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**Negotiating Stuttgart 21, or:
how (not so easily) to reconstruct democracy through deliberative practices**

Enrico Gualini

Prof. Dr. Enrico Gualini
Chair of Planning Theory
ISR – Department of Urban and Regional Planning
TU Berlin – Berlin University of Technology
Hardenbergstr. 40a
D - 10623 Berlin
ph.: +49 30 314 28125
fax: +49 30 314 28153
email: e.gualini@isr.tu-berlin.de

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Abstract

Among several recent cases of highly contentious urban development initiatives – more generally in Europe and specifically in Germany– planning for the redevelopment of the Stuttgart railway station area – the project known as ‘Stuttgart 21’ – has drawn large attention for various reasons. For one, the depth and diffusion of antagonism developed around the project has gained a level uncommon to even highly contested public policy processes in Germany. This in turn has prompted attention on the ‘new’ sociological features of urban protest and citizens mobilisation around contentious urban development initiatives. Above all, however, events around Stuttgart 21 have originated a large public debate on issues concerning the political culture of local policy-making and the apparent legitimacy deficit of public decision-making procedures incapable of incorporating a truly agonistic dimension of democracy even in long-term processes developing under conditions of highly critical public scrutiny. Accordingly, the features taken by citizens mobilisation against this particular project has turned Stuttgart 21 into a catalyst for a broader public discourse on the ‘renewal’ of local democracy. Indeed, the ‘way out’ of the conflict – the conduct of highly publicised and publicly broadcasted sessions of mediated public deliberation among representatives of the parties involved – has been highly debated by supporters and critics alike as an alleged ‘watershed’ experiment in renewing local democracy.

Based on principles of interpretive policy analysis, and extending this perspective to theories of conflict resolution as have been influential in critical planning theory over the last decades, the paper analyses the features of this approach to recovering a democratic legitimacy through deliberative practices and highlights its contradictions with regard to the nature of social mobilisation. On the basis of discursive analysis of the deliberative process, the approach is critically questioned in terms of its interpretive as well as representative adequacy in dealing with interests and positions involved in the conflict and, consequently, in terms of its capacity of generating viable integrative solutions, of granting effective public outcomes, and of ultimately providing a new source of public legitimacy.

The underlying hypothesis is that the nature of the deliberative arena and the discursive practices it favors may introduce a significant shift, but anything but a revision, in the forms of selectivity by which public policy discourses are generated and framed, and that this restricts the prospects of enhancing a truly agonistic dimension of democratic reflexivity in the policy-making process. Beyond rhetorics of its ‘renewal’, the very conception of democracy that is implied by such ‘remedial’ interpretations of practices of conflict resolution through public deliberation in urban policy and planning processes needs to be critically questioned.

Introduction

Stuttgart 21 is a project which has become the centre of a complex and on-going social and political controversy, bearing different conflict potentials and developing along several significant social and political dimensions. As such, it has already acquired a significant position in public as well as scholarly attention and is at the centre of various strands of social research (the peculiar cross-sectional and inter-generational features of social mobilisation being one of them). The intensity and diffusion of antagonism developed around the project are uncommon to public policy processes in Germany, and has prompted attention e.g. on the 'new' sociological features of urban protest and citizens mobilisation around contentious urban development initiatives. Above all, however, Stuttgart 21 has triggered a large public debate on issues concerning local policy and the apparent legitimacy deficit of public decision-making procedures incapable of incorporating a truly agonistic dimension of politics. Accordingly, the features taken by citizens' mobilisation against this project have turned Stuttgart 21 into a catalyst for a broader public debate on the 'renewal' of local democracy.

This paper does not aim at an overall assessment of this case. It is rather a first critical exploration of one specific aspect which remarkably stands out in public perception (if with different understandings): that S21 marks a major stage in unveiling a crisis in democratic legitimation of decision-making practices around public investments, and that mediated forms of negotiation may become a model for the democratization of such decision-making practices.

While there has been a clear perception of exceptionality and emergency around the *Schlichtung* in the German public – as far as leading to presenting it as something altogether new and event as a watershed event for German public decision-making practices – this experiment has been in fact generally associated by several participants, observers and opinion-makers alike with an almost epiphanic call for democratization. This paper is an attempt at defining some criteria for a critical discussion of this aspiration.

Public policy mediation as the constitution of a discursive situation

Policy analysis has a significant tradition of understanding agonism and conflict as constructive and constitutive elements of social relations, as sources of its strength and ability to innovate (e.g. Lindblom 1965; Hirschman 1994), but also of posing the question of the conditions under which agonism and conflict can be turned into a positive, constructive transformative dynamics, or rather threaten to exert disrupting effects in the social fabric.

This line of reasoning has exerted a significant influence on planning theory. In particular, mediated forms of negotiation and dispute resolution – as they have developed out of the practical engagement with alternative approaches to solving conflicts since the late 1970s – have played a central role in reasoning about deliberative practices capable of dealing constructively with the conflictual potential of public policy and planning. Mediated negotiation is understood as an interactive process in which the achievement of agreement and joint decision-making is premised upon interest- (rather than position-) based argumentation and on the readiness of participants to enter processes of a cognitive displacement and realignment within an iteratively and communicatively connoted situation. A key dimension of the mediation process is identified in the ability to actively of the mediator create and sustain conditions for a structured form of argumentation. Most of the literature has accordingly tended to gravitate on the key role of mediators in defining such conditions, in dealing as 'institutional entrepreneurs' in fostering the constitution of an interactive and communicative situation, in shaping the very conditions for an alternative to conflict to take place.

There is a significant convergence in the literature in underlining the virtues and even the ethical sensitivity mediators must put at work in the situation in which they operate (e.g. Fisher and Ury 1981; Raiffa 1982; Sullivan 1984; Susskind and Cruickshank 1987; Fisher and Brown 1988; Kelman 1996; Raiffa et al. 2007). In the first place, mediators play a key role in 'assessing' a conflict situation and the prospects of success of mediated negotiation. This implies facing situated, specific, applied problems about which planners-mediators need to learn in order to do their work. In doing so, they need to pursue a process of 'full, open, truthful exchange' (Raiffa et al. 2007) and to become the gatekeepers of conditions of 'fairness, efficiency, stability and wisdom' (Susskind and Cruickshank 1987), actively dealing with deceit and manipulation in the treatment of 'information' and with the strategic misrepresentation of situations, with the way knowledge around an issue is argumentatively constructed and inter-subjectively shared. They face challenges of trust, respect, and representation. Their repertoire of skills and abilities includes therefore the capacity to feel and promote 'empathy' and to direct participants towards developing an attitude of sharing one another's perspective and viewpoint

(Fisher and Ury 1981; Kelman 1996). In sum, mediators are required to perform context and background sensitivity, to exert practical judgments, and to enhance cognitive, and relational emotional attitudes to learning.

In this view, as summarized by e.g. Forester and Laws (2009), mediators working with conflicting parties conduct 'practical research' as they "help the parties explore the issues in dispute, they foster a creative process of exploring and proposing new options for joint action, they empower parties to create their own agreements, and more". They engage in a situated, practical analyses with significant ethical dimensions to it, as the way the knowledge brought into a mediated process "might influence emerging relationships among these actors and contribute to, or detract from, their subsequent flourishing and development". In sum: "mediators' work helps disputing parties to do better" (Forester and Laws (2009: 179-180). The ultimate mediators' goal is thus seen as that of "extending the learning they initiate to the parties involved" (180), while openly and transparently "dealing with differences" inscribed in a situation (Forester and Laws 2009: 180, 182)

There is no doubt that lessons drawn from practical engagements and with experienced-based theorizing on mediated forms of dispute and conflict resolution have significantly influenced the 'argumentative turn' in planning theory, promoting extensive theoretical programmes that aim at translating their original remedial, ex-post attitude towards conflict into a direction for re-defining planning as a deliberative practices capable of anticipating on conflict and of constructively incorporating structured agonism (e.g. Christensen 1985; Healey 1997; Innes and Booher 2010). Nevertheless, the diffusion and influence of theories of mediated negotiation is undeniably to a large extent tied to the definition and diffusion of model-like approaches to defined conflict situations. In planning practices, this not only implies very often a prevalence of a form of remedial instrumentality, but also a certain degree of stereotyping in the understanding and representation of conflict situations. The subjectivist emphasis on the role of mediators in defining the conditions for this process is a case in point. In principle, mediated negotiation is understood as a strategic-relational game in which mutual-partisan adjustment among positions ideally takes the form of a learning process which affects the definition of interests through a situationally redefined understanding of interests and preferences. The key of the matter, however, is usually identified in the skills the mediator subjectively brings into the process in order to foster such a learning process – along, maybe, with providing for some external institutional conditions.

The apparent paradox is a reduction of attention to the situational features of the process which are attached to the behavior of the participants – e.g. the performance of their subjective skills and, above all, those of the mediator – and a widespread neglect of determinants of the situation that 'frame' their behavior. It is, in other words, as if the obsession with the situational skills required from the participants in a mediation process would exert a 'black-boxing' effect with regard to an understanding of the way the mediation process itself is defined as a situation.

In saying this, one can easily agree with a notion of the 'situatedness' as a dynamic, co-evolutive, and potentially transformative feature of social agency (cf. Lave and Wenger 1991). This notion implies that a situation is not only a 'context' for social agency (in the sense e.g. of a conditionally dependent relational arena or setting or of a particular cultural or cognitive frame), but what is constituted (in terms e.g. of relations or knowledge) through interactive practices within that context. The more so, however, what constitutes a social situation must be understood as a co-evolutive interplay of these dimensions. Thus, 'situatedness' is to be intended as a strategic-relational game, as a game in which the strategic intentionality of subjects is confronted with the "tendency for specific structures and structural configurations to reinforce selectively specific forms of action, tactics, or strategies and to discourage others" (Jessop 2001: 1224). In that, the relational environment may exert forms of "structurally inscribed strategic selectivity" that influence the capacity of the actors to (endogenously) reconstitute a situation as it (exogenously) defined. This capacity "depends both on the changing selectivities of given institutions and on their own changing opportunities to engage in strategic action" within a certain relational setting (Jessop 2001: 1226). Strategic actors face "structurally inscribed strategic selectivity that rewards actions that are compatible with the recursive reproduction of the structure(s) in question" (Jessop 2001: 1225).

In this paper, I propose to direct attention to the way a process of mediated negotiation is constituted as a discursive situation, intended as a strategic-relational construct. I understand a deliberative practice – like mediated negotiation process – as an instance of how socially produced meanings are discursively defined in a specific situation. As such, it is a set of interactive and communicative practices by which a dynamics of discourse production unfolds. As discourse is made of practices, and is part and parcel of the development of practices, in which knowledge sources-resources are constructed and put at play in an interactive and communicative way, understanding a discursive situation requires understanding these practices and the conditions under which these

practices take place.

A discursive situation in this respect can be understood as a strategic-relational outcome, in which exogenous and endogenous factors affecting discursive practices interplay in evolutively co-constituting the situation. As an hypothesis, the nature of such interplay defines the nature of the discursive outcomes that may emerge – for instance, in terms of social communication of policy inputs – from the situation and, accordingly, the way these may be seen as a discursively constructed ‘resolution’ to a discursively constructed ‘problem’.

If we take a reflective distance from the subjectivist bias of most literature on mediation process, we can detect several mechanisms at play in defining a discursive situation.

First of all, the exercise of mediation in a conflict situation is predicated upon a selective process of boundary-setting. Practices of boundary-setting or ‘boundary-work’ can be understood as the activity of “defining a practice in contrast with other practices, to protect it from unwanted participants and interference, while trying to ascribe proper ways of behavior for participants and non-participants (demarcation)” and of ‘defi[n]ing] proper ways for interaction between these practices and make[ing] such an interaction possible and conceivable (co-ordination)” (Halffman 2003: 70, in Metzke 2006: 78). Highlighting what is consensually deemed possible and fencing off what cannot be consensually dealt with is a precondition for a process of mediated negotiation to be initiated at all: as such, it confers it its conditions of possibility as well as both its necessary autonomy and legitimacy – however, under conditions of selectivity that need to be understood in strategic-relational ways.

Thus, as they constitute the possibility for a mediated resolution to a dispute or a conflict, practices of boundary-setting may enable as well as constrain certain option, and enable as well as constrain innovations: they literally co-define the ‘range of possibilities’ of a situation. Hence, while there may be potentials for creativity and learning in a mediation process, these are at the same time ‘bounded’ to the selectivity of the discursive situation being constituted.

One obvious possible expression of boundary-setting is agenda-setting, the definition of an agreed-upon agenda that, in itself, constitutes a requisite condition for the mediation process to become possible. Agenda-setting in this respect expresses a form of strategic selectivity as it selectively frames the issue at stake – i.e. what is ‘negotiable’ – not only in substantive, but also in symbolic-cognitive terms. As such, there is also an – often implicit or ‘hidden’ – boundary-setting effect attached to the way the agenda of a mediation process selects the forms and styles of arguments and the kind of knowledge that is appropriate and required for the mediation to be possible.

As has been underlined for instance in the context of science and technology studies (cf. Latour 1985; Callon, Law and Rip 1986; Gieryn 1995), knowledge as a justification of a policy can be constructed as a natural given, as ‘objective’; accordingly, the ‘truths’ a certain knowledge construct conveys in turn exerts a performative role in legitimising the actors and institutions whose values and interests inform that knowledge frame or conform with it (Callon, Law and Rip 1986). Knowledge as a construct acts therefore as a key factor for building alliances that may secure a dominant or even hegemonic position in a controversy.

As these values and interests are contested, as they become the center of a controversy, however, the knowledge mobilised around them becomes a stake. Knowledge as a construct becomes the center of the controversy precisely as it is contested as its key factor (Latour 1985). This obviously ‘challenges’ knowledge constructs and may unleash a significant ‘deconstructive’ potential. For instance, in the context of a knowledge controversy, a confrontation of knowledge constructs that takes the form of arguments about ‘facts’ can become a powerful factor for deconstruction of the opponent’s knowledgebase: it can reveal how ‘facticity’ is a function of symbolic-cognitive frames and of their narrative enactment into storylines and, as such, it bears an important reframing potential. As it becomes the centre of a controversy, however, it also binds the actors to certain argumentative rules. This is particularly apparent when – as in a mediated negotiation context – the possibility of is premised on the acceptance of rules defined through boundary-setting.

As a discursive situation is being constituted, it obviously develops as a process and, as such, is amenable of internal evolution: on the other hand, while no deterministic mechanisms can be assumed to define its trajectory, measures of boundary-setting that define a situation exogenously may exert a reinforcing effect as they are reflected in the adaptive behavior of participants, which enacts and, to a certain extent, endogenously enforces its selectivity.

This may establish a significant tension between the aim change and innovation, on the one hand, and the pressure to adaptation, on the other hand. In the field of sociological institutionalism, the tendency has been for instance explored towards the development of forms of isomorphism, as a result of the strategic-relational constraints to the pursuit of strategic orientations by actors or

organisations.¹ According to this view, isomorphic behavior is an adaptive mechanism for ensuring legitimation which is linked to conditions of uncertainty and ambiguity pervasive in organizational-institutional fields (cf. March and Olsen 1976; Weick 1979; DiMaggio and Powell 1983; Heiner 1983, 1984): this uncertainty is related to aspects of a strategic order (e.g., knowing about the own knowledge as a condition for defining the own strategies and preferences) as well as to aspects of a relational order (e.g., knowing about the other's knowledge as a condition for re-positioning and re-orienting the own preferences and strategies with regard to it).

The extent to which actors or organizations can affect factors of a strategic and relational order in a situation – making them for instance capable of acting as ‘institutional entrepreneurs’ – introduces a significant differential in the direction of adaptation they will address, or even in their potential to break out of adaptive behaviour. However, this differential is not only dependent on exogenous factors, but is also endogenously defined by the behaviors of actors or organizations as they interpret the situation as a framework for developing a strategic-relationally ‘appropriate’ behavior. By this, they co-constitute the situation through their specific adaptive behavior. The interplay of factors for adaptation hence bears a significant reproductive potential, which affects prospects and modes of change. The dynamics described may even lead at times to forms of discursive institutionalisation as a local, situated effect: to forms of ‘local institutionalisation’ of aspects or features of discourse (Gualini 2001, 2004: 59 ff.) which contribute to reinforcing a discursive situation in terms of isomorphic adaptation.

If we observe the modality by which the mediated negotiation process is defined as a discursive situation, we can identify several factors – both exogenous and endogenous – for adaptive behavior possibly leading, for instance, to isomorphic arguments.

Before addressing their analysis in the case study, it may be interesting to conclude, however, on a note on the mediator. The way the mediator is him/herself entangled in the strategic-relational game which defines mediation as a discursive situation is hardly a matter of discussion in the literature. It would however be revealing to put the reflectivity of the mediator advocated for in the literature at the test of such a strategic-relational game. Far from primarily being primarily – let alone exclusively – a reflective ‘enabler’, the mediator is, in the first place, an agent of practices of boundary-setting. This does not necessarily mean that these practices are necessarily the expression of his/her unmediated subjective intentionality. In fact, the way the mediator – in exerting his/her key role in defining conditions for a mediation – acts as an agent of boundary-setting is a condition for the legitimation for the role of the mediator itself in that situation. By significantly defining the agenda and the conduct of the process, the mediator contributes to selectively defining a discursive situation. In doing this, the mediator selectively deals with extant conditions by interpreting the range of possibilities for a mediation process and by acting upon them as to select chances of success. The mediator is, among the participants in a mediation process, the first to be caught in a ‘double-bind’ that influences the way the situation is constituted.

Mediated negotiation as a discursive situation: a critical analysis of *Schlichtung Stuttgart 21*

The *Schlichtung* at the center of this analysis sure lends itself outstandingly to being analysed as a ‘drama’ of mediating public disputes, in the tradition above sketched, and exemplarily represented by e.g. Forester (1999, 2009). However, it also lends itself also to other observations.

In this paper, I propose to direct attention to the way the *Schlichtung* has constituted as a discursive situation. I will suggest that the nature of a discursive situation thus defined results from the co-constitutive interplay between forms of strategic selectivity (exogenous) inscribed in the situation and the influence these exert on the (endogenous) strategic-relational behavior of actors. In order to do so, I will point at the following dimensions of the process analysed:

- first, the way boundaries are set within which a mediated negotiation process is conceivable and becomes possible at all: this involves setting a series of politically and institutionally determined conditions of possibility, which may involve e.g. exerting selectivity on issues, pre-defining

¹ Talking of ‘organizational fields’, DiMaggio and Powell (1983) have for instance identified three basic modes of adaptation:

- ‘coercive’ adaptation (developing as the effect of alterations in the rules governing a specific arena on alterations in the rules governing another specific arena within an organizational field, resulting from the need for adaptation by affected organizations);
- ‘mimetic’ adaptation (developing as the effect of ‘opportunistic’ adaptation to behaviours of a dominant actor or organization within an organizational field);
- ‘normative’ adaptation (developing as a result of adaptation enforced by the consolidation of power or authority of a certain organization or organizational domain within an organizational field).

- agendas, sorting-out participants/representatives, discriminating among argumentative styles...;
- second, a peculiar selective effect of boundary-setting as a condition of possibility of the mediation process: the way a line is drawn between what is deemed to be political and non-political, involving decisions and assumptions about what knowledge and what arguments are legitimised to come to bear in the process;
- third, the way this influences the way knowledge controversies are played / fought out in terms of the strategic-relational development of participants' positions and arguments, defining e.g. the conditions for the emergence of differences in cognitive frames or narrative storylines inscribed in the knowledge brought to bear;
- fourth, the effects these conditions have on the potential scope for frame-reflection or reframing of participants' positions and arguments.

Making mediated negotiation possible: setting boundaries for the Schlichtung Stuttgart 21

When the parties representing one of the most remarkable recent public controversies in Germany sat down to start negotiating the issue in October 22, 2010 in Stuttgart town hall – the starting date of *Schlichtung Stuttgart 21* – this was just a further chapter in a long story.² And yet – as a protester said in an interview during a symbolic occupation of the railway station's hall in Spring 2010 – the whole story had just about started to enter a new phase.³ A key outcome of this new phase – after events that were to be experienced in their radicality as unexpectedly shocking by most German observers, whatever their position – was to become the mediated negotiation process conducted between October and November 2010 in Stuttgart, known as the *Schlichtung*.⁴

² Here is a brief chronology with some basic details on the project: First concepts date back to 1988, when experts' proposals for an underground railway station become the foundation for exploratory planning by the government of Land Baden-Württemberg, leading in September 1992 to a first intergovernmental agreement on a solution combining a new station with to a specific railway development option. In 1994, Stuttgart 21 is officially presented as a partnership project of the German federal government, the Land Baden-Württemberg, the City of Stuttgart and Deutsche Bahn AG, involving a new underground station on the location of the extant, urban redevelopment dismissed railway grounds, and an improved railway connection to Stuttgart airport. Following feasibility studies, in November 1995 the institutional partners sign a framework agreement defining mutual responsibilities in the development and financing of the project. In February 1997, according to the timing foreseen by the legal planning procedure – the *Raumordnungsverfahren* – a first phase of formal public insight and consultation is opened: over 13,000 entries, mostly referred to environmental impacts and local nuisances, make the potential for conflict attached to the project manifest. Nevertheless, in November 1997 the project takes the hurdle of environmental impact assessment and the operational planning phase begins. Financing– in particular on the federal side in charge for railway infrastructure – however turns out to be a major issue in the ensuing years, leading to delay of the official release of the project until March 2001, when a covenant between the Bund and Deutsche Bahn AG is finally signed. While the city starts purchasing land from DB on the areas targeted for redevelopment, a controversy over the listed station hall building by Paul Bonatz (completed 1927) arises in 2005, leading to a compromise decision which safeguards the main hall but sacrifices the northern wing to the plan's provisions. Pending lawsuits are decided in favour of the project by the Land justice court in 2006, but this only leads to public voice getting stronger in the ensuing years: 2007 marks a significant escalation in public protest and leads to mobilisation for a local referendum on the project which – despite the backing of about 67,000 signatures – is dismissed by the Stuttgart government in December. With a further financial covenant signed by the project partners in April 2009, the realisation phase is officially started. However, success by the Greens in June 2009 local elections and the start of regular so-called 'Monday demonstrations' at central station in November mark the start of a new public mobilisation phase, which is further fuelled by developments unveiling contradictions in the financial prospects of the project. In February 2010, construction works at the station begin, countered by mass demonstrations with up to 60,000 participants going on throughout the year. In the meanwhile, politics at the federal, state and city level becomes fully involved with the issue, with the Greens as the party-political wing of opposition against the project, the Social Democrats in Stuttgart finally accepting the idea of a referendum, the federal and Land government coalitions overtly supporting the project and rejecting any claim for political or legal revision, and citizens' protest extending to the occupation of public spaces in central Stuttgart. As a consequence of this pattern of politicization, and in view of state election to be held in early 2011, any attempt at mediation conducted during September 2010 fails. This phase dramatically culminates in the events of 'black Thursday' when, on September 30, 2010, ruthless police attacks on protesters leave about one-hundred citizens hurt and two seriously injured.

³ "Jetzt geht es erst recht los" ("Now things really are getting started", from an anonymous protester's interview on February 2, 2010, broadcasted by DeutschlandRadio Kultur: personal recollection).

⁴ Henceforth, I will shortcut Stuttgart 21 to S21, referring by this – according to context – either to the specific development project carrying this name (similarly as in the case of the alternative project K21, standing for

The name of Dr. Heiner Geißler⁵ as a mediator in the S21 controversy was first advanced in early October by the leader of the Green Party in the Stuttgart city council, Werner Wölfle. After several failed attempts in September, attitudes towards accepting a mediation process had obviously significantly changed among the conflicting parties in the aftermath of the September 30 events. Formally proposed on October 6 by the President of the Land Baden-Württemberg, Mappus, Geißler was accepted by all parties in the Land parliament as a *Schlichter* in the controversy around S21 and the new Wendlingen-Ulm railway line – previous agreement by the head of the Green Party fraction, Wolfgang Kretschmann, having been a key precondition. The Aktionsbündnis (the main association of civic initiatives against S21) followed suit, and on October 15 the involved parties could finally agree on the modalities of conduct of a mediated negotiation process, premised upon a suspension of public protests as well as of construction works granted on both involved sides. Thus, on October 22, was as to become known as *Schlichtung Stuttgart 21* could start (6, 36).⁶

According to Geißler, at the outset it was not clear to participants⁷ what kind of outcome the

Kopfbahnhof 21) or to the controversy around it as a whole. I will refer to the mediated negotiation process – as customary in Germany – as to the *Schlichtung* (a shortcut for *Schlichtung Stuttgart 21*).

It must be added here that equating *Schlichtung* with ‘mediated negotiation’ is not unproblematic, and would require a discussion not only of the understandings of mediated negotiation itself, but also of some ambiguous features of the *Schlichtung* specifically conducted in the Stuttgart experience. In this paper, however, for the most part I will have to skip these discussions.

⁵ Heiner Geißler (1930) is a key but eccentric figure of the German Christian-Democratic party (CDU), which he also led as secretary general between 1977 and 1989. As a jurist and former justice in the state administrative court of Baden-Württemberg, he started his career as CDU politician in Baden-Württemberg (1962-1965 head of office of the Ministry of labour and social policy) the Land this party ruled for several decades until state elections in 2011. His career in public office developed since the 1960’s with a focus on social policy (1967-1977 Minister of social policy, youth, health and sports of Land Rheinland-Pfalz, 1982-1985 Minister of youth, family and health of the federal government) introducing significant reforms. A long-term MP in the German Bundestag, in later years, Geißler has developed a remarkable attitude for transparency and unorthodox positions, culminating in his over critical anti-globalist and internationalist positions and his joining of attack in 2007. Geißler has also a significant experience with private contracting disputes, having served recurrently since the late 1990s as a mediator in nationwide wage contract negotiations – among which, significantly, one involving Deutsche Bahn AG (2007).

⁶ Numbers and the page numbers which follow them given in this format refer to the protocols of the *Schlichtung*, as listed in the references. This paper is mainly based on an analysis of the text of the protocols in their stenographic version, backed by an extensive review of coverage and public debates on S21 in the printed and web media. Documentation available on the *Schlichtung* includes video recordings of the sessions: these have been partially consulted but not explicitly used or referred to as a source in this paper.

⁷ The *Schlichtung* developed along six day-long sessions held in Stuttgart town hall (for dates, see references). Participants at the table of the *Schlichtung* was flexible but subject to the rule that seven representatives would represent each side at each session. Each side also could involve a non-predefined number of experts. It had been agreed in advance that only the formal representatives would be directly considered as speakers and allowed as such to intervene and be included in the sessions programme, while the representatives themselves would be entitled to pass on the right to intervene their own experts, according to needs: “Es läuft alles über die jeweils sieben Hauptdarsteller – ich will es mal so nennen – und die auch entscheiden, welche Experten wann reden” (Geißler: 2, 34). The name of experts participating are not listed in the protocols for the *Schlichtung* but are obviously named when intervening, and so they will in this text when quoting from their interventions. To give a sense of the composition of the *Schlichtung*, here are the participants in the concluding – and more ceremonial than technical – session of November 30.

As representatives of the movement against S21 (opponents):

- Hannes Rockenbauch, member of Stuttgart city council and of the civic association SÖS Stuttgart Ökologisch Sozial;
- Winfried Kretschmann, MP in the Land Parliament and head of the Green Party fraction therein;
- Werner Wölfle, MP in the Land Parliament and head of the Green Party fraction in Stuttgart city council;
- Brigitte Dahlbender, head of the civic association BUND in Land Baden-Württemberg;
- Peter Conradi, architect in Stuttgart and former MP of the Social-democratic Party in the German Bundestag;
- Gangolf Stocker, initiator of the civic initiative ‘Leben in Stuttgart – kein Stuttgart 21’;
- Klaus Arnoldi of the civic association Verkehrsclub Deutschland.

As representatives of the parties in favour of S21 (supporters):

- Johannes Bräuchle of the civic association ‘Bündnis der Befürworter – Wir sind Stuttgart 21’, a protestant pastor;
- Thomas Bopp, MP in the Land Parliament and Head of the Stuttgart regional government (Verband Region Stuttgart);
- Tanja Gönner, Minister of the environment, nature protection and transportation of Land Baden-Württemberg;
- Stefan Mappus, MP in the Land Parliament and Minister President of Land Baden-Württemberg,
- Rüdiger Grube, CEO of Deutschen Bahn AG;

process would have – for instance, whether it would have to put forward a clear resolve mediated through a ‘decision’ (a ‘Votum’) by the mediator (6, 36). However, the process itself was obviously premised upon mutual recognition of the fact that no legal binding could be attached to the results, but rather – in Geißler’s words – a significant “psychological and political effect” (idem). As a matter of fact, Geißler had made quite clear in several public declarations in advance of assuming the position of *Schlichter* that he would not see his role as one of questioning the legal and formal political legitimization – in fact anticipating a *fait accompli* argument as a basic feature of the whole process.

Despite pains taken on all sides – first and foremost by Geißler himself – in order to play down the possible direct transformative effects of the *Schlichtung* on the controversy, it became obvious by Fall 2010 that the opinion climate formed around the S21 struggles created not only high levels of attention but also extremely high public expectations on the *Schlichtung*. In particular, given the highly contentious features taken by the conflict, the breakthrough represented by agreement by the parties to confront themselves argumentatively was seen in itself with some scepticism, and a resolutive word by the mediator himself – the so-called *Schlichterspruch* (the ‘Schlichter’s statement’) – was expected with almost messianic fervour. This is an aspect of this case which bears a special interest in itself. It does not necessarily imply that public opinion – and, most notably, opinion-making through the media – was anything but united in evaluating the conflict and its prospects of resolution. It hints however at the fact that, despite significant differences in positions, the exceptionality of the situation led most public voices to taking the key role of the *Schlichter* and of his capacity to express a cogent opinion on the issue for granted, as almost a matter of last resort. Hence, the wait for the final *Schlichterspruch* became a constitutive part of this highly publicized and mediatized event.⁸

One could argue here that, first, this is nothing else than what we would expect from a textbook mediator as the active broker and public testimonial of a negotiated consensus reached among conflicting parties, and, second, what could have possibly been ‘messianic’ in this expectation obviously was in the eye of the beholder. To play down this aspect, however, means to neglect a significant feature of the discursive situation being constituted by *Schlichtung S21* – and one which the mediator Geißler embodies in person: the ambiguous and mutually reinforcing connection between what really are political conditions for the mediation process and the aim of building the mediation process itself around a de-politicized ‘facticity’.

The Schlichtung as ‘fact-checking’: de-politicizing within a politicized framework

From the very beginning – and as a very condition for its conduct – the attitude pursued by Geißler during the mediation process is one of ‘fact-finding’, aimed at achieving a pacification (“*Befriedung*”) of the controversy. Geißler explicitly couples by this an aim of ‘objectivation’ (“*Versachlichung*”) of debate with a basic ‘realism’ (“I want to stress this clearly from the outset: we cannot invent a new station in the framework of this *Schlichtung*”).⁹

This approach is clearly reflected in the agenda of the *Schlichtung*. Session 1 was to deal with the strategic meaning and the technical transportation performance of the Stuttgart railway node in relation to the S21 project and the new Wendlingen-Ulm railway line.¹⁰ Then a discussion of the

-
- Volker Kefer, managing director Deutschen Bahn AG;
 - Wolfgang Schuster, Mayor of the City of Stuttgart.

⁸ One important feature of exceptionality of the S21 case resides in the wave of public attention it raised and in its coverage throughout the media. In particular, the sessions of the *Schlichtung* were entirely broadcasted live as well as live-streamed over its website by the national public information TV channel Phoenix, and partially by regional channels like Südwestrundfunk and Flügel TV. According to a communication by Geißler himself (2, 9-10), during the first session on October 22, the live broadcast had a share of 6,8% on the Südwestrundfunk in Baden-Württemberg and of 2,9% on Phoenix on a national basis, with 370,000 contacts registered via the website.

⁹ Geißler: “Opponents and supporters of this project alike shared the opinion that an attempt should be made, with the help of a mediator [*Schlichter*], to contribute to a pacification and objectivation of confrontation. I declared myself available for assuming the role of mediator, after I have been asked by both sides to take on this task. I want to say from the outset, however: We cannot invent a new station in the framework of this mediation.” (1,1). (All translations from German are mine).

¹⁰ A key issue concerning the relation between S21 and the Wendlingen-Ulm railway line was not only an assessment of their specific performance and functionality but also of their mutual implication, the opposers being open – and rather divided – with regard to the merits of the new railway line but contending that these did not imply a project like S21, while the reverse was true: in this respect, contesting the Wendlingen-Ulm line had a rather equivocal function in the opponents’ arguments, serving both as a proof of faulty planning as a whole and as a proof of the arbitrariness of linkages to the need of a new transit station.

Wendlingen-Ulm line itself was on the agenda, followed by a discussion of the alternative concept called K21 brought forward by the opponents of S21 and a critical comparison of the two. Further issue would be a discussion of cost-benefit forecasts, followed by issues of geology, security and the construction process. Ecology and urban development issues would close the agenda of the mediation process before the reaching of a mediated consensus was expected.¹¹

The issue of fact-finding or 'fact-checking' ("*Faktencheck*") was to become a recurrent argument, particularly in the first sessions, and – time and again in connection to the 'pacification issue' – a key moderation device in the course of the process. It would be wrong to see it as a mere rhetoric trope by the mediator-moderator: reference to 'fact-checking' and an understanding of the process as being, above all, a 'mediation about facts' (intended as both objectivable and testable under scientific disciplinary criteria: hence the recurrent expressions "*Sach- und Fachschlichtung*", or also "*Faktenschlichtung*", cf. Geißler: 1, 2 and 5, 2) is actually shared by the participants.¹² What is meant by that, and what is implied, becomes however soon a matter of struggle. It turns out to be, in fact, a knowledge controversy.

That 'fact-checking' would imply fighting-out a controversy over knowledge is quite obvious to the participants in the mediation process: it is part, as can be assumed, of their strategic awareness. There are significant underpinnings for this assumption – including the remarkable level of preparation and of expertise put at play on all sides. No naivety implied, at least not necessarily. And yet, the role played by 'arguments about facts' and by the knowledge that is enacted in their unfolding is also to be seen in strategic-relational terms. That is, it unfolds within the constitution of an interactive situation that involves mutual adjustment and learning.

One significant example is the behavior of the mediator himself.¹³ While the *Schlichtung* develops – as programmed – in a sequence of increasingly lengthy expertises and counter-expertises, Geißler is first of all dealing with the task of establishing a mutually acceptable argumentation style. This, however, is confronted with a series of emerging issues.

From the outset, two issues stand out as problematic: first, 'facticity' is dependent on a framework of assumptions – or 'premises' – requiring to be scrutinized in themselves, whether in their tacit nature or in their truthfulness; second, 'facticity-check' as such depends on the relational framing of arguments. While these readily become aspects at stake in the struggle the knowledge controversy involves,¹⁴ Geißler himself clearly takes pains at keeping technical jargon at bay, at separating issues and argumentative levels by sorting out the agreed-upon agenda, and especially at trying to reach

¹¹ Despite minor shifts, in part resulting by interim checks and the need to agree on redefinitions of the agenda, this basic structure was consistently upheld by the mediator – one major difference, as we will discuss, being the virtual disappearance of urban development as a specific issue. For the sake of a comparison, the headings of the protocols referring the issues discussed read like this (simplified):

- session 1: (no title) meaning of the Stuttgart node and of the S21 project: significance in transportation terms, conception of the node, benefits for long-distance, regional and local traffic, performance of S21;
- session 2: 'performance of the railway node Stuttgart 21';
- session 3: 'new railway line Ulm-Wendlingen: general concept, passenger traffic national-international, goods traffic / K21';
- session 4: 'geology: tunnel statics, bedrock, ground water, protection of mineral waters / security and construction process';
- session 5: 'open issues from previous sessions: performance comparison S21 – K 21, impact of S'! on regional and local traffic / construction process';
- session 6: 'closing pledges by the parties', followed by the 'recommendations by the *Schlichter*' (the *Schlichterspruch*).

¹² Some examples:

Palmer (opponent): "My central statements in the form of 'does-it-apply-that' question" (1,114-115).

Kefer (supporter): "The view of all involved was: a pacification is necessary. Hence this fact-mediation [*Fachschlichtung*] was initiated under the motto: facts on the table." (6, 5).

And again Geißler: "Exchanging facts face to face – I say it once again: on equal eye's height" (2,10), "Faktencheck"...(2,32).

¹³ One could argue that, despite emphasis on learning processes by participants, there is a significant underrating of the learning experienced by mediators themselves in mediated negotiation literature.

¹⁴ The issue of 'premises' for instance already appears in the very first counter-intervention of opponents (Palmer: 1, 20) and will one of the recurrent on both sides throughout the *Schlichtung*. Some examples: Palmer (opponent): "Our counter-statement is: You have managed to define framework conditions – we have presented a catalogue of them we would like to work out in writing – in such a way as to let it appear as if the station would perform better." (1, 71); Dahlbender (opponent): "I believe, the heart of the matter is, all that is available up to date to our advisors and experts – I am referring to a respectful and honorable way of dealing with each as previously mentioned, Mr. Kefer –, the assumptions and inferences, which have been drawn from them, and that, what is said to underscore them, is not plausible. That is why we are struggling with each other." (1, 88)

partial consensus on 'factual' statements that can bring the discussion further – only to increasingly realize that precisely these aspects are strategically at stake.¹⁵

Geißler for instance tries time and again to draw consensual conclusions,¹⁶ but regularly fails at the settling the matter of controversies: hence his and his attempts to move on to other issues as a way out – at times showing overt uncertainty, at times almost losing his temper...¹⁷

Meanwhile, however, his moderation expresses an increasing realisation of the contradictions of facticity: for instance, that arguments meant to be 'factual' may require arguments that are 'counter-factual' in order to be amenable to inter-subjective scrutiny. By this, despite resistance and the initial insistence on 'exchanging facts', a shift occurs progressively in his mediatory conduct, and the request for comparable counter-view becomes for instance increasingly stronger.¹⁸

Behind the mantra of 'fact-checking' – of which of course we cannot rule out the outward rhetorical function – a quite different situation develops from what this would imply: a situation in which a mere 'politics information' – if ever 'fact-checking' had been intended as such – can only reveal its limits. Beyond a mere managing of information, it becomes apparent in the development of the argumentative process – and in the mediator's learning how to mediate – that the participants are strategically realigning to deal with a situation in which knowledge is in dispute. Nevertheless, appeals to facticity and objectivation will remain at stake – and will keep being mobilized on all sides – throughout the *Schlichtung*.

This is a key aspect which needs to be observed in order to understand the way this knowledge controversy takes form.

The Schlichtung as a knowledge controversy: confronting conflicting storylines/frames

As it develops as a knowledge controversy, a series of recognizable features of the mediation process become apparent. It turns out to be, first of all, a dispute about knowledge-bases and the 'premises' behind statements: this involves struggles about issues with the availability and update of databases and documents, as well as disputes on technical representations,¹⁹ but also readily extends to disputes over the representation of the context of factual statements, for instance procedures.²⁰

¹⁵ That such a realization is also part of this learning process is exemplified by a moment in session 5 (108), when Geißler declares himself almost shocked by some of the discrepancies highlighted by the exposure of 'facts'.

¹⁶ Examples of this at time contradictory attitude are: his attempts at postponing a controversial issue by first trying to clarify "what the issue is" (1, 82); his attempts to put a full-stop behind disputes about 'facts': "It is worthless to debate further about the premises, which have underscored the simulational analyses which have been made. This way we come to no end. We need to assume for now that you have done this all well and correctly according to scientific standards. What you just said, you also said base on scientific good conscience. But, by holding expertises against each other, we cannot not get ahead." (Geißler: 2, 76-77); or again, in a later session, his attempts to at least secure consensus on the fact that NBS will be improvements "given certain conditions", in order to shift issue, however meeting harsh disagreement by the opponents: 3, 110).

¹⁷ A significant example: "I am trying since about half-an-hour to make clear that we are really dealing here with the transportation performance of the terminal station and of the transit station. The people who have been listening to us over the last one-an-a-half hour must be completely confused." (Geißler: 2, 88).

¹⁸ For instance, in session 3 (114), despite a comparison of the alternative projects S21 and K21 not being on the agenda yet, Geißler intervenes strongly calling the opponent for a comparable alternative – which is not available in detail – in order to discuss the data brought by the project supporters; again in session 3 (145), he intervenes in a similar vein: "It would be helpful, Mr. Rockenbauch, if the Bündnis could maybe give it a thought how an alternative could look like. I am saying it once again in your own interest: it would interest people out there, if the Bündnis would not only say 'no'." Far from being trivial, the issue of whether a comparison was admissible or desirable as a foundation for expert arguments had already caused heated discussions in session 2 (133-134), when the comparison between S21 and K21 happened to repeatedly pop out while being schedule for a later session.

¹⁹ A nice example is a quarrel arisen on the correct technical representation of situations for instance in the graphics used in expert presentations (session 3, beginning), on which Geißler concludes: "Now you can see, scientific controversies need not be dry, they can be even quite lively. (Laughter and cheers from the supporters)" (3, 44). Another example is when, in connection to a detailed discussion of geotechnics and water management issues, opponents question whether the right conclusions are drawn from statements contained in expertises and *Planfeststellungsverfahren*: this will lead to a key shift in arguments by the opponents based on addressing the precautionary principle (session 4,102).

²⁰ This becomes a matter of heated controversy for instance in session 5, when the presentation of formal planning procedures as producing 'facts' (a systematic argument of supporters) while in reality in progress and not fully concluded is detected with reference to the issue being discussed and is harshly condemned by opponents.

Disputes over such aspects time and again extend to questions of truthfulness and trustworthiness. Allegations of potential manipulation concern the way 'facts' are dealt with and how they may conceal either premises or interpretations that may lead to untrue conclusions.²¹ This leads to accusations of deception, for instance to allegations concerning recourse to deceptive sophistic rhetorical devices,²² and occasionally even to open accusations of lack of trustworthiness, even if a careful self-restraint is pursued by the participants – and repeatedly required by Geißler.²³ On the other hand, the unveiling of is recurrently backed by defenses of expert and technical knowledge and of its merits and needs,²⁴ only to be repeatedly followed Geißler's reminders of the need to care for communication with a broader non-expert audience...

On a different level of analysis, different storylines can be recognized emerging from this controversy over knowledge: different 'causal stories', whereby reference to a different knowledge-base within different relational frames of causality is enacted.

One of the most notable examples concerns different conceptions of planning as are progressively outlined in the debate: one that is framed by some sort of 'expert realism' which understands the rationality of the planning process as leaning on the context-dependent systemic legitimation provided by legal-administrative procedures, and one that is systematically inclined to transcend this systemic context in order to highlight the substantive conceptual contradictions of the planning process. This conflict between storylines, which consistently affects the way the planning process at stake is represented, focusses on the opposition between German practices of transportation and infrastructure planning and a longed-for alternative – symbolically represented by reference to the Swiss system of integrated railway timetable planning. As could be expected, this turns out to be one of the most apparent sources of incommensurability among positions in the course of the *Schlichtung*: the German approach is readily accused by opponents of the project to be counter-intuitive and

²¹ Two examples of both from the same speaker:

Palmer (opponent): "Our counter-statement is: You have managed to define framework conditions – we have presented a catalogue of them we would like to work out in writing – in such a way as to let it appear as if the station would perform better." (1, 71).

Palmer (opponent): "It becomes evident again that the project is based on premises which, in transportation and economic terms, are unfortunately false. You are leading us into a cul-de-sac. You are leading us into a fallacy." (2, 142).

²² An example from an exchange between proponents, opponents and the mediator-moderator:

Wittke (supporter): "One moment, may I answer the questions one after another?"

Palmer (opponent): "If you could answer them with yes or no?"

Geißler: "Yes, go ahead, please answer them. Your turn will be next, Mr. Palmer."

Wittke (supporter): "I would like to answer the questions one after another..."

Geißler: "That's absolutely right."

Wittke (supporter): "... because it is a usual way of doing, to ask ten questions at once in order to confuse the speaker. At the end, the first question is already forgotten. I do not like to be treated like that." (4, 49).

²³ An interesting example is the way the following quarrel develops over time (in connection to a dispute over cost calculations, in which a counter-expertise maintains that expected costs systematically exceed planning cost calculations presented by DB):

Rockenbauch (opponent) (interrupting Geißler): "... the question rather is: if he now draws from his hat live in front of us all these figures, that is hardly to be proved! He does not keep to what we have agreed to: facts on the table! This, what he is sketching in front of us, this cannot be checked in time... [interruption] ... even if it appears plausible! Mr. Kefer is so smart, he manages to present things as if they were plausible, consistent – only, the premises we cannot check! That is the key point!" (5, 4) ...

Vieregg (opponent): "Formally correct, but the figures aren't right."

Geißler: "The premises are others according to you?"

Vieregg (opponent): "The input figures are wrong."

Geißler: "The input figures. Inputzahlen. All right then, expose you own calculations now." (5,11)

... (The dispute becomes increasingly heated: open allegations of untruthfulness:)

Rockenbauch (opponent) (objecting to Kefer, supporter): "Keep to the truth!"

Geißler: "I have to expressly object to this. You have no reason at all to say this. This would in fact mean the opposite, that he is lying. Do you say this in earnest?"

Rockenbauch (opponent): "He needs to stick to it!"

Geißler: "He needs to stick to the truth? Well, all right. Hence you are assuming he has said the truth so far." (5,13-14).

²⁴ Gönner (supporter): "Mr Geißler, I would like to point to the fact that we have undertaken an attempt to talk about facts. It was always clear to us that we would enter details which are not always very easy... A certain amount of expertise [*Fachlichkeit*] will not be avoidable in a fact-mediation [*in einer Fach- und Sachschlichtung, in einer Faktenschlichtung*], rather we will need to allow this." (1, 92-93). And again Gönner (supporter), contrasting 'factual' with 'political' arguments: "... Otherwise I think, it is about time to end this debate, which is quite political, since we are not getting ahead." (5, 31).

counter-effective (e.g. Conradi 1, 90; Palmer 1, 108) and of leading to realisation of infrastructure projects before adequate performance evaluations, ultimately contributing to S21 being a “*Jahrhundertprojekt* of the last century” (a recurrent theme: e.g. Palmer 1,108; Wölfle 6, 21); this view (and the counter-example of Swiss integrated timetable planning) is countered by supporters of the project by basically upholding the inherent procedural rationality and a *fait accompli* view of German planning procedures.²⁵

Another significant conflict of storylines emerges around different causal relationships established between issues – one key example being the relationship between the restructuring of the station and building the new Ulm-Wendlingen line as a justification of S21 as a whole. It is for instance interesting to note that, while there are apparent differences in interpretive frames at play even among the opponents on the issue of the new railway line (e.g. between either arguments of economic-ecologic balance and cost-benefit ratio or of prioritisation: 3, 101-110), it is ultimately the difference in storyline pursued in representing the project which bears a strategic importance in defining the knowledge controversy.²⁶

Another significant example – illuminating for what it reveals of the manipulatory potential of policy concepts, but also for the relative marginality it plays in the overall mediation process – is the discussion on the concept of the European *Magistrale* Paris-Budapest (session 3, starting 38), a lengthy, at times hilarious, and extremely interesting excursus on the political rhetoric in which the project is embedded, with a significant potential for deconstruction which however soon fades out from the discussion. Yet another example – focusing on differences in understanding of priorities – could be the ‘Porsche vs. Golf’ controversy (starting in session 3, 116 and throughout following sessions) concerning the relative priority and cost-benefit ratios of intensity/speed in point-to-point connections over extension/reliability in network performance.

While more analysis of these aspects would be required, the question is now what influence they play out on the process as a whole.

The Schlichtung as a dialogue of experts: contesting technical expertise by technical expertise

As the *Schlichtung* progresses – under careful scrutiny of a mediatized public – and develops as a knowledge controversy with all its internal struggles and contradictions, one aspect becomes strikingly clear: the fact that ‘factual arguments’ based on technical expertise remain substantially unchallenged as the focus of the mediation process. While this was obviously a significant political premise for the exercise to take place, as the careful boundary-setting of its agenda showed, this feature is co-constituted by the nature of the arguments brought to bear. In other words, it appears as if none of the

²⁵ A striking example is given by this passage in which, in an early stage of the *Schlichtung*, the controversy on understandings of planning already becomes apparent:

Kefer (supporter): “Mr. Palmer and Mr. Conradi, I feel this discussion, as we are conducting it at the moment, is quite unfair. I am willing to tell why I feel this way. In my presentation I said from the outset, we have in Germany a certain system and certain processes, which we adopt, when large projects are planned. I ask you to accept these processes, because planning processes [*Raumordnungs-, Planfeststellungsverfahren und sonstige Verfahren*] are mandated by law and lead to certain reactions in the planning. ... I object to the fact that you time and again bring arguments like that, if at a certain point of the system a conflict is found, then the whole system has to be put in question. I reject this. This cannot be done.” (1, 111-112). Palmer (opponent), in reply: “Your argument was: we do it this way. This is how we do it in Germany. If you wish to have it differently, you need to expatriate to Switzerland.” (1, 114).

An interesting side-effect of this is that, when substantive critique is brought against aspects of the project, replies by the supporters recurrently imply a defensive hint at the open, in-progress character of the planning procedure, allegedly allowing margins for further definition (e.g. Palmer, opponent and reply Starke, supporter, 1, 108).

²⁶ Two examples from the arguments of the opponents:

Holzey (opponent): “Stuttgart 21 is almost worthless transportation-wise without the new line. You could then almost only have it about urban development things. The other way round, however, does not apply. This is in itself an important thing to be acknowledged. The new railway line can have an own value. We maintain, not as it is today, but definitely it does not need to have Stuttgart 21. That is how it is. The economist would say, it is a coupling, but only one way around.” (3, 28).

Kretschmann (opponent): “Against Stuttgart 21 there are great concerns and protests. We have never been those who have posited a connection between Stuttgart 21 and the new line. We never did it, but you did it. ... This is why we should not primarily actually deal with the new railway line in isolation – that is a whole different debate – but you should rather take the step and finally say: Stuttgart 21 needs the new line, otherwise it leads to nothing. That is why I would like to conclude again by saying: this is the decisive debate. It is up to you to separate the issues and to make it possible for us to conduct separated debates.” (3, 165-166).

different frames underpinning the participants' arguments was capable of actively subverting the overarching frame defining the *Schlichtung* as a technical-expert dialogue. More importantly, it appears that – under the framework conditions in which it took place – the participants' conduct and their arguments co-constituted the *Schlichtung* as a peculiar discursive situation in which, despite differences in positions, a basically empiricist understanding of knowledge and expertise are shared and reproduced as condition for exchange and communication. The dominance of what – in the terms of Habermas (1981) – we could define rational-technical knowledge remains unchallenged and is actually reproduced even while the knowledge controversy comes to its zenith. It is, in other words, as if the conduct of the knowledge controversy would stick to a practical order of technical or situational justification that does not address an argumentative connection with more reflective, value-sensitive and moral order of reasoning that has been so important a motivation for the protest (Fischer 1980; Fischer and Forester 1987).

It appears as if, first, rational-technical knowledge and expertise and their objectivation bias are consistently claimed on both sides as a legitimation for the own arguments; and, second, that rational-technical knowledge and expertise ultimately confer a mutual legitimation to the participants, as it is constituted within the setting of the mediation process as the very condition for structured form of argumentation. Accordingly, the *Schlichtung* consistently – and almost unchallengedly – develops as a game of expertise and counter-expertise, and rational-technical knowledge dominates over the controversy as far as to prevails over the capacity to work out contradictions among knowledge frames and to possibly address a process of reframing (Rein and Schön 1993; Schön and Rein 1994).

A first aspect which strikes in this sense is the overall dominance in the course of the process of extensive and intensive, increasingly lengthy and detailed technical discussions. We already mentioned the importance, for instance, of discussions on timetables: a discussion which – starting in the early beginning of session 2 and dominates most of it, until (2, 100) it is postponed as the latest documentation appears not to be available... only to come back at length in session 5 as a key matter in the comparison between S21 and K21 (5, 47 ff.). A similar importance is that placed on discussions on regional transportation networks and traffic data (dominating most of session 3) and on geology issues (session 4).

It is trivial to recognize that, as substantive technical matters, the aspects involved in these discussions bear a key importance in arguments about the performance and feasibility of S21, and hence also in the knowledge controversy at play. The point however is that, despite potentials for insisting on conflicting frames or storylines as a strategy, arguments rather appear to converge on an attitude by which questioning expert knowledge and its underlying rationale requires expert knowledge pursuing an isomorphic argumentative rationality. One may certainly argue, with Innes (1996: 463) that "in consensus-building, discourse is the 'calculation' method": but then, we face an apparent paradox here.

The timetable discussion is a case in point. In line with the agenda set for the mediation process, the discussion of timetable plans is part of the overall aim of assessing the S21 station project in terms of performance; henceforth, the timetable issue is discussed at great length as mainly an issue of whether it is technically feasible or not – even while an alternative view of what a timetable might be at all looms behind it... (e.g. Wölfle: 2, 90). While it is apparent that the way in which an isomorphic argumentation is pursued with an apparent 'falsificationist' or de-constructivist intent – like in this case – may provide a significant foundation for counter-arguments and for alternative proposals, it is also apparent that it expresses the dominant of a defined discursive frame which is predicated on this isomorphism as a requisite.

A significant effect of this isomorphism of arguments is the difficulty of exiting a discursive frame of expertise vs. counter-expertise. This becomes most apparent precisely when this frame is openly questioned: for instance, as the questioning of 'evidence' by the opponents is countered by requirements of 'counter-evidence' by the supporters – requirements which the opponents systematically refuse to accept (e.g. Palmer: 2, 91), reminding of the asymmetry of competences and responsibilities between the parties, and of the planning authorities' own responsibility to include alternative counter-arguments in their planning procedures, only however to turn to arguments which are precisely defined by an isomorphic frame of counter-arguments in their own presentation of alternatives (most notably, in presenting K21: session 5).

These aspects, on the one hand, underline the constraints the discursive situation defines for both sides to exit an empiricist frame of arguments, but, on the other hand, also underlines the way the development of arguments reinforces this isomorphism, by this co-constituting the features of the discursive situation.

Some key features of the development of arguments during the *Schlichtung* exemplify this aspect. One of these is the centrality gained by cost-benefit arguments, as it is applied to the various

performance criteria under discussion in assessing the project: while developing initially within the frame of ‘fact-finding’ and ‘fact-checking’ as apparently an issue of sharing information, of establishing a common knowledge-base, cost-benefit arguments but soon become significant markers of what is at stake in the process, but also constrain the discussion at length within a strictly technical domain of argumentation, defined in terms of ‘cost-benefit’ calculations. This has significant effects, for instance, when the cost-benefit argument, at a certain point in the process, even establishes itself in the awareness of the participants as key argument of the opponents²⁷ – exerting in fact a dominance in the framing the opponents’ arguments that progressively marginalizes other significant frames.

A similar observation can be made about a key shift in arguments introduced in by the opponents in session 4 (in the framework of highly technical discussion on geological aspects and on the expected impact of construction) when, as part of a controversy over the interpretation of evidential data, risk-related arguments are introduced, leading to introducing a frame of arguments based on the precautionary principle: the whole discussion of this issue is defined by adopting the same argumentative repertoire of cost-benefit analysis adopted in previous performance discussions.

Possibly the most striking aspect, however, is the fate experienced by discussions over urban development issues. A key aspect of the S21 project next to its transportation features, and an issue of evident centrality in the mobilization of civic protest, urban development had been formally included in the agreed upon agenda of the *Schlichtung* but, even more importantly, could be assumed to be a cross-cutting issue implied in most of the points on the agenda. Upon analysis of the development of the *Schlichtung*, however, one cannot help thinking that, in its qualitative multi-dimensionality, urban development issues proved to be not amenable to fit the empiricist frame of technical expert arguments that dominated the *Schlichtung*. As a matter of fact, the issue is first mentioned in a scant and merely descriptive way – almost in passing – in the first supporters’ expertise in session 1 (Kefer: 1, 20) and again only in session 5 by the same expert (Kefer: 5, 38) in relation exclusively to a dispute over financial calculations, whereby real-estate transactions are introduced as a financial cost-benefit factor (related to gains as well as to issues of compensation in case of withdrawal of the project), with counter-views expressed by the opponents. Even more remarkably, the issue suddenly becomes more important in the concluding session 6, when most of the concluding statements take a less than technical and more promotional stance, and when several supporters of the project refer to urban development benefits in a rather defensive way – in an apparent collective attempt at ‘issue displacement’²⁸ – only countered by opponents in extremely generic polemic terms (Wölfle: “Einen Potsdamer Platz brauchen wir in Stuttgart auf gar keinen Fall”: 6, 20). It is fair to say, in this respect, that urban development issues have been *de facto* marginalized in the discussion and that the *Schlichtung*, after all, has not been, or has been only scantily at best, about the urban development options involved in S21. The issue is the more striking, as the prospects of urban development introduced by S21 are at the core of one of two key ‘recommendations’ contained in the *Schlichterspruch* presented by Geißler as a result of the mediation process – as his consensually backed “*Votum*”.²⁹

Conclusions

There is no doubt that the *Schlichtung* has been an exceptional, exceptionally important and necessary event in German politics and society. Its importance is inscribed, first of all, in the scope of public awareness it has raised and enabled about mechanisms of policy-making and planning usually systemically shielded from broad public insight and scrutiny. By this, the peculiar response offered by the *Schlichtung* to the exceptional social mobilization that had prompted it in the first place has made it possible to articulate and channel the demand for new legitimating sources of public policy-making into possibly viable directions of reform. In this respect – even if no specific outcome in this direction

²⁷ Geißler: “We have no agreement here, because we have just got the cost-benefit issue from Mr. Kretschmann as the central point. The line as such is not contested, but what the thing costs and what benefits it delivers. That is the real issue.” (3, 144)

²⁸ In detail: Bopp (supporter) (6, 11) in generic terms; Schuster, the Mayor of Stuttgart (supporter), announcing measures of citizens’ participation in neighborhood development (6, 12); Bräuchle (supporter) (6, 15) in generic terms and Mappus, Premier of Baden-Württemberg (supporter) (6, 18), in rhetoric terms.

²⁹ This crucial point (number 1 in the *Schlichterspruch*) concerns the request to endow the development of the areas made available by the project to foundation under public scrutiny and pursuing defined urban quality criteria; it also relates to point 2 which concerns the conservation of urban quality assets in the central city (a highly symbolic issue in the protest movement). The further key point (number 12) is the request of a stress-test in order to assess the feasibility and desirability of the S21 concept.

can be taken for granted at present – the results in terms of critical de-construction of routinised public practices produced by the *Schlichtung* can hardly be underestimated and will probably exert long-lasting effects.

There is also little doubt, however, that the *Schlichtung* will not be able to provide the resolution of any of the conflicts arisen around the S21 project. Too many and too momentous contradictions loom behind this experiment, as the events following the Spring 2011 state elections and the constitution of a new government coalition in Baden-Württemberg are showing.

Today, we face therefore the contradiction that, while the importance attached to this experiment remains high and justified with the German public, the *Schlichtung* is not unlikely to turn out to be a minor episode in the Stuttgart 21 case in terms of concrete outcomes. This is not the least of contradictions that are worth being explored in the framework of the Stuttgart 21.

When expectations around a deliberative procedure rise to such levels and when prospects of the renewal of democracy are evoked with such an emphasis as around the experiment of mediated negotiation we are discussing, then it is warranted to have a closer look at what is at play in such a process. This paper has addressed this task by looking at a specific, limited but in my view crucial aspect: it has dealt with an attempt at understanding the way a mediated negotiation process is constituted as a discursive situation. One of the key reasons why, despite its importance, the *Schlichtung* can hardly be seen as a resolute of the conflict around S21 is the set of constraints to a re-framing of the issue that have been inscribed in the mediated negotiation process – as an exogenous condition and as an endogenous dynamics – as it has come to be constituted as a discursive situation. My point is that this aspect is largely neglected in the more pragmatic, application-oriented theories of mediated negotiation that exert a mainstream influence in planning theory and practice and that, conversely, this neglect may bear significant limitations on our understanding of the nature of conflict situations and on our assessment of the potential outcomes of mediated negotiation practices. This is an important aspect in view of a critical-reflective attitude towards the aspirations and the potentials for democratization that practices of mediated negotiation may bear within conflictual urban environments.

References

- Callon, M., Law, J. and Rip, A. (eds) (1986), *Mapping the Dynamics of Science and Technology*. Basingstoke: Macmillan.
- Christensen, K.S. (1985), 'Coping with Uncertainty in Planning'. *Journal of the American Planning Association*, 51,1, 63-73.
- DiMaggio, P.J. and Powell, W.W. (1983), 'The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organizational Fields'. *American Sociological Review*, 48, 2, 147-60. Now in Powell, W.W. and DiMaggio, P.J. (eds) (1991), *The New Institutionalism in Organizational Analysis*. Chicago IL: University of Chicago Press, 63-82.
- Fischer R., Brown S. (1988), *Getting Together: Building a Relationship that Gets to Yes*. Boston: Houghton Mifflin.
- Fischer, F. (1980), *Politics, Values and Public Policy*. Boulder CO: Westview Press.
- Fischer, F. and Forester, J. (1987) *Confronting Values in Policy Analysis*. Newbury Park CA: Sage.
- Fischer, R. and Ury, W.L. (1981), *Getting to Yes: Negotiating Agreement without Giving In*. New York: Penguin.
- Forester, J. (1999), *The Deliberative Practitioner*. Cambridge MA: MIT Press.
- Forester, J. (2009), *Dealing with Differences: Dramas of Mediating Public Disputes*. Oxford: Oxford University Press.
- Forester, J. and Laws, D. (2009), 'Toward a Naturalistic Research Ethic: Or how Mediators must Act well to Learn, if They are to Practice Effectively'. In: Lo Piccolo, F. and Thomas, H. (eds), *Ethics and Planning Research*. Farnham: Ashgate, 179-189.
- Gieryn, T. (1995), 'Boundaries of Science'. In: Jasanoff, S. et al. (eds), *Handbook of Science and Technology Studies*. Sage: Thousand Oaks.
- Gualini, E. (2001), *Planning and the Intelligence of Institutions: Interactive Planning Approaches between Institutional Design and Institution-building*. Aldershot: Ashgate.
- Gualini, E. (2004), *Multi-level Governance and Institutional Change: The Europeanization of Regional Policy in Italy*. Aldershot: Ashgate.
- Habermas, J. (1981), *Theorie des kommunikativen Handelns*. Frankfurt a.M.: Suhrkamp.
- Halfman, W. (2003), *Boundaries of Regulatory Science*. Boechout: Albatros.
- Healey P. (1997), *Collaborative Planning: Shaping Places in Fragmented Societies*. Basingstoke:

- Macmillan.
- Heiner, R.A. (1983), 'The Origin of Predictable Behavior'. *American Economic Review*, 73, 4, 560-95.
- Heiner, R.A. (1985), 'Rational Expectations when Agents Imperfectly Use Information'. *Journal of Post-Keynesian Economics*, 8, 2, 201-7.
- Hirschman, A.O. (1994) 'Social Conflicts as Pillars of Democratic Market Society'. *Political Theory* 22.2, 203-18.
- Innes, J.E. (1996), 'Planning through Consensus Building: a New View of the Comprehensive Planning Ideal'. *Journal of the American Planning Association*, 62, 4, 460-72.
- Innes, J.E. and Booher, D.E. (2010), *Planning with Complexity*. Oxon: Routledge.
- Jessop, B. (2001), 'Institutional Re(turns) and the Strategic-Relational Approach'. *Environment and Planning A*, 33, 1213-1235.
- Kelman S. et al. (1980), 'New Opportunities for Planners'. In: Clavel P., Forester J., Goldsmith W.W., eds., *Urban and Regional Planning in an Age of Austerity*. Oxford: Pergamon Press.
- Kelman, H.C. (1996), 'Negotiation as Interactive Problem-Solving'. *International Negotiation*, 1.1, 99-123.
- Latour, B. (1987), *Science in Action*. Cambridge MA: Harvard UP.
- Lave, J. and Wenger, E. (1991), *Situated Learning*. Cambridge: Cambridge University Press.
- Lindblom, C.E. (1965), *The Intelligence of Democracy*. New York NY: Free Press.
- March, J. G. and Olsen, J.P. (1976), *Ambiguity and Choice in Organizations*. Bergen Universitetsforlaget.
- March, J.G. and Olsen, J.P. (1989), *Rediscovering Institutions: The Organizational Basis of Politics*. New York: The Free Press.
- Metze, T. (2006), 'Keep out of the Bijlmerpark: Boundary Work in Experimental Policy Discourse and Practice'. In: van den Brink, M. and Metze, T. (eds), *Words Matter in Policy and Planning*. Utrecht: NGS, 77-89.
- Raiffa, H. (1982), *The Art and Science of Negotiation*. Cambridge MA: Harvard University Press.
- Raiffa, H. et al. (2007), *Negotiation Analysis: The Science and Art of Collaborative Decision Making*. Cambridge: Harvard Belknap Press.
- Rein M., and Schön, D.A., (1993), 'Reframing Policy Discourse'. In: Fischer, F. and Forester, J. (eds), *The Argumentative Turn in Policy Analysis and Planning*. Durham NC: Duke University Press, 145-166.
- Schön, D.A. and Rein, M. (1994), *Frame Reflection: Toward the Resolution of intractable Policy Controversies*, Basic Books, New York NY
- Sullivan, T. (1984), *Resolving Development Disputes through Negotiation*. New York: Plenum Press.
- Susskind, L. and Cruickshank, J. (1987), *Breaking the Impasse: Consensual Approaches to Resolving Public Disputes*. New York: Basic Books.
- Weick, K.E. (1979), *The Social Psychology of Organizing* (2nd ed.). New York: Addison-Wesley.

Documents:

- Protocols of *Schlichtung Stuttgart 21* (stenographic version):
- session 1 of Friday, October 22, 2010
 - session 2 of Friday, October 29, 2010
 - session 3 of Thursday, November 4, 2010
 - session 4 of Saturday, November 20, 2010
 - session 5 of Saturday, November 27, 2010
 - session 6 of Tuesday, November 30, 2010
 - S 21 *Schlichterspruch*, November 30, 2010
- available as Pdf/Word file (along with complete video recordings) on:
<http://www.schlichtung-s21.de/dokumente.html>
 last consulted: May 2011.