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## Conceptualizing European Public Spheres

General, Segmented and Strong Publics

By

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### **Abstract**

The development of post-national democracy in Europe depends on the development of an overarching communicative space that functions as a public sphere, viz., a common room created by speakers who are discussing common affairs in front of an audience. This is a place where opinions ideally are formed and changed according to a communicative mode or interaction. The point of departure is Habermas' seminal work on the public sphere from 1962. The author examines the aptness of his recent reformulation of the concept (1992/1996), which is found to be too 'thin'. Further, he distinguishes between a *general public sphere*, *segmented publics* and *strong publics* and clarifies their potential conduciveness to democratic government. General publics are inclusive and open communicative spaces rooted in civil society in the periphery of the political system. Such a sphere is found wanting at the supranational level in Europe. Rather what is discovered are transnational, segmented publics evolving around policy networks constituted by the common interest in certain issues, problems and solutions. The EU also has many strong publics, viz. legally institutionalized discourses specialized on collective will-formation close to the center of the political system.

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## I. Introduction

In its widest sense, the public sphere is the social room that is created when individuals deliberate on common concerns. It depicts a relationship between the speakers and the audience that is created by social actors experiencing the by-products of cooperation and the inclusion of affected parties.

The EU's development as a new kind of polity is closely connected to its development as a communicative space. Traditionally, political theory and media theory have thought of communicative space and public spheres as what goes on inside nation-states. But this kind of perspective is rapidly becoming deficient, as the EU manifests more and more the characteristics of a supranational polity. Furthermore, regionalism and nationalism at the sub-state level are leading to the creation of more distinctive spaces below the state level. The upshot is fragmentation and differentiation of national publics. How to conceptualize the public sphere in sites beyond (and below) the nation state? Is it merely a communicative space or can it develop into a democratic sovereign – a collective entity able to act?

The public sphere is a precondition for the realization of popular sovereignty, because, in principle, it entitles everybody to speak without any limitations, whether on themes, participation, questions, time or resources. The idea of a public sphere provides the sort of deliberative arrangement that fits the requirement of discourse theory, namely that a norm is deemed to be legitimate only when all affected have accepted it *in a free and rational debate*. A public sphere has problem-solving functions as it increases the level of information and understanding between co-operators, but more importantly, it is a sphere of political justification intrinsic to democracy. It is basic to the concept of democratic legitimacy as it revolves on the probability of including all potentially affected.

Democratic legitimacy cannot stem from direct and full participation in collective decision-making as the people is rarely present to make choices in modern complex

states.<sup>2</sup> It is also hard to see how democratic legitimacy can be based merely on votes, as voting procedures are loaded with aggregation problems and as the principle of majority vote does not guarantee full political equality. Moreover, thanks to the new role of media and more public criticism, the politicians have to define and refine their mandate on a continual basis, and to drum up support in the general public sphere. Their mandate is “unbound”, it is barely transmitted via elections but has to be struggled for by communicative means, and this links in with an assumption of the epistemic value of deliberative democracy. The epistemic interpretation of deliberative democracy holds that deliberation is a cognitive process for the assessment of reasons in order to reach just decisions and establish conceptions of the common good. But can such a variant of public deliberation be sustained in normative terms or does it merely amount to “governance without democracy”?

In a democratic perspective the public debate is held to lead to opinion-formation, the forging of a common identity on the basis of which collective decision-making can take place, viz. an identity-shaping process strong enough to enable the solving of the collective action problem. A collective identity above the level of primary groups and a collective we-feeling are needed in order for the European citizens to acknowledge the “sacrifices” imposed in the name of the European collective good (Scharpf 1999). At a minimum the members must recognize each other as being members of the same group. According to Bernhard Peters, collective identities does not merely depict successful integration of a social entity, but also and specifically “... social communities based on defined membership and a shared collective self-conception, shared convictions and aspirations” (Peters 1993:117). The main problem with the development of a European public sphere is held to be the lack of a cultural substrate required for collective will-formation. The forging of a collective identity so to say presupposes certain social underpinnings presently lacking in the EU. Can there be a public sphere without a collective identity? This is one question to be addressed. A second one picks up on the epistemic value of deliberation and its putative democratic quality. What kind of polity notion of the EU does this concept of the public sphere speak to, the EU as a regulatory, problem-solving entity or a democratic government?

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<sup>2</sup> Rather collective decision-making is conducted through programmed systems and professionals specialized in self-justificatory deliberation and Inszenierung of mass loyalty. Hence, “Wer würde es merken, wenn es gar kein Volk gäbe?” (Luhmann 2000:366).

In part II, I address Habermas' seminal work on the public sphere and focus on the public sphere as an analytical category. How can it be identified and according to what criterion can we determine whether it functions? Thereafter, in part III, I examine the prevalence of a European public sphere, the communicative space of Europe comprising a general public sphere, transnational segmented publics and strong publics. Part IV contains a discussion of the trust put into network governance based on transnational publics – deliberative governance – from a democratic point of view. Part V holds the conclusion.

## **II. Conceptualising the public sphere**

The public sphere is the place where civil society is linked to the power structure of the state. It is "... the informally mobilized body of nongovernmental discursive opinion that can serve as a counterweight to the state" (Fraser 1992:134). Jürgen Habermas is the founding father of the most influential concept of the public sphere.<sup>3</sup>

### ***The norm generating power of reflective argument***

The notion of 'public sphere' signifies that equal citizens assemble into a public and set their own agenda through open communication. Historically speaking, this public sphere – which was prescribed by the authorities – the citizens immediately lay claim to and used in confrontations with public authorities over the general rules of coexistence in the fundamentally privatized, but publicly relevant sphere for exchange of goods and societal work. The medium for this political confrontation is remarkable and without historical precedent: the public reasoning (Habermas 1989[1962]:27). The public sphere that sprang forth in British coffeehouses from 1680 to 1730 – and correspondingly in drawing rooms and clubs in France – first consisted of literary, then of political sphere.

The essence of the modern public sphere is the *rational* debate. There are no elevated dogmas to be protected or a meta-standard according to which conflicts can be resolved. In this type of public sphere, actors have to seek support on a broad basis and across established convictions, religions and status hierarchies. The modern

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<sup>3</sup> This part of the paper is based on chapter 9 in Eriksen and Weigård 2003.

concept of a public sphere is greater and wider than that which is formed around a particular ethical basis, i.e. around the state or the Church. It spread to all of civilized Europe (Taylor 1995:266).<sup>4</sup> It became possible to appeal to a public that was greater than the nation-state. In this sense the public sphere predated the modern state.

In conceptual terms, the public sphere is non-coercive, secular, and rational. It is established through freedom rights that provide citizens with protections from state incursions. The modern public sphere is founded on rational debate and is antithetical to dogmatic ways of conflict-settlement. This idea of the public sphere is, then, closely linked to the principle of universalistic argumentation. The discussion can go on indefinitely, and the participants can address an indefinite circle of interlocutors, who are scattered in time and space. The public sphere is reflective – through it “society” thematises itself.

The development of a public sphere has profound implications for the conception of democratic legitimacy.<sup>5</sup> The public sphere alters the power holders' basis of legitimacy is changed, as citizens are equipped with rights against the state. Decision-makers are compelled to enter the public arena in order to justify their decisions and to gain support. They cannot allow themselves to merely pose for the masses, as the Emperors in the ancient world did (and some tyrants have tried in recent times). This forms the background of speaking of a modern public sphere that is critical of power. There are no external bodies that guarantee the legitimacy of power – neither divine law nor traditional authority. Authority is established through public discussion. With this legitimacy consequently becomes not only precarious, but also a critical resource – something “outside of the reach of individuals”. We see a transition from the speech of power to *the power of speech* (Lefort 1988:38). It is neither a given set of institutions nor concrete persons that guarantee the legitimacy of the law. Only the public debate in itself has norm- giving power. Hence, democracy became the sole

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<sup>4</sup> Historically the all-embracing institutional order of the Christian Church gave rise to an institutional order that transcended the boundaries of the principalities and was succeeded by *enlightenment* focused on reason, human rights and democracy. “Modern science and enlightenment replaced the universal chance of salvation with the universal chance of education, the universal community of souls with the universal community of mankind based on natural reason and the empirical examination of nature” (Eder and Giesen 2001:260).

<sup>5</sup> It is a principle of political justice: “All actions relating to the rights of others are wrong if their maxim is incompatible with publicity” (Kant 1996[1797]:347).

legitimation principle of government in modern, post-conventional societies, based on an inclusive public sphere entitling everyone affected to take part in the deliberation on common affairs.

One may, however, ask whether such depends upon the institutionalization of one overarching, unifying public sphere? Historically, there has never existed only one single authoritative public sphere representing one collective identity. There were many and they were stratified. The dominance of high culture and the “Bildungs-Bürgerschaft” (or Gelehertenöffentlichkeit) were successively challenged by the lower classes and popular publics. The contention between elitist (high culture) and popular (plebeian) publics was manageable because of the existence of a well developed collective identity (cp. Giesen 1999; Eder and Giesen 2001; Eder 2003). The process of fragmentation and dissolution of given identities based on e.g. nation, religion, class, ethnicity etc. catches on thanks to globalization and Europeanisation processes.

### ***A Complex Public Sphere***

According to Habermas’ revised theory, the public sphere is a common room in society, but it is a room which is presently divided into different types and categories (1996:373 ff.). It consists of different assemblies, forums, arenas, scenes, and meeting-places where the citizens can gather. Today the public sphere is a highly complex network of various *public sphere segments*, which stretches across different levels, rooms, and scales. There are subaltern public spheres, municipal, regional, national, and international public spheres. There are different arenas, where elite and mass, professionals and lay-people, prophets and critics can meet and cooperate with various degrees of intensity and enthusiasm. The public sphere extends from episodic café and street gatherings, via organized professional, cultural, and artistic public spheres, to abstract public spheres, where listeners, readers, and viewers are isolated and spread in time and space. There are strictly situated public spheres, where the participants meet face to face; there are written public spheres, and there are anonymous, faceless public spheres made possible by the new electronic technologies

With this Habermas makes adjustments for the critique that his early, «bourgeois» concept of a public sphere involved a fixed, ontological distinction between the public

and the private spheres – between the common good and special interests respectively.<sup>6</sup> Further, the criticism has been that the original use of the concept involved *one* uniform and national public sphere, and that the increasing division and duplication of the public sphere which followed in the twentieth century (for example represented by the labour and feminist movements) consequently had to be regarded as a decline and not as a contribution to the democratization of society.<sup>7</sup> Already in the early modern period of Europe the “Vielstimmigkeit” or polyphony of the popular publics and the level of contention are striking (Eder 2003:92; Tilly 1986). Even more so in well-developed *modern societies*, which are characterised by dominant discourses, world-views, and established forms of understanding being put under pressure, and new, more unconstrained patterns of communication emerge. New forms of communication develop; new discourses emerge and are in constant flux and contestation. The public sphere has become polymorph, polyphonic and even anarchistic. Today, according to Habermas, it forms «*einen wilden Komplex*», which is vulnerable to perversions and communication disturbances. On the other hand, this open public sphere is a medium for *unlimited* communication, and it is hence much more sensitive to social pathologies. However, the question is whether this variety of public spheres, which creates different identities, does not also disrupt and fragment the political community, viz. that it relapses into “Identity politics”: the disruptive effect of groups demanding recognition for their difference (cp Guthman 1993). How is order possible in this cacophonous symphony?

One should note that there are different kinds of publics displaying different modes of operation. While anonymous mass publics or *silent publics*, according to Klaus Eder, are conducive to merely a statistical aggregation of preferences, *speaking publics* may be able to integrate opinions and form a collective will. The first subverts established orders through *scandals* whereas the latter puts morally motivated *campaigns* on foot (Eder 2003:104).

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<sup>6</sup> He now carefully points out that “We must distinguish *procedural constraints* from a constraint or limitation on the *range of topics* open to public discourse” (ibid.313).

<sup>7</sup> For more information on this debate, cf. especially Negt and Kluge 1972; Cohen and Arato 1992; Calhoun (ed.) 1992; Fraser 1992; Habermas 1992; Luhmann 2000:274ff; Nanz 2002.

### *Antenna and sluice*

The free public debate has the ability to both identify and interpret social problems; this is where we find the attention shaping and innovative opinion-formation processes. Here we have to do with a *context of discovery* for the perception and thematization of problems. By contrast, parliamentary, institutionalized discussions help filter out and make priorities between claims on the basis of the more immediate demands of justification which arise when resources are limited and decisions must be made. Habermas refers to this as a *context of justification*. It is in this interplay between institutionalized and non-institutionalized discourses that a collective process of self-understanding can take shape, and this is where deliberative politics has its place. The principle of *popular sovereignty* can only be realized under the guarantee of a free public sphere and competition between political parties, together with representative bodies for deliberation and decision-making.<sup>8</sup> Hence, popular sovereignty dissolves, becomes subject-less and retreats into the very procedures of lawmaking.

The public sphere is a communication structure localized in *civil society*: "... a communication structure rooted in the lifeworld through the associational network of civil society" (Habermas 1996:359). It is a common space for free communication secured by legal rights to freedom of expression and assembly, where problems are discovered, but also thematized and dramatized and formed to opinion and wills that are to be acted upon by formal decision making agencies. The public sphere "sluices" new problems into the political system. In Gramscian terms: *It besieges the parliamentary system without conquering it.*

This can be linked to Bernard Peters (1993:327pp.) who models the circulation of political power according to a centre-periphery scheme. The parliamentary complex consists of formal political institutions, such as the parliament, political parties, and different types of bodies that influence choices and decision-making – such as expert committees, boards and councils including the neo-corporatist arrangement. This complex constitutes the *centre*, because it has the authority to make binding collective decisions. This centre, which is the focus of attention and enjoys the highest degree of



legitimacy, is connected to the periphery through a set of channels of political influence. The periphery is civil society, which consists of pressure groups, clients, organized interests, NGOs etc. For this system to be regarded as legitimate, it must be demonstrated that its decisions started with a communication process which originates in the periphery – in non-distorted areas of civil society – but which has been introduced into the formal power apparatus in a procedurally correct manner (Habermas 1996:356). While the centre controls instruments of power and decision-making competence, the public sphere is the only possible channel of influence for the periphery. It lacks formal instruments of power, it does not make decisions, and it does not discuss all aspects of a problem. But how do we know a public sphere when we see it?

### ***A deliberative public sphere***

A public sphere not only consists of a *speaker* attempting to convince an *addressee* that he is right; there is also a neutral third party present - a *listener*. When we have such a *triadic relation* between a speaker, an addressee, and a listener, the speakers feel obliged to argue primarily with a view to obtain the support of the listeners. The general public functions as a referee in relation to the contending parties. It is consequently the neutral observers that have to be convinced. Now, this is an idealised precondition, which oddly enough, in practice often leads the adversaries to address the audience to get endorsement and overlooks the addressee. This is due to the deficiency of the mass media of today, as they do not impose proper constraints on the political discourse.<sup>9</sup>

According to the constitutive principle of the public sphere, it is the spectators that are the “judges”, but their approval can neither be bought nor enforced. This is a consequence of the logic of a public argumentation process, where the resources that an actor has at her disposal must remain hidden. In a public debate it is useless to threaten or pressure our opponents to accept our standpoint, because then one implicitly admit to neutral listeners that our arguments are weak. One practical consequence of this is that if somebody is able to demonstrate that the spokesperson

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<sup>8</sup> See Habermas 1996:171. Continuous and repeated deliberation, punctured by periodic elections give the best hopes of democratic responsibility (Gutmann and Thompson 1997:144).

<sup>9</sup> See B. Peters 2004:36 also for further references, and 2001.

for some cause is a resourceful person, or that she has a personal interest over a specific outcome, her motives are immediately rendered suspect and her arguments lose much of their force. Normatively speaking it is clear that arguments *should not* automatically be rejected if it is possible to prove a connection to the spokesperson's self-interests because sometimes they disclose a morally valid content. It need not be illegitimate to advocate one's own interests, but there may be reason to investigate the argumentation more thoroughly if someone refers to general interests in order to justify a standpoint which at the same time serves her own interest (Eriksen and Weigård 1997).

Ideally, those who manage to demonstrate that their own arguments are both unselfish and correct, have the greatest chance of winning in an open, public debate. The public testing and screening of viewpoints contribute to eliminating bad and selfish arguments, so that only the generally acceptable ones are left (cp. Goodin 1986). When an outcome is accepted even though it is different from what each of the participants originally intended, it has to do with the actors' ability *to learn and to change* their opinions through the exchange of arguments. This is the main indicator of a deliberative public sphere. This has the further implication that the public sphere is not only a setting making preference realisation possible (i.e. a sphere merely for strategic action), it also constitutes a reflective form of self-understanding. Before anyone can make strategic use of the public sphere – before anyone can make claims or “bargain” about public opinions – it must have developed so far as to possess general standards and an audience to which reference can be made. Only with the existence of an audience, can we speak of a public sphere.

The result of a public debate is unpredictable, in a strictly, mono-causal scientific sense. It is the quality of the interaction that is the explanatory factor. In an intact and non-deformed public sphere it is the rules for rational communication that govern the formation of opinions. It is the *interaction process* itself that generates results. Deliberation explains politics when the public sphere is functioning. Whether the public sphere is functioning and whether it is of importance to political decision-making can be decided with regard to whether, and to what extent, it can be demonstrated that rational, *impartial arguments* have won out. To test if the public sphere works in a deliberative manner, we must demonstrate that political decisions

are not only a result of the influence of powerful groups, or the dispositions of strategic actors, or the politicians' attempts to please voters, but rather that they are based on qualified and generalizable reasons. This brings social movements to the fore.

If we look at the public sphere in a wider time perspective, we are struck by its positive role as a *sensitive sensor* or antenna vis-à-vis new questions and problems visualised and verbalised by civil society organisations and social movements.<sup>10</sup> Neither détente politics, minority rights nor third-world problems were taken up by the established system. Instead they were advocated by the new social movements and their extra-parliamentary actions (cf. Dalton and Kuechler (eds) 1990; Offe 1990). To explain this ability to influence politics, we must see the public sphere not only as a “warning system” with sensors, but also as a “system of influence” (Habermas 1996:359).

The latter points us to *strong publics* as the concept of the public sphere also comprises institutionalised deliberation close to the centre of the political system that is legally regulated, viz. sites in which there is a requirement to provide justification and there is a stronger regulation of discourses. Nancy Fraser (1992) distinguishes between *weak* and *strong* public spheres. The latter concept alludes to parliamentary assemblies and discursive bodies in formally organized institutions that have obtained decision-making power, while the concept of weak public spheres signifies deliberations outside the political system. For the latter, I prefer the term *general public sphere* because it entails free and open access to opinion-formation processes, and has in many instances proven to be both “strong” and powerful as revolutionary situations, constitutional moments and when bare public opinion dismisses corrupt leaders (cp the dismissal of the Santer Commission). Will-formation and decision-

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<sup>10</sup> Such social movements have added dynamism to modern politics. They have forcefully advocated new causes, come up with new arguments, and put matters in a new light. Popular protest movements develop and help realize new collective goals and new forms of rule by making modern norms and values acceptable to wider social strata in modern societies (Eisenstadt et al. 1984). They have not taken over the established parties or the established interest organizations, but have forced them to relate to new problems. Gradually, this pressure, these demonstrations and campaigns and argumentation have exerted influence and have changed the political agenda and the programs of the political parties considerably (cf. Olsen 1983). The new social movements represents a form of *intellectual mobilization*, which has its source in international relations. They constitute an independent explanation of social change (Bendix 1978:266; Loftager 1994).

making, as opposed to mere opinion-formation, are reserved for institutionalized discourses in the political system. Such bodies transform the influence of civil society and the general public sphere into *communicative power* and this in turn serves to legitimise political decisions in parliament. Parliaments are quintessential strong publics but there are others. Historically strong publics have existed within the nation state, but now, especially since World War II and the establishment of the UN, there are also trans-national strong publics, such as panels, tribunals, committees, conventions, etc. (Brunkhorst 2002).

The discourse-theoretical proceduralisation of popular sovereignty not only makes a conceptual space for a distinction between general and strong publics, it also makes visible transnational communicative spaces, viz. spheres above and between the nation states in which affected actors can reason about common affairs but where access is limited. They can be seen as *nascent supranational, general publics*. Before I address this threefold notion of the public sphere and its conduciveness to democracy, I will address how the democratic deficit of the Union is commonly conceived.

### **III. A European public sphere?**

The EU is in its present form held to suffer from a *democratic deficit* due to a weak parliament, the absence of European wide parties and the absence of a European public sphere based on a symbolically constructed people. It is only indirectly legitimated, through the member states. The rights and procedures in place do not suffice to ensure the voice, the interests and values, of the citizens a proper hearing.

#### ***Collective identity and the public sphere***

Fritz Sharpf maintains that the EU has to overcome "... the triple deficits of the lack of a pre-existing sense of collective identity, the lack of a Europe-wide policy discourse, the lack of a Europe-wide institutional infrastructure that could assure the political accountability of office holders to a European Constituency" (1999:187, cp. 1994:220). As there is a lack of collective identity, the prospect for a viable European public sphere is rather bleak. There is no agreement on common interests or values

and different languages and disparate national cultures make opinion formation and coherent action unlikely. The intermediate structures of civil society in the shape of a Europeanized party system, European organizations, social movements and European media are lacking as well as a common language making possible a transnational binding debate (Grimm 2004). A common public debate – on the same themes, issues and criteria of relevance – is, thus, not achievable.

There is a communitarian string to this kind of critique as public debate is seen as something quite different from a discussion of private concerns, i.e., it appears as if a common will from the outset prevails. This view presupposes a homogeneous culture, a populace, a united people that comes together in public spaces to deliberate and decide about common concerns. It pictures the public sphere as something rather distinct and stable, as a place where enlightened and equal citizens can assemble to discuss public matters and come to discover a shared pre-existing good. This is the concept of the *res publica* handed down from the Greeks where citizens meet in the Agora as friends and brothers to deliberate before decisions are reached in Ekklesia, resurrected in the medieval, Italian republicanism and in the seventeenth century England, France and Germany. The Greek model of the public sphere which e.g. Hannah Arendt (1958) makes use of presupposes a homogenous political community (cp. Benhabib 1992:90ff). A *volonté générale* is possible because citizens are equal and share common values and notions of the public interest. In case of conflict, parties can reach an agreement on the basis of a hermeneutic interpretation of common values and affiliations about who they are and who they would like to be, and, then, develop into a collective subject - a nation - capable of action.

In this model there is no distinction between deliberation and decision-making, between opinion formation and will formation. This conceptualization does not capture the way the modern public sphere is institutionalized in opposition to government, the manner in which it is situated in the civil society and rendered possible by the fact that the citizens have rights that they are entitled to use against the state. Thus, this concept of the public sphere is one closely associated with the rise of

nation state democracies and the pre-existence of a collective identity.<sup>11</sup> The idea of a collective identity based on common origin, heritage, language, memory or remembrance, goes together with the conception of citizenship-based government in which the sovereign people via law can form a collective will and rule themselves. The democratic sovereign is created in a public room in which the people lay down the law authoritatively and make it binding on every part to the same amount and degree. This republican view is also basic to the discourse-theory, which, however, opposed to communitarian readings of republicanism, posits that a *post-national identity* is possible. It is seen as based on the procedural requirements of the modern constitution and the continuing voluntary recognition and appreciation of this which is conducive to the accommodation of difference and plurality, and a form of solidarity that is founded on mutual respect. The underlying assumption, then, is that the lack of pre-political identification with the emerging political community can be recompensed through a public debate with catalytic effects on enlarged citizenship, solidarity, and plural identities (Kleger 1998). But how “thick” does it have to be in order to shape a collective identity?

### ***A communicative network***

The public sphere is constituted by the *freedom of communication*, which makes possible the public use of reason. We should, however, conceive of the public sphere not as an institution or as an entity unto itself, existing prior to decision making bodies, i.e. as a place where “the people” come together and deliberate upon who they are or would like to be, and then form a collective will of “the nation” or “the class”. The public sphere should also not be seen as existing prior to or independent of decision making agencies but as emerging in opposition to them - as a vehicle to test the legitimacy of legal provisions and as a counterweight to governmental power. This view of the emergence of the public sphere is based on the contention that the state originated, more or less, through war or brute force: all democracies have non-democratic roots (Offe 2003:154).<sup>12</sup> Only subsequently was state authority democratized, i.e., subjected to the rule of law and the principle of democracy. In

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<sup>11</sup> According to Claus Offe the stability of the political community rests on the “reflexive homogeneity” in which citizens are integrated “through an understanding of the communality of their fate” (Offe 2003:157). See further Guéhenno 1996; Miller 1995 for a similar position; and see Stie 2003 for a discussion.

brief, first came the state, then the nation and democracy. Collective identity, thus, has to be made rather than merely discovered. It is from this assertion that the contention “no European demos without a European democracy” is derived.

In this reading the public sphere is not an institution, but rather a *communication network*. This network of «subject-less interaction» based on informal streams of communication is not aimed at achieving particular results. The public sphere is that social space which is created by communicatively acting operators who are bearers of opinions and interests. The public sphere is a forum where what happens is determined by what can be made generally understandable, interesting, believable, relevant, and acceptable through the use of everyday language, viz. subjected to the procedural constraints of discourse only.

This is a very thin concept of the public sphere as it consists of actors united merely on the basis of attending the same topics and problems.<sup>13</sup> How can a collective opinion come about unless there is *one single public sphere* where people discuss the same issues, at the same time and under the same frames of interpretation (critically appropriated), and unless certain commonalities are in place? In other words, how can a collection of actors be transformed into a group with a distinct collective identity capable of comprehensive action unless there is a sense of common mission or vision? A certain minimum of unity and solidarity is necessary for actors to at all come together in public spaces to fight for the realization of collective goals and be prepared to take on new obligations, as well as being prepared to surrender some of their own sovereignty or possessions. Of course this “cultural substrate” – the collective “we” – can be created through inclusive processes of opinion-formation and law-making. However it comes about, it is a precondition for regulatory and distributive measures to be undertaken in the name of all. Further, a collective identity revolves on distinctions: To have things in common requires that others are excluded.

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<sup>12</sup> “Democracies can not establish states but they impose new forms upon pre-existing non-democratic states upon whose previous existence they are parasitic...” (Offe 2003:154).

<sup>13</sup> “The core is formed by a political sphere which enables citizens to take positions on the same issues at the same time under similar aspects of relevance” (Habermas 1998:160). For this debate see also Kantner 2002:60.

“A critical condition for a genuine Europeanization of public debates would be the extent to which the imagined collective ‘we’ is enlarged beyond national borders (for example, on ‘Europe’ or ‘the Western community’) and corresponding dissociations (of ‘East’ or ‘South’, or possibly of ‘America’) become more important.” (Peters 2004:31)

The symbolic establishment of a demos – a people – founded on a sense of unity and belonging, is a precondition for a democratic sovereign capable of regulative as well as redistributive measures, for the people to obey the law out of duty as well as to pay for the misfortune of their compatriots. Such a “culturalist substrate” is required for the formation of a collective identity strong enough to ensure that the compatriots not only see themselves as members of a community based on liberty but also as one based on equality and solidarity. While the concept of the public sphere as a communicative network may be too thin, as a single European space is needed for a general political debate on major European decisions, there is no reason to “substantialize” it along with communitarian or nationalistic prescriptions. Rather what is needed is to see the public sphere as presupposing a certain dosage of solidarity along with the norms of tolerance and respect making up a liberal-democratic culture conducive to a *reflexive identity*, i.e., a self-confident identity that also recognizes *difference*.<sup>14</sup> Even though everyone is entitled to equal respect and concern there is, in normative terms, a need to distinguish between what we owe each other as human beings – as citizens of the world – and what we owe each other as compatriots – as fellow citizens of the same polity.

### ***A general, supranational public sphere?***

There are many public spheres in modern states and they are not confined to national borders. There are subaltern counter-publics and there are overarching publics transcending limitations of time and space made possible by new media technologies and audiovisual spaces. New forms of communication are evolving and citizens' involvement in public debate may be seen as rather voluntary and elective than obligatory and “native”. Conceptually we may distinguish between:

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<sup>14</sup> The German public debate making conscious earlier wrongdoings – *Bewusstmachung* – and coming to grips with the past – *Vergangeheitsbewältigung* – is instructive of such an endeavor.



*General publics* are communicative spaces of civil society in which all may participate on a free and equal basis, due to proper rights entrenchment, and deliberate subjected to the constraints of reason only;

*transnational segmented publics* evolve around policy networks constituted by a selection of actors with a common interest in certain issues, problems and solutions;

*strong publics* are legally institutionalized and regulated discourses specialized on collective will-formation at the polity centre.

In this view, a general public in Europe is not totally absent as there are new European audio-visual spaces - newspapers, television, Inter-net, and English maybe as a bound to be first language (de Swaan 2001) - and new social movements and identity politics across borders. The poly-lingual TV-channel “Euro-News” operates on a large scale. In addition the Financial Times, International Herald Tribune, The Economist, BBC World, ARTE, The European Voice, Deutsche Welle (broadcasting in English), Le Monde Diplomatique with editions in most major European languages - and certainly not least the Internet - create audio-visual spaces in Europe. Many of these efforts are market driven (Schlesinger 2003), but such communicative spaces are not restricted to economic issues. Many NGOs, such as ATTAC, keep internet pages in several languages and thus facilitate transnational European debate.<sup>15</sup> Some media operate as a motor for Europeanisation. In comparison with other actors – civil society actors, state and party organizations – Koopmans et al. find that the German quality newspapers “... emphasize the collective identities, norms, and values that Europe should stand for” (Koopmans and Pfetsch 2003:30). There are also traits of a Europeanized public debate: The “Haider Affair” reveals that even though transnational events are still viewed through national lenses they lead to common and simultaneous types of debates within the different national public spheres. There is in other words a Europeanization of events (Statham and Guirandon 2004:16). The same can be said about Joschka Fischer’s famous speech in May 2000, which was widely reflected and commented upon by journalists in 12 news papers of six EU member

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<sup>15</sup> One may even hint to examples on the global level, and the non-publicly funded <http://www.zmag.org> that have sections based on voluntary translations.

states (Trenz 2004).<sup>16</sup> We should also not forget the large demonstrations that took place in all major European cities against the war in Iraq during the winter of 2003.

In Europe there is a potential space for the creation of collective identity through pan-European press and media based on English as lingua franca. But there is a long way from the kind of debate and information dissemination taking place nowadays in Europe, to the kind of committed public deliberation needed for collective opinion and will-formation, viz. the requirement of a general, supranational public sphere revolving on identical topics and policy proposals throughout Europe, rendering collective decision-making possible on the background of a broad mobilization of public support effectively sluiced into the governmental complex by intermediate organizations and political parties. A general supranational public required by a fully democratic government is for the time being more of a potential than an actuality, even though the Europeans Greens now – February 2004 – have been formed, as the first European wide party.

### ***Segmented publics***

Common communicative systems of mass-media facilitating real public debates conducive to collective will-formation are to a large degree lacking at the European level. However, there are transnational public spheres emanating from the policy networks of the Union. Networks are joint problem sites based on common issue orientations and knowledge - epistemic communities (Haas 1992). Such issue communities constituted on the common interests of actors in certain issue areas fluctuates, grow and shrink, sometimes in cycles. In Europe, networks of transnational regulation are conducive to Europeanization of policies and deliberative governance beyond the nation state (Zürn 1999; Burkard and Grande 2003).<sup>17</sup> Networks represent the *institutional software* for the reflective treatment of discourses (Dryzek 1999:35). They take the form of publics as far as there is a coupling between the collective actors and the audience in the sense that the actors do not only communicate among themselves but are also heard by others. As far the communication can be heard by an “undetermined audience” - a public - this takes the

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<sup>16</sup> Fischer’s speech also spurred a transnational European debate within the academic community (Joerges, Mény and Weiler (eds) 2000).

shape of *transnational resonance* (Eder and Trenz 2003:6).<sup>18</sup> Scandals and campaigns are vehicles of such (cp. Ebbinghausen and Neckel (eds) 1989).

Schlesinger and Kevin testify to this kind of public sphere formation by pointing to the prevalence of campaigns in the EU, such as “Citizens First” campaign on the four freedoms, “the Building Europe Together” campaign before the 1996 IGC, and the “Euro” campaign (2000:219). Hans-Jörg Trenz (2002) demonstrates how European security discourses evolve and revolve on a European community of solidarity and are propelling human rights discourses: *Scandals and campaigns* are the legitimating and de-legitimizing functions of the silent and speaking publics respectively. The public sphere effects of (the criticism of) Schengen, of the European campaigns against racism, of the BSE, of the charges of corruption and fraud in the Commission which developed into a scandal in the eyes of the public, are examples of events creating transnational but segmented public spheres. These cases show that not one unifying form of discourse develops but discourses that vary according to the issue fields and reflecting the institutional structure of the EU. The ability to manipulate or homogenize the European public discourse is rather limited. The bare suspicion of manipulation in fact leads to a delegitimising critique and is conducive to the broadening and pluralisation of public communication (Trenz 2002:193). Still it is a form of elite communication, where the experts and the well-educated speak to one another and stage (‘inszeniert’) communicative noise and protest. It surely falls short of reaching a level of mass communication in a homogenized political public sphere (Trenz 2002:184,185). But segmented publics also fall wide short of complying with the democratic proviso of openness and equal access.

The European public space is currently fragmented, differentiated and in flux. In the place of the sovereign people, there is the noise of anarchic and pluralistic communication. The public sphere nevertheless has effects on governance as it subjects the decision makers to protests and ‘communicative noise’ – *Kommunikativer*

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<sup>17</sup> Cp the Commission’s White Paper on Governance and its urge for partnership models and the Open method of coordination. For the latter see contributions in Eriksen, Joerges and Neyer (eds) 2003.

<sup>18</sup> This is inspired by Luhmann’s model in which the public sphere is a mirror of societal self observance - the observance of the observed – and where the handling of the problem of suspicious intentions rather than rationality/non-rationality constitutes the decisive difference through which the public sphere is established and ever so often collapses (Luhmann 2000:291, cp. Trenz 2002:28,29,34).

*Lärm*. Such “noise” can be anticipated and thus discipline decision-makers ex ante.<sup>19</sup> The informal and unruly streams of communication that characterizes the European public debate takes place in scattered fora and arenas. From a democratic viewpoint the lingering problem pertains to the lack of ability to form collective identities on an equal basis in order to facilitate collective decision-making as well as solving the problem of (de facto) holding the rulers to account. But what about the deliberative and democratic qualities of the *institutional “hardware”* of the EU?

### ***Strong publics in the EU***

The EU is a highly complex institution possessing many points of access and sites for negotiation and deliberation. It displays a conglomerate of organization forms geared towards integrating policy-fields and establishing consensus ranging from the hard core decision-making units like the Council, the EP and the ECJ, via the nexus of adjacent committees – expert committees, COREPER, Comitology, COSAC – to the two Conventions on constitutional matters. The deliberative mark on these varies but some amount to strong publics as a brief look at three of the institutional forms renders clear: There are a) open deliberative spaces b) in which deliberation takes place prior to decision-making and c) decision makers are held to account.

The European Parliament (EP) is directly elected by the peoples of the Member States, and can, hence, claim to be an institutional expression of the will of the people. It is the only EU institution endowed with direct democratic legitimacy through European-wide elections. Further, the EP is the world’s only supranational parliament, and has over a longer period of time been effectively empowered by the Member States (Rittberger 2003). Multiparty parliamentary systems are generally consensus-oriented and prone to deliberation but in the EU there is even more scope for open deliberation as there is no clear-cut division between government and opposition. Majorities can then more easily form around a number of dimensions, but in fact positions follow mainly party-cleavages (Hix 2000).

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<sup>19</sup> “Sie erzwingen die Korrektur von Entscheidungen dadurch, dass protest bei der Entscheidungsfindung antizipiert wird oder elitärer kommunikativer Lärm vor der populären kommunikativen Lärm gestellt wird, also elitäre Öffentlichkeit selbst an der Inszenierung von kommunikativer Lärm teilnimmt” (Eder 2003:104, see also 106).

The EP does operate as a multilingual body – there are 11 working languages in the present EP. The Political Groups are made up of representatives from different countries, which means that MEPs must actively interact with representatives from different language and cultural backgrounds. To achieve proper understanding and agreement in such arenas require comprehensive, genuine and sincere communication. The EP fosters such deliberation and seeks to ensure rational and transparent decision-making. It has also been a firm promoter of the development of a more representative and accountable EU system: “In addition to its role in granting the budgetary discharge to the European Commission, the Parliament is involved in other, less spectacular, scrutiny activities. It may put oral and written questions to the Commission and the Council committees, hold public hearings, set up temporary committees of inquiry and discuss the EU’s performance with the Council’s presidency” (Maurer 1999:6). According to the *investiture procedure* of the Maastricht there is “... a requirement for each commissioner to present themselves and their respective portfolio to sessions of parliamentary committees open to journalists and other interested member of the public” (Smith 2004:3). This new appointment procedure has “injected an element of parliamentary government” into the EU (Hix 1999:47). The EP conducts major monitoring functions, which now also include supervising compliance of the member states with the provisions of the Charter of Fundamental Rights. Albeit it has become an important legislator - it has obtained the power of co-decision in a wide range of policy fields -its role in shaping the constitutional and institutional development of the EU is still more that of an *auditor* than originator or constructor (Eriksen and Fossum 2002).

The EP is not only hampered as a democratic sovereign because of deficient popular support (due to low turnouts in elections), but also because it lacks proper lawmaking power. It is “the masters of the Treaties” – and the intergovernmental Council – that are in charge of Treaty changes. Such changes pertain to the basic structure of the Union – its constitution – and are the ones most in need of popular input and democratic enactment. Two recent developments have changed this.

The first development was the Charter of Fundamental Rights of the European Union (2000) and the second was the Laeken Convention on the Future of Europe (2002-2003). These suggest a more open constitutional process – the Convention is a

progressive innovation.<sup>20</sup> The Cologne European Council of June 1999 resolved that a *Charter of Fundamental Rights of the European Union* should be established.<sup>21</sup> The “masters of the Treaties” decided that this Charter should be drafted by a “body” composed of representatives from national governments, national parliaments, the European Parliament and the Commission. This was the first case of direct inclusion of parliamentarians in a process of a constitutional nature at the European level, and also the first instance at which parliamentarians made up the majority of representatives (three fourths of the total). This stands in marked contrast to the processes of the Intergovernmental Conferences (IGCs), where Treaty changes are the sole preserve of executive officials.<sup>22</sup>

The “body”, which renamed itself “Convention” – a name with constitutional overtones – was set up as a deliberative body with a number of meetings. Participants’ account and analyses testify to open debate, especially in the beginning of the process (Schönlau 2003). As the process went on, the need to strike deals to ensure agreement became more imminent, as the Charter had to be pronounced at the Nice Summit in December 2000. The Convention held open hearings and received several hundreds written submissions – about 180 NGOs submitted contributions. It tried much harder to foster public debate than have IGCs. This process contributed to the sparking of a European-wide debate among the organizations and institutions of civil society (de Schutter 2003; Kværk 2003). The Convention was intended to produce a draft Charter which could be accepted by all states and citizens of Europe. The Convention that concluded its work in less than one year, adopted the Charter almost unanimously.<sup>23</sup> The resulting text is composed of fifty-four articles that spell out the civic, political and social rights of European citizens under Union law.

Before the Nice Summit of December 2000, the “masters of the Treaties” agreed that the final status of the Charter would not be clarified until the next IGC, scheduled for

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<sup>20</sup> The following paragraphs draws on Eriksen, Fossum and Menéndez 2003a, and Eriksen and Fossum 2004.

<sup>21</sup> Presidency Conclusions of the Cologne European Council, 3–4 June 1999, *European Council Decision on the drawing up of a Charter of Fundamental Rights of the European Union*. Available at [http://europa.eu.int/council/off/conclu/june99/june99\\_en.htm](http://europa.eu.int/council/off/conclu/june99/june99_en.htm).

<sup>22</sup> Here parliaments in most cases only really enter at the ratification stage (in some cases the national electorates, through referenda, also enter then).

2004.<sup>24</sup> The three main European institutions (the European Parliament, the Commission and the Council) confined themselves to the solemn proclamation of the Charter on December 7, 2000. The Charter Convention, which was deemed a success, established a procedural precedent for constitution-making. It became a model for the Convention on the Future of Europe.

The Laeken Convention's composition largely duplicated that of the Charter Convention; it was made up of a majority of parliamentarians (46 out of 66 voting members, and 26 out of 39 from the candidate countries). It had also appointed representatives from the Member State governments, but these were in a clear minority.<sup>25</sup> However, this weakens its putative claim to represent the citizens of Europe. The deliberative quality – its ability to foster consensus through deliberation – may be seen to partly amend this problem and increase its legitimacy. The Convention deliberations ran over 17 months, and its working method was to be marked by openness and transparency. The work of the Convention complied with tenets of the deliberative model although to a variable degree.<sup>26</sup> In the last stages Giscard was in particular accused of attaching different weight to members, and de facto privileging the government representatives. However, the process was structured to ensure that different views could come to the fore and throughout the process, opinions and positions changed. The Draft was also accepted without major opposition by the Convention members. Hence it was pretty successful and among its proposals are:

- The recognition of the legal personality of the Union
- The elimination of the pillars structure
- The recognition of the supremacy of EU law
- Reduction and simplification of the instruments for law making and the decision-making procedures, plus the introduction of a hierarchy of legal acts

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<sup>23</sup> No final vote was held, but participants' accounts reveal that only two members of the Convention were against its adoption.

<sup>24</sup> *Declaration on the Future of Europe, annexed to the Treaty of Nice*, OJ C 80, of 10.3.2001, p. 85 ff.

<sup>25</sup> That said the Convention's composition was far more representative than any previous constitution making body in the EU. About 500 organizations submitted contributions to the Laeken convention, which also had a special plenary with civil society groups and established 8 contact groups in addition to other kinds of formal and informal contacts (See CONV 120/02 and 167/02).

<sup>26</sup> This becomes clear from studies conducted by Magnette 2004; Maurer 2003b; Fossum 2004.

- A definition (albeit not conclusively clear) of the distribution of competences
- The incorporation of the Charter of Fundamental Rights with binding force
- The generalization of qualified majority voting in the Council and the extension of co-decision
- The consolidation of a model of “constitutional politics” that differs from “normal politics (Eriksen, Fossum and Menéndez 2003b:10-11)

### *The missing link*

Conventions are communicative sites where citizens or their representatives assemble to propose the basic principles and rules of a legal community – the constitution – and they conduct their affairs through an open and deliberative process. To be legitimate the ensuing proposal has to be subjected to a comprehensive public debate in the general public sphere and be enacted by popularly authorized bodies such as a Parliament, a Congress or a Senate.

The Conventions at work in the EU were fairly representative and were open to public scrutiny. The deliberative imprint was also clear. Positions were moved and standpoints changed. The agreements rest on *reasonable reasons*, not only on compromised interests. Participants portrayed the draft as the best that could be achieved under the given circumstances, but they also underlined that this was a result that had been forged through a lengthy argumentative process. However, these conventions have yet not triggered a larger European-wide political debate on the constitutional essentials. They did not spur *a constitutional moment* in the sense that a broad spectrum of the population “took to the streets”. It is such that is demanded for the constitutional draft to find public justification, but it is also much needed to foster and bolster the collective identity of the Europeans.

With regard to the concept of the public sphere, the link between institutionalized debates and the general public debate is largely missing. In fact, the problem is not the lack of public spaces in Europe that are capable of holding decision-makers to account to a large degree. What is lacking is the ability to link and filter themes and topics, the problems and solutions aired in the civil society and verbalized in the



general public into the decision-making units via transnational networks and strong publics.

The plethora of transnational publics increase the information level and the contestation of different view points. They also enhance the rationality of decision-making and may even enable holding supra-national power holders effectively to account, but they do not suffice to constitute a democratic sovereign. Access to *one* common public – one single European public space – is necessary to enable citizens to address the same political issues and being exposed to the same information, arguments and contra-arguments. To develop common opinions and wills require common themes, shared interpretative frames and inclusive fora. Only such can establish the preconditions necessary for a rational opinion formation process in the sense that all affected are included. In particular this is required for the proper legitimation and justification of the basic ruling principles of society – of the constitutional essentials. Since such a discussion revolves on norms, principles and common values (e.g. democracy, the rule of law, equality, solidarity), there is prospect for consensus. Whether these discussions can bring about a collective identity strong enough to make possible collective action is the decisive point for the EU to develop beyond a regulatory regime in legitimacy terms.

#### **IV. What kind of public sphere?**

Given that the findings testify more to a segmented, transnational rather than a supranational public sphere in Europe based on equal citizenship and a well-developed civic infra-structure, one may question its putative democratic quality. As mentioned, proponents of deliberative governance see networks as the “institutional software for the reflective treatment of discourses”, and see its epistemic value as conducive to democratic legitimacy.

##### ***Deliberative governance***

Public debate can have epistemic value even if the ideal requirements of communication have not been met because deliberation forces the participants to justify their standpoints and decisions in an impartial manner. This kind of

deliberation, which can take place in transnational networks and institutionalized deliberation, contributes to a more rational way of solving problems and to increase the epistemic quality of the reasons in a justification process. Deliberation in this perspective is primarily seen as a co-operative activity for intelligent problem-solving in relation to a cognitive standard and not as an argument about what is correct in the sense that it can be approved by everyone. It is substantial, not procedural. Publicity, then, is to be understood as a democratic *experimental society* for detecting and solving social problems – including the identification of unintended consequences or by-products – and not as a political principle of legitimacy.<sup>27</sup>

In this perspective, the EU is seen as an example of transnational governance. Policy-making in committees and networks supplemented with civil society organisations, (I)NGO's, and social movements have created transnational communicative spaces. As no one possesses absolute power within these structures, they, for some analysts, represent functional equivalents to democracy. In this perspective government is not needed because network is available and is an appropriate “ ... institutional expression of a dispersed capacity to engage in deliberation that helps determine the terms of discourse in the international system ...” (Dryzek 1999:48). Deliberation substitutes, so to say, government. Pluralism, disaggregation and deliberation in the criss-crossing public sphere are seen as being facilitating democracy in a multi-centred world of diverse, non-governmental actors.<sup>28</sup> Adherents to the *direct-deliberative polyarchy* perspective of the EU, subscribe to such a view:

“Consider now a world in *which* sovereignty—legitimate political authorship—is neither unitary nor personified, and politics is about addressing practical problems and not simply about principles,... In this world, a public is simply an open group of actors, nominally private or public, that constitutes itself as such in coming to address a common problem, and reconstitutes itself as efforts at problem solving redefine the task at hand. The polity is the public formed of these publics: this encompassing public is not limited to a list of functional tasks (police powers) enumerated in advance, but understands its role as empowering members to address such issues as need their combined attention” (Cohen and Sabel 2002:721).

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<sup>27</sup> For this conception of the public see Dewey 1927; Kettner 1998; Brunkhorst (ed.) 1998.

<sup>28</sup> See Rosenau 1997, 1998; applied to the EU, see Joshua Cohen and Charles F. Sabel 1997; Michael C. Dorf and Charles F. Sabel 1998; Oliver Gerstenberg and Charles F. Sabel 2002.

Deliberation as a mode of problem-solving may enhance the effectiveness and efficiency of the decision-making system and help targeting the policies as qualitatively good discussions lead to more enlightened actors and more rational decisions. However, the problem of democratic *legitimacy* lingers. Legitimacy is the crucial criterion to be met for a political system to be recognised as valid. The institutional *nexus* of the EU should thus, be tested with regard to legitimacy and not merely efficiency. In modern, post, conventional societies democracy is the sole remaining principle of legitimation. It pertains to public accountability and congruence between the law abiders and the lawmakers, viz. participatory rights, which are *the rights of rights*. Experimental deliberation cannot bear the burden of legitimacy in the latter variant, as there is no possibility that the laws that all have to obey are consented to in a free, open and rational debate by all the affected parties. It is an unstable solution as the polity has to rule in the name of all, not in the name of a section of the public. Such a concept of the public sphere may suffice for a regulatory entity or international organisation, but not for a power wielding polity like the EU whose actions have a profound influence on the citizens as well as on the member states.

Deliberative governance implies trimming down the criteria of sovereignty. It implies applying a less demanding public standard than that of the discourse theory. The latter builds on strong idealisations, *i.e.*, it is based on the presupposition that all limitations on power and resources are suspended. In an ideal situation, there are no limitations on the public discourse with regard to themes, time, participants or resources. An idealised public standard is necessary for normative and critical purposes: in order to decide whether the outcome of the deliberation is legitimate, a *rationality founded identity* is needed. This requires a shift to a higher level of abstraction where the participants take a disinterested perspective and rule with regard to what is in the equal interest of all citizens, hence take the shape of a democratic sovereign. This is an unavoidable standard in constitutional politics. It is through such a standard that the basic structure of society and the higher deontic norms, such as equality, freedom, democracy, and solidarity can be rationally approved. To be a recognized member of a communicative community requires the notion of a law-based society, viz. the symbolic notion of an order based on equal rights. The present EU does not embody

such a standard of a law-based collective identity (even though most of the presupposed rights are already legally entrenched).

***A democratic sovereign capable of action?***

Central to the discourse theoretical notion of the public sphere is a distinction between opinion formation, which is the domain for public sphere, and will formation, which is the domain for decision-making units within the political system. Publics do not act as they possess no decision-making agency in a constitutional state with a division of powers. The public may be seen to act in revolutionary moments, as in the storming of the Bastille, but generally, in public spheres it is only possible to deliberate and as such form opinions about what should be done. In pluralistic and complex societies public opinion is “anonymous” – it is “decentered” into the network of communication itself, it is dispersed, and has no power to govern. This corresponds to a *desubstantialised concept of popular sovereignty*. Popular sovereignty does reside in the dispersed process of informal communication and not in a demos substantively defined. That is also why Habermas (1996) maintains that popular sovereignty has to be located in the interplay between institutionalized and non-institutionalized bodies for deliberation and decision-making. The implication is lower ambitions on behalf of popular rule and hence normative space for transnational network governance.

Transnational bodies of governance and deliberation may be able to tackle normative and politically salient questions in a qualitatively good manner. “The public use of reason” enhances the problem solving capacity and political rationality also at the supranational level where “soft power may push hard power” (Habermas 2001). This assessment draws on the epistemic value of deliberative democracy, which underscores the rationality presupposition and not merely the institutional or participatory presuppositions in conceiving of democratic legitimacy.

“[T]he democratic procedure no longer draws its legitimizing force only, indeed not even predominantly, from political participation and the expression of political will, but rather from the general accessibility of a deliberative process whose structure grounds an expectation of rationally acceptable results.” (Habermas 2001a:110)

Legitimacy then first and foremost stems from the deliberative process itself. The basic problem with this solution is the lack of commitment that follows when law is not laid down authoritatively by a people or the symbolic representative of such, and made equally binding on every part. The authority of the law stems not merely from discursive processes but from the notion of common will or a common good which constitutes a higher authority able to legislate and sanction non-compliance unilaterally. All political power stems from the people! Consequently, the requirement of a government or a state – a Leviathan – follows, as there must be a body endowed with the capacity and authority to act on behalf of “the people”, which in turn can be held publicly accountable.

The question is whether Habermas with this epistemic twist risks down playing the moral element of democracy pertaining to the place of citizens’ participation. One may also ask whether this implies reducing the possibilities of political government via public opinion and democratic will-formation. Due to the sharp distinction between deliberative practice in the general public sphere and will-formation and decision-making in parliamentary assemblies, it becomes difficult to explain in what sense public deliberation and political decision-making are connected. Thus, the very idea of popular sovereignty is at stake. As pointed out by James Bohman (1996:180 ff.), it is difficult to determine who is the political subject, and how communicative rationality intervenes in the formation of a majority will. A reason is only convincing as long as it is *somebody’s reason*. A disintegrated and decentralized concept of popular sovereignty such as that advocated by Habermas can not govern. It is not fit to establish that foundation of common convictions which is necessary in order to formulate a collective will. It becomes difficult to deduce authoritative instructions for what should be done, if no connections are established to social interests and needs articulated by real actors. From a normative perspective there are problems with this perspective as collective identities have to be formed and be able to govern societal relations in a democratic manner, viz. in compliance with the criteria of accountability and congruence.

## V. Conclusion

The public sphere is the place where civil society is linked to the power structure of the state. The public sphere is the basis for deliberative politics because it is here that the power must find its justification. Here binding decisions must be justified vis-a-vis the citizens who are bound by them. The public sphere, which is based on communicative freedom, gives citizens the right to discuss the general conditions for the common weal as well as to form opinions about what is just. As far as counter arguments are voiced this is a test to whether political decisions are correct.

The public sphere has, however, become polymorphic and polyphonic. In the EU there are traits of transnational communicative spaces in which all the citizens of the EU can take part, but more salient are segmented publics evolving around policy networks and legally institutionalized discourses - strong publics - specialized on collective will-formation. The assessment of the EU in a democratic perspective should take heed of different kinds of publics and be aware of their different functions and spheres of validity. Generally the existence of many publics fosters democracy as they enhance the possibilities for popular participation in opinion formation. Even though the problem of fragmentation and communication disturbances prevail, which makes opinion and collective goal formation difficult, it is fair to say that the more publics, the more debate and critique. Fewer voices are excluded and more questions are asked. More publics provide more possibilities for testing the legitimacy of power. They contribute to criticize and deconstruct hegemonic "truths" and prevailing consensus and force the decision makers to provide more general or universalistic justifications. They are the vehicles of democratization, also in the sense of making conscious earlier wrongdoings and coming to grips with the past - or *Bewusstmachung* and *Vergangeheitsbewältigung* as it is termed in the German debate.

However, when deliberative networks in communicative spaces are seen as exhaustive of the democratic tenet, there is a renouncing on the idea of rule through public, collective reasoning. In modern societies it is the law that establishes unity: participation in law-making constitutes the collective identity. What hampers

democracy at the European level today is the lack of a common, law-based identification and the possibility for transnational discourse - *a single European space* - in which Antonio in Sicily, Judith in Germany and Bosse in Sweden can take part in a discussion with Roberto and Julia in Spain on the same topics at the same time. The debate on the future constitution of the EU is a paradigmatic case for such a venture.

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