

**Mobilizing the State:
The Erratic Partner in Brazil's Participatory Water Policy**

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1. Introduction

Following the end of authoritarian regimes in Latin America that monopolized decision-making power, limited consultation to restricted circles of elite allies, and suppressed popular organization, it is not surprising that a wide array of actors would want to transform “the state.” Some reformers decried the inefficiency, as well as the authoritarianism of a bloated central state apparatus, and prescribed a smaller, streamlined, decentralized state anchored in a variety of representative institutions – from legislatures to policy councils. Others associated decentralization with participatory governance, and wanted to increase popular control of government decision-making or create public spaces for expression and deliberation. Each of these arguments contains different implicit assumptions about the nature of state and society and the way they are interwoven (Dagnino, 2002). Although the agendas and power resources of those espousing such changes differ substantially (Dagnino, Olvera and Panfichi, 2006),² a focus on motivations and ends often assumes too much about available means. Interests do not by themselves generate deployable resources; state agencies are not necessarily as impressive in practice as they are on paper, and institutional designs are not self-activating. Transformative projects of whatever kind must quickly adjust to the inevitable disparity between expectations and the real context in which they will be carried out or not. In making the necessary adjustments, they may transform the projects as well.

Although often construed as “strong states,” the authoritarian regimes that governed most Latin American countries during the second half of the twentieth century were stronger in their ability to act irregularly – repressive actions with excessive force, big development projects – than they were in developing the everyday qualities of stateness (Martins, 1997). Most left weak legacies in precisely the kinds of capacities most relevant in a democracy, such as the ability to provide routine services efficiently, to ensure the security of citizens, to administer public business, to enforce the law in an evenhanded and appropriate manner, to collect taxes, and to respond to emergencies. Brazil is a prime example. The enduring weakness of many Latin American states in these areas has not received the attention it deserves from political analysts of democratization, who have more often studied elections and legislative politics, or focused on economic and fiscal policy. Studies of institutional development mainly take it as given that duly elected bodies can generate [rational] policy outcomes, and studies of economic

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² Dagnino, Olvera and Panfichi, 2006, portray contemporary politics in Latin America as a dispute between “democratic/participatory” and “neoliberal projects”, both of which contain proposals for empowering civil society and promoting participatory governance.

policy presume either that policies originate from fairly well defined interests and procedures or that policies, once enacted, are enforceable. In the presence of states with a highly politicized policy process, uneven coverage, and low enforcement capacity, any or all of these assumptions may be unwarranted.

To promote public deliberation in diverse policy-making arenas, a profusion of participatory councils have been established in Brazil and throughout the region, attracting the attention of scholars and fueling the hopes of activists seeking greater access to decision making. Most of these councils are required by federal law and allocate seats to both state and civil society actors. As societal actors set out to use newly formed participatory mechanisms for public purposes, they often find that state officials are reluctant to hand over real decision-making power to them (Tatagiba, 2002; Dagnino, 2002). However, electing sympathetic leaders to top government positions is not enough to resolve the problem. Political will must be accompanied by political capacity. Our research strongly suggests that participatory governance – the “coproduction” of decisions and services (Ostrom in Evans 1997) - demands not only the activation of civil society, but also, unexpectedly, the mobilization of the state.

The issue of state weakness has gained a lot of attention over the last few years. Many economists who supported the Washington Consensus in the 1990s have come to see the costs of cutting back on the state vis-à-vis its economic activities without simultaneously strengthening its regulatory and fiscal capacity. According to Francis Fukuyama (2004:28), even famed free market exponent Milton Friedman came to realize that privatization should not precede the consolidation of the rule of law. Capacity-building and institutional strengthening programs roll regularly off the drawing boards of a wide variety of development agencies, often in the form of training programs for state officials. The rule of law, by which economists mean above all secure property rights, has moved to center stage in economic discourse. Students of political institutions now see making the rule of law apply universally as a crucial task in democratic consolidation. However, increasing the state’s capacity to operate effectively and responsively requires a political process that goes beyond training, planning, and property rights guarantees.³ The participatory “governance” councils that have been established over the last two decades in Brazil provide a privileged site for examining this process precisely because of the ambiguities in their mandates, goals, and authority.

In general, these new arenas of decision-making and partnership have been studied primarily from the standpoint of civil society organizations.⁴ To our knowledge there has been very little work on the state side of these participatory processes. Despite the influence in the 1990s of ideas such as Evans’ (1997) “State-Society Synergy”, many scholars of civil society and of the public sphere appear to resist breaking down the state-society divide when it comes to the roles actors play in participatory decision-making forums. An implicit division of labor pervades much of the literature: Civil society should express interests, deliberate, and make decisions, and should leave their implementation to the state. Scholars emphasize either the

³ On the difficulties of state administrative reform, see the excellent edited collection Ben Ross Schneider and Blanca Heredia, eds., *Reinventing Leviathan: The Politics of Administrative Reform in Developing Countries* (Miami: North South Center Press, 2003).

⁴ The term “civil society organization” is left unspecified here, because its boundaries are contested in ordinary political usage. Its use presumes both non-stateness and (usually) publicness, but publicness in a Deweyian sense, known by its consequences, rather than as a categorical term.

input side of policy (deliberation, participation) or on the output side (accountability). Neglected in this story is the throughput: Is the state capable of implementing the decisions deliberative bodies make, taking into account both political and technical capacity? Of what do these capacities consist?⁵

To answer these questions, we need to take two important steps away from the vision of civil society and state as alternative (and mutually exclusive) spheres of activity that has characterized much of the literature in Latin America to date. First, analysts must stop taking for granted that if only the political will existed, state institutions have the managerial, administrative, technical, and human capacity to do their jobs properly. Whether they do or not requires verification, and varies over time, among agencies, and from place to place. Setting aside questions about the appropriate scope of state action, we are interested in the flow of decisions and their implementation through state agencies, and the nature of the experiences, connections, and institutional practices accumulated over time in these agencies.

Secondly, the role of state-society networks in pushing policy decisions and their implementation deserves further study, with attention to both political and administrative process. Especially relevant is the role of activists within the state who are committed to the goals espoused by civil society groups – indeed, who upon coming home from work at the end of the day may even be members of the civil society groups in question.⁶ Hochstetler and Keck (2007) show that the implementation of environmental policy in Brazil frequently requires that activists inside and outside the state coordinate actions through the whole policy process, from lobbying for policy decisions all the way through implementation. Similarly, the Watermark Project – a research network on participatory water management in Brazil that we help coordinate -- has found that state technical employees must often collaborate with activists outside the state to force agencies that resist coordinating their activities to do so in the ways that socially inclusive and environmentally sustainable water management requires.⁷ We suspect that these policy areas are not unique, but unless the black box of bureaucracy is opened up to demonstrate how these interactions occur, they remain opaque.

Participants in both scholarly and political debates about participation and democracy have neglected the problem of generating democratic state capacity. Insofar as state strength in Latin America is associated with authoritarianism, this lacuna is understandable. However, it also creates both theoretical and practical confusion over the proper relationship between civic organizations and the state, between policy-making and policy implementation. The argument that civic mobilization helps to democratize policy-making often includes the contention that civil society organizations should not undertake policy execution, lest they be co-opted into supporting a neo-liberal agenda of state retreat. However, council members often discover that in practical terms, making their decisions meaningful requires going beyond deliberation alone.

⁵ For a rare exception, see Anthony Pereira's discussion of state capacities in The End of the Peasantry (University of Pittsburgh Press, 1997): 154..

⁶ See Evelina Dagnino, "'Sociedade Civil, Espaços Públicos e a Constituição Democrática no Brasil: Limites e Possibilidades,'" In Dagnino, *op. cit.*, pp. 287-88, who nonetheless ties this collaboration to the political project of the government in office rather than activists in the regular bureaucracy.

⁷ The Watermark project is a collaborative, interdisciplinary network that we founded in 2001. It has conducted a variety of studies of on participatory water management in Brazil since 2001. For more information, see www.marcadagua.org.br.

They find they must break open the “black box” of the state to identify deficiencies and help government agencies do their jobs; not to do so would make their efforts meaningless, and would reinforce a view that civic involvement in decision-making makes no difference.

This paper explores these questions through an analysis of recently created participatory arenas for water management in Brazil, river basin committees. In the next section, we elaborate on the conceptual and political problem we are addressing here: what are the appropriate roles for non-state actors who participate in participatory governance arenas? Then, after presenting some general background information on water policy reform in Brazil, we examine the evolution of four river basin committees. In each case, non-state actors sought not only to influence state decision-making but to transform state capacities to implement those decisions. The result, we argue, was not in a “transfer of state responsibility” to private actors, but rather the mobilization of state capacities to defend the public interest.

2. State society relations and participatory governance

At least three major arguments or “justifications” appear both in the literature on councils and in the voices of participants. The *popular control view* holds that since conventional representative institutions and technocratic bureaucracies reinforce elite privilege, excluded groups need direct or semi-direct participatory mechanisms to amplify their voices within the state (Pateman, 1970; Macpherson, 1977; Gutman 1980: 178-80; Santos Jr. 2003; Avritzer 2002). This argument often seems to be saying that participatory forums connect two exogenous spaces or entities, society (or civil society) and the state, such that the state’s role should be to absorb the decisions resulting from such forums, and “society’s” is to contribute to producing agreements. *Deliberative democrats* claim that the bureaucratic logic of the state and the aggregative method of reconciling diverse preferences suppress public debate, civic thinking and difference (Warren 2001). For them, participatory forums can play a transformative role: more than just spaces in which excluded groups may voice their preferences, they allow people to come together and, through deliberation, form new preferences. Still, even when deliberative theorists accept the idea of a state-sponsored formal sphere of deliberation and governance (and not all of them do) they understand these forums to be exogenous to both administrative and representative organs of the state (Teixeira 2002: 195; Avritzer 2002; Heller 1997). *Instrumental arguments* measure economic efficiency, and ignore elitism or impermeability except insofar as these might contribute to inefficiency and ineffectiveness. Often associated with neoliberal reforms, privatization, and state-minimization, instrumentalist support decentralized stakeholder participation on the grounds that it reduces transaction costs, improves access to local information, and increases stakeholder commitment to (“ownership of”) policies. (See Stiglitz 2002). Aside from those with strong ideological commitments to strengthen markets by gutting the state, many we are calling instrumentalists are not ideologues but rather pragmatists, interested in getting things done. If participatory governance can be a lever for wrenching decision-making out of the hands of ineffective bureaucracies, and getting it into the hands of presumably better equipped private for profit or nonprofit actors, they are for it. In other words, while the first two views judge decision-making on the basis of inclusiveness and autonomous deliberation, the third approach is concerned above all with results – whether or not its proponents care deeply about these other concerns.

These sets of views are not mutually exclusive. Scholars of common pool resource management, for example, often link the development of effective institutions with local empowerment (Agrawal 2006; Ostrom 2005). The notions of polycentric governance and spheres of coproduction of services require taking seriously the investigation of relations among diverse state and societal forces (McGinnis 1999; for similar approach see Evans 1997). In much of the literature on participatory governance, however, debates about state capacity and policy implementation and those about inclusive and socially accountable democracy have been like two ships floating side by side in the night – it is hard to tell whether they are on the same course or are passing each other.⁸

We propose to reconnect democratic and instrumentalist approaches by claiming that in practice, besides serving as *forums* where society expresses preferences or deliberates, policy councils are also *organizations* that can improve the state’s ability to serve the public interest. Some authors have contended that policy councils help promote accountability by pressuring the state to explain what it does, and by monitoring policy implementation to ensure that it promotes public and not private interests (Ackerman, 2004; Wampler, 2004). Invoking the need for states to be accountable for their actions takes an important step in the direction we want to go, in showing that participation not only serves democracy by leading to more just decisions, but also that it can make state implementation more transparent. That is, by invoking the Kantian “publicity principle” -- showing that having to explain itself and knowing it is going to be monitored changes how governments act -- this line of thinking makes a democratic connection between participation and implementation. The state becomes an endogenous variable.

In our studies of river basin committees, we take this idea further. The democratic value of participatory governance lies not only in representing a broader array of voices, deliberating, and monitoring, but also in helping the state carry out decisions. Deliberation and participation in decision-making will only deepen democracy if the decisions affecting the actions of public agencies can be carried out, and if public agencies have the ability to enforce new binding norms on public behavior. Sometimes, then, empowerment of civil society requires empowerment of the state, and democrats must assume for themselves responsibility for what the state does and does not do. Participatory forums can serve as mechanisms that mobilize actors and resources within the state and capacitate the state itself. However much this function may lie outside the intentions of their designers, the adaptability required for building robust institutions requires that other actors fortify or compensate for the building blocks that for one reason or another are absent at the outset (see Goodin 1996: 41).

The idea that non-state actors can actually help build state capacity (rather than merely controlling the state – in the democratic view - or replacing it – in the instrumentalist view) contradicts the presumptions in much of the literature on participation that the state is strong, and can generally manipulate participatory processes for its own ends. This presumption rests on four rather compelling observations. First, the formal powers of participatory forums are often quite weak. Most serve a consultative purpose, and governments can choose to ignore them. Some have authority over relatively marginal issues, with “important” decisions remaining in the

⁸ Indeed, for Dagnino, Olvera and Panfichi (2006), the similarity between what they call “democratic” and “neoliberal” views of participation is extremely dangerous, since proponents of one project can easily find themselves supporting the other.

hands of traditional decision-makers (Manor, 2004; Gilbert and Ward, 1984). Second, because those who design participatory processes define the rules of the game, they are able to manipulate outcomes. Some authors contend that governments control agendas in such a way as to sideline disruptive issues or radical ideas (Gittell, 1983; Coit, 1989). Recent critiques of projects implemented by international agencies find that this model of participation imposes “western” or “modern” modes of thinking (See Cooke and Kothari eds., 2001). In other words, these authors argue that certain kinds of ideas and decisions are suppressed within these participatory spaces, undermining their claim to be spaces of free deliberation. The third point is that by incorporating activists into a government defined agenda, participatory mechanisms demobilize more radical forms of social organization. Formerly radical leaders come to dedicate hours each week to government sponsored meetings. Social movement organizations restructure themselves as NGOs in order to gain access to these spaces, subjecting themselves to organizational constraints and bureaucratization, and causing them to moderate their positions (Coit, 1978; Goodman, 1971; Piven, 1970; Piven and Cloward, 1979; Gittell, 1983; Kohl 2002). In other words, they serve state purposes while weakening society’s ability to respond should those purposes be harmful. Finally, by utilizing participatory mechanisms to promote their preferred decisions and control potential opponents, governments or development agencies gain greater legitimacy. Selznick was the first to make this argument in his 1949 book on the Tennessee Valley Authority. Citizen commissions and advisory groups create a veneer of legitimacy, he argued, behind which governments can continue to do business as usual.

All of these contentions take it for granted that the “givers” of participation are much more powerful than the receivers, and that they currently can or do exercise the powers they are handing over. They attribute to the state or to development agencies the capacity to control participatory procedures and agendas, to present and manipulate information in ways that lead to previously defined outcomes, and to convince social groups that engaging in these activities is the best use of their time. In doing so, they presuppose that governments *have* an agenda, and that they are capable of implementing it. Indeed, governments (or development agencies) must be so effective at furthering their ends that they can do so without seeming to, by manipulating information, procedures, and programs. And much of the literature seems to likewise presuppose that participants are so powerless that they cannot influence the rules of the game or even perceive that they are being manipulated.

In the stories that we will tell below, a much more diverse picture of the relations between participants and the state emerges. Sometimes the manipulative use of state power and resources has undermined the council’s legitimacy as a participatory forum. Often relations between participants and the state are much more complex: where state institutions are weak and agendas precarious, civil society groups or alliances between civil society and state actors can propel an agenda for state action. Moreover, they can actually equip the state to implement policies. These cases do not mean that manipulation and control of participants by the state never happens. But in some policy arenas and in some places, such as in River Basin Management in Brazil, this does not seem to be the norm.

3. River Basin Committees in Brazil

Brazil has attracted the attention of participation advocates because of the great variety of innovative experiments, especially at municipal level, launched over the last two decades.⁹ The Participatory Budget, in which local citizens engage in discussions of how to allocate municipal capital expenditures, has gained particular renown as a successful experiment in participatory democracy (Abers, 2000, Avrizer, 2002; Baiocchi, 2003; Gret and Sintomer, 2005; Sousa Santos, 1998; Wampler, 2004). Meanwhile, a variety of other kinds of thematic stakeholder councils have proliferated in the country. Many were made obligatory by national and state laws (Health, Education, Social Assistance, Children and Adolescent Issues, School Food). Others are parts of national programs for specific municipalities (Local Sustainable Development Councils) and others are created by municipalities themselves. These councils generally include representatives from different categories – civil society, private interests, government agencies. Councilmembers are either elected by their peers at assemblies open to all organizations in the category, or are chosen by mayors or other authorities. In some policy areas, they have been created on a massive scale. For example, by 2000, more than 4000 municipal health councils had been created in Brazil's 5,506 municipalities (Santos, 2000:15). Although in some countries what Manor (2004) calls "single-issue user committees" may have been set up in response to the requirements or impositions of international agencies, this is not the case in Brazil (Melo and Rezende, 2004: 49-50). Instead, stakeholder councils have emerged from below as well as from above, and also from what we might call "the middle", that is from middle class professionals and state technical personnel.

The international literature has paid much less attention to this wide array of stakeholder forums, but a national literature has grown rapidly in both academic and action research arenas (Dagnino, 2002; Tabagiba, 2002; Carvalho and Teixeira, 2000; Santos Jr., Azevedo, and Ribeiro, 2004). In general, these assessments express disappointment. The fact that these councils are largely created by government decree, are not necessarily associated with progressive governments, and that they include as members private sector and government representatives, alongside civil society groups, makes it harder to view them as clear cut examples of popular control than in the case of Participatory Budgeting. Since they include governmental representatives, they cannot be placed within a (non-governmental) public sphere and hence have drawn less attention from deliberative democrats. And although on first view they share some features with neo-corporatist bodies, their members are not normally empowered to make binding decisions on behalf of their constituents (Keck 2003).

The move to create river basin committees came later than in some other policy areas, but has recently accelerated. More than 140 committees have been formally set up, in basins covering areas that range in size from a single municipality to parts of several states.¹⁰ The committees are part of a broader reform process in the water management sector that has gradually progressed through legislation at state and national levels, and has been informed by international trends in the sector (Conca 2005). Water in Brazil can be under state or federal

⁹ Brazil is a federal country, with 26 states, a federal district, and about 5,500 municipalities. Following a presidential system, each of the three levels of the federation (municipal, state, and federal) has an elected legislature (two chambers, in the case of the federal level), an elected executive and accompanying bureaucracy. Municipalities and states have the power to levy certain taxes as well as receive constitutionally determined transfers from higher levels.

¹⁰ Fewer than half of these, however, have a readily discernible public presence.

dominion¹¹. Historically, at both levels, its management has been both centralized and fragmented. Dozens of agencies concerned with water use (sanitation, energy, irrigation, industrial use, etc.) implemented their own policies with little coordination. Municipalities, largely responsible for land use, were rarely consulted by any of these state or federal agencies. Expanding needs for sanitation and water supply competed with demands for energy and industrial use. Private users in a relatively unregulated environment had little incentive to avoid pollution or rationalize use. Environmental agencies and NGOs had few instruments to ensure that as multiple uses competed for water, biodiversity was not threatened. In this context of increasing conflict among agencies, interests, and levels of government, new water legislation was introduced and began to pass initially in some states (starting in 1991), later at the national level (in 1997), and since then in most remaining states.

The reforms follow several different models, but the dominant one – in place in key states such as São Paulo, Minas Gerais and Rio Grande do Sul, as well as in the national law – seeks to promote integrated water management by decentralizing management planning to the river basin or sub-basin level and creating new institutions capable of bringing together all groups concerned with water use and protection. A new deliberative institution, the River Basin Committee, includes members from state, federal, and municipal government, private and public water users, and civil society groups. The committees are responsible for approving investment plans, monitoring government actions, mediating conflicts among water users, establishing water resources plans and water quality goals, among other attributions. Alongside committees, Water Agencies were to act as executive bodies, to provide informational and technical support for the committee’s decision-making, and where relevant implement its decisions. The whole scheme was supposed to be financed by levying bulk water charges on public or private entities that either extract water directly from its source or pollute rivers, lakes or streams. The basin committees would set the water charges for each type of user in the basin, and would decide how to use the funds generated.

Although the model granted the river basin committees substantial powers, this was not, strictly speaking, a case of devolution. The committees’ roles were not based on the transfer of pre-existing powers, but rather the creation of a hitherto nonexistent capacity to coordinate among multiple water uses (see Abers and Keck, 2006). The reform’s motivation was thus primarily instrumental; its designers hoped that the basin committees could become mechanisms for promoting policy efficacy in a field plagued by disorganization. But many of them also had democratizing aims. By including civil society organizations and public agencies such as health and environmental protection departments in the design of basin committees, these actors sought to draw attention to water’s social and environmental roles as well as its “productive” uses.

Implementing the model turned out to be much harder than anyone had expected. First, there were significant legal (as well as political) obstacles to creating agencies that would collect and use public funds at a territorial level – the river basin -- that was not a constitutionally defined administrative unit. Second, in most states, the implementation of water charging required additional legislation that has been difficult to pass.

¹¹ Bodies of water that run along or cross state or international borders belong to the Union.

Third, the water laws turned out to be extremely ambiguous with respect to what components of the system could do what. For example, states and federal authorities retained the exclusive right to issue permits for water rights, even though committees could determine “priorities” for assigning rights. Still, there is a fine line between setting “priorities” and prescribing which claimants should be granted permits, and the resulting ambiguities have produced debates about the respective jurisdictions of public agencies and basin committees. Conflicts over competence also occur within the government, for example, between environmental and water agencies, or between departments responsible for policy formulation and those charged with implementation. In such a context, there is considerable uncertainty on when – and on what - committee decisions are binding.

Fourth, committees lack the legal powers to force governments to implement their decisions. Although in most states they are responsible for defining river basin plans, there are either no sanctions at all for governments that do not comply with plans or very weak ones that have rarely been imposed.¹² In some states where the law requires that official projects related to water resources be approved by the committees, state governments have simply ignored the provision, and have deliberately marginalized or bypassed basin committees altogether on water management decisions.

Fifth, the absence of accountability is not the only cause of enforcement failures; often policies go unimplemented simply because public agencies lack the capacity to carry them out. To comply with water management plans, governments have to be able to monitor withdrawals and uses, maintain consistent records, levy fines on those committing violations, and ensure that the fines are paid. But in most states and even in major federal water basins, public agencies do not even have comprehensive information on how water is being used. They cannot assign water rights according to committee defined priorities because there is no system in place to issue permits. Sometimes state water agencies cannot implement provisions of river basin plans because they require coordination with other agencies or municipal governments over which they have little or no influence. Many have no way of gathering the information that would allow them to monitor whether plans are being followed or not.

The picture of powerlessness that emerges when we look at basin committees appears to confirm the pessimistic literature on participatory governance that finds that state institutions resist devolving power (Tatagiba, 2002:80; Labra e Figueiredo, 2002; Paz, 2003). However, the tendency to portray this resistance in terms of a “lack of political will” misdiagnoses the causes of impotence here and, as we will show below, thereby underestimates what participatory governance mechanisms can do about it. The problem is not just that the state has failed to devolve real power to the committees, although often state actors do indeed resist doing so. It is also that often the state does not in practice possess the powers it is supposed to devolve. The state bureaucracy is both politically and technically constrained from promoting integrated river basin management. Suggestions in the critical literature on participation that policy or stakeholder forums are merely spaces for legitimating decisions that government would be making anyway simply do not apply. Outside the hydroelectric sphere, Brazilian governments have rarely implemented any kind of water management at all. This relative policy vacuum must affect our expectations about which actors in a participatory governance arrangement might be

¹² Neves (2004) demonstrates that the vast majority of river basin plans are never implemented.

able to control agenda setting, decision-making and implementation. In the next sections, we discuss the cases of four committees whose trajectories illustrate the variety of ways that committees have served as focal points not only for negotiation and deliberation among state and nonstate actors, but also for the development of capacity to implement decisions.

4. The Alto Tietê Basin: Deactivation in face of Non-Devolution.

São Paulo developed the technical capacity to manage water resources well before the rest of Brazil. Its growth as an industrial center stimulated the demand for energy, and the engineering school of the University of São Paulo supplied world-class training to generations of specialists in hydroelectric power, hydrology, and other related specialties. Although sewage treatment in metropolitan São Paulo lagged far behind other urban areas of its size, measurement and control of industrial pollution began early, and the state technical agencies dealing both with pollution control (CETESB) and management of the water supply (DAEE) were staffed with highly trained professionals (Keck 2000). This situation is striking when compared to other Brazilian states. Recent data from the Brazilian Ministry of the Environment shows that while São Paulo state has about 500 technical level employees dedicated exclusively to water management, the second strongest state has only a few dozen.¹³ The strength of the technical agencies in São Paulo was both a blessing and a curse for the development of the Alto Tietê committee. In principle, they possessed enormous capacity for action. However, that capacity could be stalled with remarkable ease when the state government chose to either drag its feet or oppose the policies and processes mandated by water legislation. In the wealthiest Brazilian state, with the most powerful governing apparatus, the problem of “mobilizing the state” would be most acute.

Water specialists from São Paulo state played a central role in the design of the new system, and got the country's first water law of this new kind passed in 1991. Nonetheless, it took seven years to get the legislation passed that would allow water charging to begin,¹⁴ and another 15 months before the governor issued a decree making it operational. State governors, Mario Covas and Geraldo Alkmin invested little political capital to overcome private sector resistance to the idea of paying for water, and during much of this period, the heads of technical state agencies resisted relinquishing some of their agencies' autonomy to a broader coordinating process. Technical personnel at both DAEE and CETESB were divided among supporters of a decentralized water management system and those who viewed basin committees as encroachment by untrained outsiders on their professional turf. All along, DAEE officials have insisted that their agency was the most suitable one for allocating the proceeds of water charges. Besides agency foot dragging, there was popular opposition to bulk water pricing on the grounds that it constituted a step toward the privatization of water altogether, rather than a way of rationalizing its use. In the absence of water charging, a state fund, FEHIDRO, financed out of royalties paid by hydroelectric firms, has provided funding for projects. Each committee receives an annual quota, usually enough to implement small-scale sanitation and environmental

¹³ Manuela Moreira, Secretariat of Water Resources, Ministry of the Environment, Brazil, Personal Communication.

¹⁴ Lei no. 12.183, passed on December 29, 2005.

protection projects. São Paulo is thus the only state in Brazil where committees have direct access to state funds and this has certainly helped mobilize them throughout the state.

To date, the Alto Tietê Basin Committee, responsible for most of the São Paulo metropolitan area, has played a decidedly marginal role in water management. With such colossal – and expensive – needs, FEHIDRO funds represent a drop in the bucket. When state assemblyman Ricardo Tripoli took over as the state's Secretary for the Environment in 1999, he insisted on the secretariat's prerogative to determine what issues ought to be subject to deliberation. For example, in 2001, the state government announced a technically controversial plan to use flotation to extract pollutants from the Pinheiros River, from which partially cleaned water would flow into the Billings Dam, restoring its hydroelectric potential. Although clearly this plan did require the committee's appreciation, the secretary refused to submit it for discussion (Formiga Johnsson and Kemper, 2005:35). When state officials chose not to discuss programs that were clearly within the committee's oversight purview, the committee was powerless to make them do it, especially when state representatives on the committee allied with private sector and some municipal representatives to prevent a confrontation. As it became clear that the agency responsible for water management was systematically not bringing issues to the committee, the latter simply became inactive. In 2004, for example, the committee did not even issue an opinion on one of the most important water issues of the moment: the renewal of a contract with a nearby basin for the transfer of water supplying almost half of Greater São Paulo (Ibid). Activists began to focus energy elsewhere, especially in the five sub-committees that were created in 1997 and 1998 in response to new legislation giving them the power to devise catchment protection plans.

Collaboration among dedicated activists inside and outside the state has long been central to moving the water agenda forward in São Paulo (Keck 2000). Even when state government recalcitrance stalemated formal procedures, non-governmental actors and committed municipal and state officials managed to keep the main issues on the political agenda. A good example is the *Instituto Socioambiental (Socio-environmental Institute, ISA)*, which built a coalition with smaller organizations to launch a campaign called *Água Viva para São Paulo* (Living Water for São Paulo) in 2002. ISA applied the sophisticated GIS capacity it had developed to map important areas of Atlantic Forest to diagnostic studies of the catchment areas around the Guarapiranga and Billings dams, in the southern part of the metropolitan region, providing information that subsequently helped to resolve conflicts. The head of ISA's water catchment project, Marussia Whatley, became a civil society representative on the Alto Tietê committee, joining other long-time water activists from the region; ISA also frequently provided the committee with technical and logistical support. Similarly, when the *cobrança* law languished in the state legislative assembly, NGO activists regularly lobbied state assembly members and prodded state officials to make a more aggressive effort to pass the bill.

Mobilization during the long period of state boycott seemed to pay off after the administration of Governor José Serra took office at the beginning of 2007. Within a matter of days, the new Secretary of Environment, Francisco Graziano, announced that environmental issues were a priority for the government, especially those related to the problems of the metropolitan catchments. Formal authority over water management changed again; instead of water being paired with energy policy, there was now a Secretariat for Environment and Water Resources. The water department was headed by Rosa Maria Mancini, whose work in the

Litoral Norte committee is discussed in the next section, and included a number of other longtime water activists. However, the formal transfer of authority has not eased the inter-institutional competition among state agencies for control in this area, nor will it until more meaningful incentives for collaboration are in place.

Ironically, the story of the Alto Tietê committee shows that high levels of state capacity can impede collaborative efforts as well as enable them. In the absence of a robust and consensual vision of the goals and process of water resource management within the state, as well as between different state factions and powerful private actors, it is hard to imagine how inter-sectoral collaboration could succeed. The Alto Tietê committee is affected by this conflictive scenario to a much greater extent than are other water committees in the state, by dint of its location in the state capital and the scope of the problems to be resolved. Although some of its regional and technical subcommittees exhibited considerable resilience even when the main committee was virtually deactivated, they could not spearhead a wider public process of rethinking water uses and management. To the extent that NGOs and civil society organizations have attempted to take up the slack, they have had to do so primarily outside the official ambit of the committee, unlike their counterparts in Itajaí and Velhas.

5. The Litoral Norte Basin: Promoting Integrated Planning

A bit further away from the central radar screens, however, where local offices of state water agencies are often understaffed and underserved by the central bureaucracy, water committees can sometimes be a resource for accomplishing tasks that could not otherwise be accomplished. The Litoral Norte (northern coastal area) Committee is São Paulo's smallest, covering only four municipalities. It has also been one of the most entrepreneurial in finding ways to compensate for inaction at the state level. Instead of a single river basin, the designated water district contains dozens of small rivers that descend from the coastal mountain range to the sea. The three small cities at the base of the coastal mountain range and the island of Ilhabela are heavily dependent on a combination of tourism and public employment, and have historically competed with each other rather than collaborated. Some 80% of the region falls within the protected areas of Atlantic Forest. Associational networks in the region are thin, and young people, finding few prospects of decent jobs close to home, tend to leave. State agencies have very few technical employees on the ground, and have a hard time convincing their main offices in São Paulo to grant them more.

In the face of this decidedly discouraging situation, the activist leadership of the Litoral Norte committee set out to build a regional identity and investigate other forms of regional coordination. In this committee, a handful of state employees, with support from the rest, have acted on strong personal commitments to both environmental protection and democratization in the region. The committee's executive secretary has always been from CETESB, the state environmental agency, and the committee's office is in CETESB headquarters, facilitating a process of continuous collaboration. As in any estuary area, interaction between rivers and sea was clearly a priority area, and the water committee from the beginning sought to coordinate its activities with the as yet weak efforts underway to introduce coastal zoning. It took the initiative to organize joint meetings between the water and coastal planning groups and other groups in the

region charged with producing plans in relevant areas – solid waste planning, for example – with the idea that a more coordinated approach would likely get further. At the same time, the committee worked with the four municipal governments of the region to establish a stable source of funding aside from the fluctuating contributions from the state's FEHIDRO fund, and succeeded in having the municipal councils of each municipality pass legislation authorizing an annual contribution of a percentage from the municipal tax rolls. The committee has also stimulated a broad range of environmental education and civic activities, involving local schools, businesses, sporting events, and so forth

Far more difficult, however, is the problem of enforcement of existing legislation and policy. Land use is a particularly complicated: the severely understaffed *Ministério Público* (the agency responsible for promoting the legal protection of the public interest, similar to the Public Prosecutor's office) in the region does not have the facilities to monitor hundreds illegal construction projects, ranging from a house being built in a protected area to whole subdivisions being built on land whose registry is hopelessly out of date. By 2004, the committee and the CETESB group had established a close working relationship with the local *Ministério Público*. Their goal was to pressure other federal agencies (particularly SABESP, the sanitation agency, and DAEE) to complete planned sanitation projects and, especially, to fulfill the monitoring and licensing activities that they were required by law to undertake. In March 2004, the committee organized a high-level workshop that included the main environmental agencies, the environmental police force, the *Ministério Público* and the Judiciary to discuss how, given the limited resources they all had, they could begin to deal more effectively with the region's problems. The meeting resulted in the creation of an inter-institutional committee slated to meet monthly, as well as a variety of concrete agreements.

None of these kinds of activities fall within the purview of water committees. In effect, the committee leadership took on the task of trying to build the state capacity that was necessary for a deliberations to be meaningful. By negotiating contributions from municipalities to fund these planning efforts, it went so far as to help local governments generate financial resources for resolving problems that had historically plagued them.

One striking aspect of this case is that state employees, not civil society groups, are the predominant activists. These employees do not act as Weberian rule-followers. Basically ignored by the agencies they work for, they had the autonomy to use their time and limited resources to try to bring governments and other institutions together around resolving concrete problems. This central role of state employees did not exist in the next two cases we will examine, but we will see that much of the work civic associations carry out in the Itajaí and Velhas cases involve the similar efforts at mobilizing the state.

6.. The Itajaí Basin: Filling Policy Vacuums.

The Itajaí River flows from the interior of Santa Catarina state in southern Brazil to the sea, about a hundred kilometers north of the state capital, Florianópolis. Although the National Department of Sanitation Works (DNOS- *Departamento Nacional de Obras de Saneamento*) began to build flood containment dams in the 1970s, the basin experienced devastating floods in

the 1980s. To make matters worse, the federal government dismantled DNOS in 1990. The following year, another flood overwhelmed towns along the river, especially the largest, Blumenau. In 1996, Blumenau's Commercial and Industrial Association (ACIB) held a meeting of civic and university groups from the region to discuss the problem, and participants realized that the state's recent water law created an opportunity for doing the kind of basin-wide organizing long deemed necessary. The water specialists at the local university (FURB) immediately took a leadership role and organized an informal Basin Committee, which was made official by government decree a year later. Santa Catarina's first committee was thus an initiative of local civil society rather than of the state itself, but the groups that formed the committee did so in part because the new state law granted formal powers to such committees (Mais, 2001).

To date, however, the main actions of the Itajai committee have little to do with its official competence. Its first activity was a 1997 workshop to develop an emergency flood prevention plan. Two weeks later the federal agency responsible for dam maintenance sent an envoy to the basin, and subsequently signed an agreement with the state government to resume a flood containment infrastructure program that had languished since DNOS's extinction seven years before. In effect, by bringing together a wide array of groups from local organizations, universities, business groups, and municipalities in the basin, the workshop functioned as a show of force that pressured an inactive government to act (Frank and Bohn, 2003; Mais, 2001).

In the years that followed, the committee organized a series of activities intended to bring together local actors and define common objectives. This involved reviewing past approaches to flood control and designing alternatives. They advocated reducing dependence on large infrastructure projects and promoting reforestation and environmental education, on the grounds that loss of forest cover was the fundamental cause of chronic flooding. Starting in 2001, the committee began to implement these ideas through projects that relied only on the resources and people of the organizations involved in the committee itself, initially with no outside funding. It has spearheaded a yearly educational campaign called Water Week, which by 2003 involved more than 200,000 people, including members of several hundred local working groups and school children. In 2004, however, the executive secretariat of the committee, based at the university, applied for and won a \$1.5 million grant (subsequently renewed) from PETROBRÁS, the national petroleum company, to train municipal government officials in environmental education and reforestation techniques, distribution of seedlings, and technical support.

In effect, this committee –led mainly by university professors and mayors -- has a completely different relation with governments than much of participatory theory would expect: Rather than power being devolved from government to committee, the committee has devoted itself to helping build the capacity of government. Early on, much of the work of the committee was deliberative: defining a set of priorities for the basin. But without real power, deliberation was not enough. Once committee members decided to focus on deforestation, they took action. Building on the credibility gained when federal and state agencies responded to their early demands, the committee has largely worked with its own resources. It achieved some of its objectives not by wielding formal powers, but by putting pressure on the state. Even more important was the committee's function as a focal point for local groups, for mobilizing around

water issues, and for attracting resources. It now strives to develop capacity in local governments to implement the kinds of policy decisions the committee thinks are necessary.

7. The Velhas Basin: Civil Society Mobilizing the State, Colonizing the Committee

The Velhas river basin presents a completely different story of how civil society engaged with the state. Located in Minas Gerais State, the Velhas river is more than 700 kilometers long. The upper portion of the river passes through the nation's third largest metropolitan area, Belo Horizonte. Downstream from the city, it runs through a large, poor area of extensive ranching and subsistence farming before flowing into the São Francisco, one of Brazil's most important rivers. In general, water management in Minas Gerais, as in Santa Catarina, is precarious. The state water management agency is under-staffed and under-funded. The state sanitation company is much larger, but even so, sewage treatment plants were not installed in the Belo Horizonte metropolitan area until 2002. The resulting pollution left the Velhas river "dead" for hundreds of kilometers downstream.

Two sewage treatment plants were financed by a loan from the World Bank's sanitation program, contracted in 1993.¹⁵ A condition of the loan was that the state government formulate a water resources plan for the Velhas basin, and establish a water agency to implement it. Concurrently, the state legislature passed a water law along the lines of the São Paulo model, according to which such an agency could only be created if approved by a river basin committee. In 1997, under pressure from the Bank to complete the project (one of the plants is still under construction; the other began to treat sewage in 2001), the state government decided to set up a basin committee whose main function was to approve a water agency, so that the remaining funds could be disbursed. A series of rushed meetings took place over a two week period and members were chosen through an exceedingly informal process. In accordance with state legislation, the committee's 28 seats were allocated equally to four member categories: municipal governments, state agencies, civil society organizations, and water users. The state's first river basin committee was thus enacted by government decree, a predefined agenda, and practically no participation by civil society, water users, or municipal governments. It proceeded to do nothing at all for several years. The committee had so little legitimacy that it could not even mobilize a quorum to pass its own statutes, let alone approve a water agency.

Civil society members chosen for the first term of the Velhas Committee came largely from environmental NGOs and community organizations. But in the same year that the committee was formed, a new organization was established that would become a major actor in the basin. University professors were once again responsible, this time at the Federal University of Minas Gerais's medical school. The organization grew out of a program that sent interns to work in health posts throughout the state. The professors in charge of the program began to encourage interns to work with community organizations to connect water and health problems, through activities such as river clean-ups and popular education efforts. They decided to focus on the Velhas River Basin and created the Manuelzão Project. In the first few years of the Project, the core of its efforts were to organize local communities into what were termed "Manuelzão

¹⁵ BRAZIL – Minas Gerais Water Quality and Pollution Control Project, Loan 3554-BR, dated February 1, 1993.

Committees”. These were loosely organized groups at the municipal or community level that brought together various actors: school teachers, business leaders, charitable organizations, local politicians, etc. Each committee had a different objective, depending on the problems that most needed to be addressed in the locale and they received support from Manuelzão to do so. Today there are more than 80 Manuelzão Committees in the Velhas basin, a virtual network of mini-stakeholder councils. Although they often including local state actors, and are sometimes led by local politicians, the effort was initiated not by government but by civil society.

Soon, the Manuelzão Project expanded beyond micro-local level activities. By 2001, the Project had 14 sub-projects, ranging from research to eco-tourism to environmental education in schools, with funding from the federal government, the state sanitation company and other sources. The Project has promoted or participated in dozens of partnerships with larger institutions in the basin, especially state agencies responsible for environmental protection and sanitation.

Initially, the Manuelzão leadership looked upon the official but inactive Velhas River Basin Committee with scorn. “The real committees are the Manuelzão Committees”, we heard frequently in interviews in 2001 and 2002. But in 2003, Project leaders mobilized to get community leaders and municipal governments involved in Manuelzão Committees onto to the Basin Committee. Part of this mobilization was inspired by the fact that despite its weaknesses, the committee, under the direction of a water specialist in the Belo Horizonte municipal government, was starting to make some small but important decisions. Unlike other states in Brazil, Minas Gerais law gives basin committees the power to approve large scale water permits and the Velhas committee was the first to exercise this power. Despite the fact that it was founded only on paper, and that behind its creation there was little state support for “devolving” powers, as the committee demonstrated that it could actually have some influence on water management, civil society groups began to take greater interest.

With Manuelzão now the dominant force in the Basin Committee, its director was elected as committee president in 2003. Since then, the committee has become one more participant in the Manuelzão Project’s efforts to promote environmentally sensitive water management in the basin. In 2004 and 2005, the project used its connections with a wide array of public and private institutions to promote a sort of “pact”, called Meta 2010. More than just a plan, Meta 2010 involves a set of commitments by state agencies, the state legislature, and private users to actions that will, if carried out, make it possible to navigate, fish, and swim in navigate the Velhas River by 2010. Over the course of 2004, Manuelzão set about promoting a series of partnerships and eliciting promises from a variety of institutions. Since then it has been dedicated to helping those institutions find the resources to implement their promises, while keeping up the pressure on them to ensure that they do so. The Velhas Committee played an important role in this process, as the formal arena in which the plan was discussed by stakeholders and approved. In effect, the committee had been “colonized” – or perhaps co-opted? -- by a civil society initiative.

Once again, we see in the Velhas story an unexpected relationship between state and society. Initially created by an uncommitted government to fulfill obligations to an international agency, the Velhas case seemed to be a perfect candidate for cooptation. Instead it was taken over by a civic organization. Its agenda, far from being defined by the state, was now defined by that organization. Furthermore, as is the case of the Itajai and Litoral Norte cases, participation

was less centered around controlling state actions, deliberation or monitoring the government. Instead, it focused on doing the coordinating work that the government itself was unable to do. The Manuelzão project and eventually the committee served, essentially, as a mobilizer and negotiator that helped state agencies define an agenda and to build the partnerships needed to implement it.

8. Conclusions: Building a More Public State?

The cases just presented suggest that viewing participatory governance from the standpoint of authenticity of representation and deliberative capacity, or ability to exercise prerogatives devolved upon them by central authorities, may be insufficient. In three out of the four cases discussed above, instead of participants deliberating over programs and authorizing their executive agencies to exercise devolved power, water committees were engaged in creating the conditions necessary to do those things; that is, they have been busy creating the capacity, in the state as well as in civil society, to recognize and promote the public interest. In a sense, what was devolved to these committees was not the power to make and implement policy, but a license to accumulate the power to do so. The exception, in the case of the Alto Tietê, is especially telling: where that power was fully present in the state, the committee quickly reached an impasse. In the absence of the water charges that would have given the committee an independent funding stream with which to undertake coordinated activities, existing state agencies saw it as detracting from their abilities to accomplish tasks they set for themselves. Civil society organizations soon recognized the futility of trying to activate the committee, and concentrated on making FEHIDRO funds more available. The subcommittees, in which coordination among local actors at smaller scales of operation was more effective, did continue to function.

In the Velhas, Itajaí, and Litoral Norte committees, we see a gradual process of accumulating capacity. The committees become formal spaces for legitimation of a variety of partnerships among different kinds of actors to accomplish goals, seek out resources (human and material), and reach out to other institutions. The activists who initiated such partnerships, interestingly enough, came from different locations: in Itajaí and Velhas, university faculty played catalytic roles, working with local businesses, community groups, and local governments; in Litoral Norte, committed state employees from environmental agencies took the lead. Whatever the categorical location of the activists, however, they were not attempting to accumulate authority and build power for their own category, but rather for a *public* interest that was contained in the idea of the committee. The formality of the committee's existence granted them a platform from which to construct this potential for publicness that action in the name of their own agencies or organizations would not have done. In the process, they have had to work to mobilize the capacity of the state to resolve problems.

Rao and Walton (2004) have perceptively noted that participatory governance requires a government capable of implementing decisions, but that it is precisely where governments are weak that participation is most necessary. The result would seem to be a vicious circle quite difficult to escape. But if we see participatory councils as spaces that interact with the state, rather than simply make decisions and monitor implementation from outside, it may be easier to

imagine how participation can actually promote state capacity, which in turn could make it more likely that the state will be able to implement the decisions of participatory governance mechanisms. Interestingly, this appears to occur more when the state is particularly *demobilized* around the issue at hand. Where strong political interests guide government decision-making it may be less likely that government will allow participatory forums to define agendas. This state of demobilization is probably more characteristic of water management than some other policy areas, because it involves so many interests often in such diffuse ways that no interest group is powerful enough to dominate.

Put simply, in each of these three cases, committees seem to be engaged in co-opting the state rather than the other way around. But unlike more traditional discussions of external influence on state agencies, this is not a case of “capture” of state agencies by powerful forces in civil society, but rather of activation. Members of this set of committees do not wait around for the state to “respect” their decisions, nor restrict their efforts to protests when it fails to do so. They do not necessarily stick to the agenda defined in state laws as their formal attributions. Their members know that not all cases of state inaction reflect an absence of political will, that sometimes the problem really is one of organizational, technical and financial incapacity.

Does the fact that committees sometimes mobilize resources from civic and private organizations constitute a form of privatization, making participatory governance merely a mechanism for transferring responsibilities from an inefficient state to more effective private organizations? It would seem not: on the contrary – civic and private resources have often been used to mobilize the state. The committees all worked directly with state institutions to help them gain technical capacities (i.e. Itajai and municipalities), coordinate decision-making among a wide array of fragmented institutions (Velhas and Litoral Norte) and even raise funds (Litoral Norte). Instead of public-private partnerships in which state agencies seek private partners to make their programs effective, here we have a coalition of private and public actors attempting to build partnerships with the state, attempting to bind it to assume the responsibilities that properly belong to it.

Are these simply exceptions to the rule? In some ways yes, insofar as for this account we have highlighted committees that were, or in the case of Alto Tietê, were expected to be, unusually active. However, they are not atypical, in that there is no single type that predominates among these organizations. The research to date of the Watermark Project, which has collected information on more than twenty basin committees in Brazil over the last six years, suggests that there is a tremendous variety in how state-society relations operate. In Ceará, the User Associations of the Jaguaribe Basin of Ceará (where a different model of stakeholder participation was implemented), became so powerful that the government began to close them down (Lemos and Oliveira, 2004). On the other hand, the federal government chose the Paraíba do Sul Committee (CEIVAP) as a pilot case to implement water charging, providing an example of what can happen when the government is committed to empowering a committee (Formiga Johnsson, Kumler and Lemos, 2005). The Gravataí committee has received little support from the state, but state technical personnel (working independently) in alliance with environmental NGOs have been effective at solving problems (Gutiérrez 2003). In the Santa Maria committee, the lines between state, civil society and private sector are particularly blurred, because committee members from each of these categories actually all come from the same interest group (rice producers) (SCHULT, 2003).

In the end, our study suggests that the literature on participatory governance needs to pay attention to a set of factors that have not traditionally been a part of the discussion. Although democracy has to do with decentralizing power, it also has to do with creating institutions that promote the public interest. Participation is supposed to guarantee that a broad range of social and environmental concerns guide state actions. But the structure of the Brazilian state is not favorable to such guidance. It is organized in a way that benefits a small set of elites and creates multiple opportunities for the appropriation of public resources for private ends. This privatization results not just from a lack of voice on the part of most social groups, but also from institutional fragility. Sectoral fragmentation, disorganized or non-existent information and lack of enforcement all make it easier for private interests to usurp the public. In this context, the problem is not just devolving power from the state but also building it within the state at the same time as decision-making is made more transparent, accountable and inclusive. This is particularly important with regard to Latin America, where the legacy of authoritarian regimes left an assumption that the problem for democratization is always to balance state preponderance, without recognizing the problems caused by its pervasive absence. In sum, if our objective is to theorize democratization, we need to reconnect process and results, recognizing that democratic decision-making must produce results, and not merely more talk, or as Dewey (1927) would have it, recognizing the public by its consequences.

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