members (interviews A, B, C, D), the debates were generally characterized by an equality of voices, general mutual respect, a certain joint commitment and rational arguing styles – speakers were usually not interrupted or otherwise discriminated against. The chairs encouraged open debate and the voicing of concerns throughout, even by personally addressing individuals they considered to have an air of discontent. Apart from a very few personalized and slightly aggressive attacks against individual positions on the most controversial issues, the interaction was characterized by respect – the legitimacy of contrasting opinions was never openly undermined, and the interaction was characterized by politeness. The rationale to achieve joint and preferably consensual

decisions accompanied the process, and all members showed a relatively strong commitment to this goal and made an effort to build their positions on arguments.

Yet, since the dividing lines between Gorleben-opponents and Gorleben-supporters were old and pronounced and since the committee's composition followed a Gorleben-parity (with roughly 50% against and 50% in favour of Gorleben as the final repository) (see interview A, B, C; Bürgerinitiative Umweltschutz, 2016), only a few participants adjusted their original positions during the deliberations, and one can assume that the arguing style covered underlying bargaining rationales; genuine trust between the camps did not develop.⁸

Open dispute was allowed to a large extent in the committee; the expression of concerns was legitimate throughout and often encouraged, and conflicts were rarely openly suppressed. If strong discord prevailed, the chair would usually postpone the debate or transfer the development of a solution to a subgroup. Yet, there were two major taboos, one of which was addressed finally – the site of Gorleben – while the other, financing questions around nuclear waste disposal, was transferred to another arena, the 'Nuclear phase-out financing commission' ('Kommission zur Überprüfung der Finanzierung des Kernenergieaustiegs').

The committee applied a complex mixture of decision rules, with informal rules often replacing the codified ones: Formally, the committee aspired to avoid voting and decide consensually (Bundestag, 2016), but due to solid camps and irreconcilable conflicts this goal was not achieved, and there was formal, explicit majority voting with a two-thirds quorum on all sections of the final report. Voting went through three readings; the third reading excluded the 'politicians', in committee parlance, on the grounds of the Site Selection Bill that only attributed formal voting rights to the representatives of 'academia' and societal interests. From a democratic perspective, granting formal voting rights to only one half of the committee members undermines the inclusiveness of the committee's decision rules, particularly since the excluded agents – members of parliament and the Länder governments – have a high status of authorization and accountability and advocate relatively large shares of the concerned public. Effectively, however, these 'second class members' decisively shaped the report during the process, took part on an equal footing in the working groups and voted on all issues during the first and second readings (committee sessions on 02.10.2015 and 20.06.2016; interviews A, B).

On the final outcome, the committee used a 'nostrification' procedure – that is, it rounded up its decisions by one concluding decision. Nostrification was facilitated by allowing dissenting opinions on single aspects of the final report, a possibility that was used by seven members. When one member nonetheless withheld his/her

⁸ Yet, in the end, a compromise was found that conciliates the two camps to a certain degree: In the final report, Gorleben is neither excluded as a possible site nor is it given priority, and the outcome is supported as a package by all but one of the committee's members with voting rights.

approval to the final report as a whole, the committee de facto applied a consensus-minus-one rule by calling this result ‘consentaneous’, a ‘sweeping consensus’ and an achievement of its consensual goal, regardless of the dissenting voice (Final Storage Committee, 2016a, p. 30).

An array of different participatory formats accompanied and contributed to the committee’s consultations, including several online tools and a range of face-to-face, deliberative tools as well as document analyses of statements of the so-called ‘critical public’ (the anti-nuclear movement) that had not been reached by any of the direct participatory formats. The large number of different, accumulating arenas of citizen participation that allowed open access and deliberation originate in a participatory approach, which two external service providers developed by order of the commission in July 2017 (Final Storage Committee, 2015). Due to the considerable transparency of the committee’s consultations and its materials, one of the preconditions of meaningful citizen participation was fulfilled. Yet, while the amount of transparency was indeed remarkable compared to the usual practice in Germany and seemingly well-intentioned overall, effective data access was still often limited at surprising and sensitive points. One example is the practice of making every comment in the online fora’s debate tools subject to administrative clearance, which heavily undermined lively debate. Another example was the maintenance of the committee’s website, which was supposed to contain all data on the committee. For instance, videos of the committee sessions were regularly not available there for download, and online streaming was very error-prone.

Since access to the participatory arenas was open, the rounds of participants were subject to self-selection, and accordingly they were not descriptively representative of the public at large. Only few ‘ordinary’ or ‘lay’ citizens participated in the face-to-face arenas and online forums, while stakeholders, organized civil society, business representatives and experts dominated (Final Storage Committee, 2016a, pp. 417ff., 2016b; Interview B). The committee itself declared its online forum a failure (because it was barely made use of and later misused for unrelated entries) and attributes this to technical minutiae, such as the belated activation of comments and to the complete lack of public promotion of these tools (Final Storage Committee, 2016a, p. 422). At the end of the process, prior to the final adoption, public debates (both online on www.endlagerbericht.de and in a face-to-face event) on the draft result of the committee’s proposal had been planned. Yet, only small fractions of the report were available in draft versions as basis for discussion, and these final public assessments therefore had to focus on ‘key messages’ and the less contentious issues.

For all participatory formats, institutionalized transmission mechanisms between the participatory arena and the committee had been provided for, which were meant to assure the responsiveness of the decision-making committee members. For instance, in every face-to-face format, two committee members participated as ‘ambassadors’ of the public input and were to act as bridges. The input of all participatory formats was dealt with in the committee on the grounds of systematic

assessment and evaluation by both external service providers and the committee's office. Yet, the amount of different participatory arenas led to a great deal of external input that was very difficult, if not impossible, to channel, process and respond to. Besides, the additional participatory rounds never included representatives of the anti-nuclear movement, who were fundamentally opposed the committee's overall approach, including its participatory fora.⁹ Failure to include and to pacify these key actors is very likely to preclude real and lasting societal conciliation and closure on the issue.

As for the epistemic legitimacy of the advisory procedure, a large range of relevant experts' positions were given voice within the committee. The members of the committee reflected no doubt a plurality of different expert viewpoints on the issue and particularly both sides of the Gorleben-divide in parity. The committee further invited domestic and international academics and lawyers as well as experts from public agencies and state departments to a range of different hearings on issues such as the public appraisal of large infrastructure projects or the retrievability of nuclear waste. In addition, the committee consulted about 100 reports from external experts from state agencies, state-funded companies, independent research centres and universities and a handful of private engineering companies. The reports comprised studies on a broad range of mainly technical but also legal and political issues.

The fairness and thoroughness of the deliberative procedures described above as criteria for the democratic legitimacy of the procedures are also conducive to the epistemic quality of the deliberations, particularly open debate and confrontation, but also an emphasis on argument and inclusiveness in the communication. In addition, the handling of expert input within the committee needs to be considered here. Several indicators imply that the committee overall seriously engaged in debates with external experts. From the outset, such as by following the expert hearings, expert opinions were seriously discussed. Directly after the individual hearings reports of approximately 15 minutes, committee members asked clarification questions and made a few critical remarks; after all presentations had been held, the committee members entered into debate with the invited experts and critically scrutinized their information and/or asked for further explanations or transfer to different settings.

When looking at the committee members' track-records of competence and experience, one can speak of an overall high proficiency and pronounced practice related to both the policy problems that the committee focuses on and in terms of political-administrative experience. On the side of the members of Bundestag and the

⁹ The movement criticizes the committee mainly for having offered nothing more than token participation, for not excluding Gorleben as a possible site, for enacting the site selection law before the committee was set up, for focusing solely on the *highly* radioactive kind of waste and for neglecting alternatives to the deep geological storage option (Bürgerinitiative Umweltschutz et al., 2016, pp. 5ff., pp. 25ff.).

societal stakeholders, however, policy-related experience was somewhat restricted, with about half of each of these two groups showing little of such expertise.

Yet, as a group, several committee members in the role of ‘academics’ fall short of academia-internal standards. Only a small majority of them actually hold a PhD, and only one has a current, credible track record of relatively recent academic publications and research projects. The independence of these agents is limited because only a minority is affiliated to independent research institutions; however, in the majority of cases, there is no evidence of private financial stakes in the issue.

Upon the end result, complete consensual closure could not be accomplished. One member with voting rights, the representative of the environmental association BUND, withheld his approval of the final report as a whole (Final Storage Committee, 2016a, p. 497). Additionally, six further members, two of whom also had voting rights, published dissenting opinions. Only one, the statement by the representative of the party ‘die Linke’, who did not have voting rights, can be read as a further fundamental rejection of the report as a whole, however.

7.4.2 The 22 July Commission

Central and clearly affected interests were represented in this 12-member commission: the police, the public health sector, the Armed Forces, the communication and transportation sector and the Norwegian Red Cross, a highly relevant civil society actor. Balance in gender and multiple geographical backgrounds among members was also ensured. Moreover, the hearing process contributed significantly to increased representativeness, with a range of civil society organizations and public sector units responding and contributing in addition to the commission’s ongoing exchanges and communication with ‘different audiences and those directly affected’ during their work (NOU 2012:14, p. 40). A survey organized by the commission, consisting of seven sub-surveys adapted to different groups of the affected, had nearly 4000 respondents.

Yet, there were some clear limitations to representativeness. Apart from the Norwegian Red Cross Vice President, and the fact that some of the public health and police sector representatives had previous interest group experience from their sectors, civil society organizations had no representation in the 22 July Commission. Rather, members were academics, civil servants and/or recruited from public or private sector management. The commission leader herself was a lawyer and former business executive in Norsk Hydro, a large Norwegian industrial company. No active or former parliamentarians were included to ensure the inclusion and balance of different political-ideological views.

A more detailed characterization of the representativeness deficit needs to be assessed in relation to the commission’s mandate. The commission itself argued that its mandate was limited to narrowly reviewing the role of the ‘secondary prevention’ of terror, ‘after the basic problem has occurred’ (NOU 2012:14, p. 71), that

is, after ‘one or more persons have been radicalized and are willing to use violence to achieve their political goals’. Even within these boundaries, however, one could have expected the representation of unions in the police and rescue sector at the commission table and a reflection on recent controversial public sector reforms (NPM etc.) that have affected the emergency and prevention sectors (Christensen, Lægreid, & Rykkja, 2015). Furthermore, hearing reports reveal more concrete tensions among stakeholders around weapon policies and the government’s choice of information and communication technology system for emergency situations. Yet, these lines of conflicts were also left uncovered by the commission’s composition.

The commission could moreover have given a wider interpretation of its mandate and included in its review the more ‘basic problem’ of how societal structures, political culture and policy can contribute to foster, or prevent, radicalization and terrorism in the longer run, as raised by civil society stakeholders, the media and independent authors. With such a broader approach, the range of relevant and affected stakeholders would of course have increased drastically, including actors from the public school system, social services etc.

A review of the interest groups and civil society organizations that participated in the 22 July Commission process reveals overall high scores on authorization and accountability criteria. However, as already indicated, apart from the National Red Cross, none of these groups and organizations had direct representation through commission membership. To be sure, there were commission members affiliated or formerly affiliated with organized interests and civil society groups. Their commission membership was however granted them in the capacity of their current or previous executive positions.

Due to the closed nature of the committee’s proceedings, insights into the fairness of procedures rely on sources such as the reading of the general regulations of the work of Norwegian public commissions,¹⁰ information from interviews with key actors in the NOU system, the commission’s self-reporting of its procedures, existing research, media coverage and procedural comments in hearing reports. There are few signs that the deliberative atmosphere in the commission was experienced as an obstacle by participating parties. The media scrutiny of the commission’s proceedings was quite extensive, and it is likely that heavy conflicts and substantive misgivings among commission members would have come to the fore. Yet, limited time and early deadlines for hearing reports were mentioned by various stakeholders and are likely to have influenced negatively on the deliberative quality of the process.

The commission furthermore reached agreement on all points. In general, NOU commissions are expected to produce consensus reports, while minority statements

¹⁰ See Instructions for Official Studies and Reports, <https://www.regjeringen.no/en/dokumenter/Instructions-for-Official-Studies-and-Re/id107582/>.

are allowed and voting serves as a last resort. Within the 22 July Commission, however, there were few signs of high conflict levels, and the committee reached unanimity.

This being said, given the composition of the 22 July Commission, the lack of minority statements does not necessarily indicate that all conflicts surrounding the issue had been solved. After all, a set of stakeholders did not have seats at the commission table, and academics and civil servants participating in NOUs tend to have a higher threshold for dissenting in deliberations (Tellmann, 2016).

The commission allowed access not only to survey reports, expert reports and hearing reports but also to several internal documents, including substantive parts of the commission's correspondence with affected actors and informants. It seems likely that transparency of this kind fosters more informed deliberations and scrutiny.

The 22 July Commission received individual citizens' direct input not least through conversations, interviews and a range of meetings with affected actors. Independently authored books on the 22 July attacks were also included in the report's reference list. In addition, the hearing round included individuals – engaged citizens without official institutional affiliations – who reported their concerns, in particular opposition to the commission's recommendation to ban semi-automatic weapons and critical views on what some saw as the commission's 'blind trust' in the reliance on responsible agencies' far too optimistic assessments of the current emergency net ('Nødnett'). Lastly, the commission's large (N = 3700) survey arguably compensates – although only in part – for more direct lay citizens' access points. It increased representativeness in the process but added less from the perspective of democratic deliberation, since in surveys, citizens participate as respondents, not as deliberators, and the potential for mutual learning is obviously limited (Lafont, 2015).

Generally, the limited representation of stakeholder and civil society expertise and parliamentarians' competence and views, already elaborated upon in terms of a participatory deficit, also reduced the epistemic legitimacy of the 22 July Commission. The fact that the commission included less than thorough discussions of highly relevant value conflicts and normative dilemmas, including possible conflicts between terror prevention and protection and values of 'openness and democracy' – a dilemma explicitly mentioned in the commission's mandate (NOU 2012:14, p. 38) – and the commission's not unreasonable, but far from obvious, narrow mandate interpretation, can be connected to this lack of representativeness. The liberal dilemmas raised by security and prevention policies and the question of the deeper causes of radicalization were raised in hearing reports from civil society, and the issue of public sector organization and funding were addressed by central unions and heavy-weights among the national agencies in the rescuing and emergency sector, but none of these had seats around the commission table. In sharp contrast to this, some responsible ministries delivered only half- to one-page hearing reports without real substance, referring to 'ongoing internal evaluation processes in the ministry'. This reluctance among some of the central actors can be due to the early hearing deadline, but the fact that hearing processes are surrounded by a level of publicity

that internal ministerial evaluation processes are not may also have played a role. Lastly, in an ongoing research project, the Gjørvi commission has been accused of blaming individual police officers and leaders for mistakes generated by system-level flaws (Renå, 2016). One could easily imagine how shortcuts of this sort, as far as these accusations are founded, would less easily occur had police and rescue sector unions been more strongly involved in the commission's work.

Different kinds of academic and sector expertise were, however, included in the committee, and national and international¹¹ and civil society and interest group expertise was provided *post hoc* through a set of thorough stakeholder hearing reports, which corrected factual mistakes or inaccuracies (about hospital and rescue procedures, police work, weapon and weapon regulations etc.) and added new concerns and perspectives. One could argue that the bureaucratic and regulatory expertise among commission members could have been higher, given the commission's focus on scrutinizing public administration procedures, leadership and restructuring. The ideal type central administration top-level civil servant, typically found in other NOU committees (Christensen & Holst, forthcoming) was actually not included in the 22 July Commission. However, several commission members did have administrative and regulatory expertise as part of their portfolio. The secretariat, completely dominated by public and private firm lawyers but led by political scientist and business executive Bjørn Otto Sverdrup (Statoil), moreover added profoundly to the commission members' competence, also in this area. However, strikingly, even in the secretariat, servants from the national ministries or agencies were absent. Yet, the exclusion of these actors can also be given an epistemic justification as it arguably facilitated unbiased scrutiny of the role and responsibilities of governmental units and politicians, which the commission's report ended up criticizing heavily for a lack of adequate procedures and leadership.

As for the representation of academic disciplines, the domination of lawyers, both among commission members and in the secretariat, supplemented by a couple of historians but at the expense of social scientists with experience from organizational and public administration research, has been claimed to result in a narrow focus on legal regulations and obligations and on 'attitudes and culture' instead of on structure and organization, funding schemes etc. (Christensen, 2013). Christensen (2013) links this bias also to the somewhat surprising centrality of business sector background and management expertise in this commission as well as in the secretariat.

As mentioned, there is reason to think that the commission proceedings were relatively deliberative. The delivered commission report itself was generally written in an argumentative mode, providing and presenting evidence, discussing the limitations and validity of evidence, weighing conflicting points of view etc. in

¹¹ Among the commission members were Stefan Gerkman with an earlier career in Finnish public administration, and Hanne Bech Hansen, previous police executive in Copenhagen.

a reason-oriented way. The deliberative qualities of the hearing reports varied, obviously, but a majority followed up on the argumentative style that we find in the commission report. A guiding principle for the Gjørv commission was furthermore, no doubt, to draw on and base its discussions and recommendations on updated relevant academic, professional and regulatory knowledge. Twelve expert reports on issues of high relevance to the commission's mandate were frequently referred to throughout the report; the large N survey was made in accordance with standard scientific procedures; informant interviews were systematically pursued, reported and archived; and relevant references and literature were referred to in the commission report's background chapters. However, the commissioned expert reports, as well as their listed sources and references, confirm the epistemic bias of its composition. Once more, we see how this commission, despite having an analysis of public sector and administration performance at the core of its mandate, to a limited extent relied on scholarly literature by academic experts or expert input on this exact topic. The 22 July Commission's sketchy treatment of normative questions and possible value conflicts also depart from the deliberative mode characteristic of the report at large.

As for the experts that were in the end included as commission or secretariat members or relied on as external experts, a review of their track records indicates consistently high levels of competence and overall relevant previous and present positions in and experiences from relevant public and private organizations, bureaucracy and/or academia. This goes as well for the academics participating – all highly esteemed and all connected to independent academic institutions.

Finally, the Gjørv commission managed the task of providing consensual closure. Not only were no members dissenting, but the conflict levels exposed in hearing reports were also relatively modest. Except for some controversy, not least around weapon policies, nearly all hearing reports 'bought' the commission's package of recommended policies. Excluding some actors' non-trivial reservations when confronted with the commission's analysis of events and conceptualization of the public sector's prevention and emergency challenges, the overall impression from the hearing round is consensus and embracement. The vast majority of hearing reports praise the report's 'importance', 'clear-sightedness', 'thoroughness', 'impartiality' etc., and it is repeatedly suggested that this report sets – as one hearing report puts it – 'a new standard' for public inquiries. When criticism is raised, it is raised carefully, and often implicitly.

The consensual closure and the authority of the commission have moreover shown a striking stability over time. Despite some critical voices in the research community and clearly mixed assessments of the commission's achievements, not least in the justice and police sectors, the public image in the media and among politicians and commentators is still very much that Gjørv told us 'what happened' 22 July. This closure, and the tendency, so far at least, to in effect put the 22 July Commission 'beyond politics' somehow, is obviously related to the strong sense of national togetherness and 'meaningful community' that occurred in the aftermath of

the horrible terror attacks and senseless killings (Rafoss, 2015) and that still seemingly influence how 22. juli is talked of, framed and reflected upon.

7.5 A Condensed Normative Assessment - Overall Scores, Limitations and Tensions

Summing up the case analyses, our first set of questions is: How good was the practice in the two cases on the whole? Where do we see a lack of fit with the normative criteria we developed, and why did it occur? Which tensions and trade-offs are observable?

Recapitulating the achievements of the Final Storage Committee, this committee invited public scrutiny and broad societal participation by allowing an unprecedented amount of insight into internal documents and its procedures and additional public involvement through participatory formats, and it reached a considerable degree of pacification within the committee report on the most critical questions that span the deeply divided camps on the issue of nuclear waste storage. One of the main political advocates of Gorleben-criticism, the Green party, agreed to the report in the end, although the compromise that was found did not preclude Gorleben. Yet, the committee member representing Germany's environmental movement could not be convinced to back the results, and this clearly undermined the amount of conflict resolution. The Final Storage Committee suffered from some structural 'birth defects' that limited its democratic potential: the number of representatives of the general public was low in comparison to other proponents and in relation to the issue that was dealt with. Most importantly, the committee did not include the most active and deeply sceptical societal interest groups in the field, the anti-nuclear movement, nor were these groups incorporated through the additional participation formats. By transferring a key conflict to another, strongly political forum, the nuclear phase-out financing commission, the participatory credibility of the committee was further undermined. At second glance, the committee's claim to superior transparency was also restricted in several minor ways.

Arguably, the participatory approach of the committee highlights one of the internal tensions of citizen participation, the inequality dilemma of participation (see e.g. Fung, 2006; Lijphart, 1997) that is exacerbated when open access to participatory arenas is allowed: the more input the committee invited in response to public demands for more substantial and more meaningful involvement, the more voice it gave in effect to those that were already involved – interest groups and experts – without reaching to a sufficient extent those that had been excluded – the social movements, the younger generation and the 'ordinary' lay citizen. Yet, in comparison to usual committee governance practice in Germany, the committee worked in a very transparent way and was relatively inclusive. This, however, came not only at the price of incomplete consensual closure – a range of dissenting opinions and even one vote against the report as a whole – but also of limited scientific credibility: the committee

members had been chosen very carefully on the grounds of several selection criteria, the most important one being ‘Gorleben parity’, but regional representation and party political affiliation also played important roles. The ‘scientific excellence’ of the committee came obviously second.

This trade-off between epistemic standards and participation can be argued for from a perspective of governance since the most difficult issues were rather political and came down to making ethical judgements and assessing risks. While the committee had to consider technical information, there was no shortage of it given the large amount of written and oral reports from external experts, the long history of the conflict and also the considerable experience on the side of the (non-academic) committee members, which had for the largest part worked on the issue for decades. The practice of persistently emphasizing the alleged objectivity and scientific credentials of committee members was obviously used to facilitate open and reasonable debate, to overcome divides and to legitimize the results epistemically by borrowing the authority of scientific knowledge.

In accordance with what would be expected from a presumed best practice NOU, the 22 July Commission was firmly characterized by ‘consensus and competence’, to quote an experienced NOU contributor and administrator (Interview E). There were no minority statements and limited conflict levels within the committee itself, but also during hearings, and a variety of high-level professional, administrative and academic expertise was included both around the commission table and through the composition of the secretariat. In addition to ‘consensus and competence’, the 22 July Commission provided participatory opportunities for stakeholders and affected, through extensive consultations, interviews and large-N surveys while in session, a post hoc hearing with wide reach and, generally, the adoption of an openness policy that encouraged public interest and scrutiny. However, the high transparency level may also have contributed to reduced engagement among key actors, such as the responsible ministries, which kept their hearing reports vague and short.

The other side of this is that limitations to openness, not least the commission’s closed doors meeting policy, standard for NOUs, most likely facilitated its success in terms of closure, as it allowed parties to make concessions without losing face or having to check back with their constituencies (Chambers, 2004; Lentsch & Weingart, 2011). Yet, the committee’s unanimous deliverance must also be read as a result of the limited representation of conflicting views. The relatively narrow composition resulted in a relatively narrow and technical interpretation of the mandate, and controversial aspects pertaining to descriptions of events, analyses of societal and public sector challenges, conflicting normative concerns and policy recommendations were not addressed or were addressed in a limited way. The expertise involved also had some biases, in part due to the participatory deficit partially due to the relative dominance of some disciplines and professional backgrounds, in particular law and management, which also seem to have influenced report features.

The exclusion of party politicians and the responsible ministries and agencies that can be considered as powerful stakeholders with strong self-interests in regard to the issue may very well have contributed to a more thorough and unbiased scrutiny and better deliberations and thus be justified from an epistemic perspective. Yet, while it is a characteristic of stakeholders to have firm and potentially bias-producing interests, their exclusion from the committee is unusual for the NOU system, at least as this system has traditionally worked. This particularity of the Gjørv commission is of course not unrelated to the extraordinary incident – 22. juli – that it was to investigate and assess the implications of. Previous to, during and after the commission proceedings, parliamentarians and media commentators stressed, repeatedly, the utter importance of an unbiased scrutiny of the role of responsible governmental units and politicians. This contributed no doubt to disqualifying certain interested actors that under different circumstance would have been obvious candidates for the committee.

7.6 Conclusion

When assessing the degree of overlap between our consensus-cultural criteria and the observed advisory practices, it can be stated that the two committees may not be considered ‘best practices’, but they certainly qualify for *good* practice measured against a rather ambitious set of indicators. Moreover, they illustrate pronounced tensions in modern consensus democracies between stakeholder inclusion and interest reconciliation on the one hand and modern pressures to base public policies on evidence and expertise on the other (see Fischer, 2009; Gornitzka & Krick, 2017; Straßheim & Kettunen, 2014).

Arguably, this points to what seems to be a more fundamental conflict between epistemic and democratic concerns (see Holst & Molander, 2017), to which they provide two distinct and somewhat inverted answers: whereas the 22 July Commission is an example of ‘consensus and competence’ that reached limited interest mediation, inclusion and transparency, the Final Storage Committee is characterized by ‘inclusion and transparency’ yet had shortcomings in terms of the scientific credentials of its members and consensual conciliation. The tensions in these two cases played out in quite different or even opposed ways. Yet, the underlying trade-off mechanism is the same: in both cases, the inclusion of conflicting views contravenes consensual closure, detached assessments and scientific competence.

A fuller explanatory analysis of the less-than-ideal features of the advisory processes we have studied must be left for another occasion. However, we contend that they are closely related to inherent tensions in our indicator set that reflect the fact that particularly *epistemic* and *participatory* concerns can pull in different directions. Acknowledging this, it is perhaps not so much noteworthy that our cases in the end did not achieve full scores as best practice but rather the various ways they

handled the internal tensions of the epistemic and political culture in which they are embedded.

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