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A Done Deal?

The EU's Legitimacy Conundrum Revisited

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Abstract

In this paper we suggest a research agenda beyond the legitimation strategies of the CIDEL project (i.e. legitimation through outcomes, values and rights). The European Union has developed beyond that of international organisation and derivative democratic construct. But the step from negative determination to positive identification of type of entity requires an analytical scheme that takes the character of the polity configuration properly into account. How to handle Europe's present democratic conundrum? Europe will suffer democratic losses if it does away with the multilevel constellation that makes up the EU. But the present structure is also deficient; unless it is reformed, the EU will not be able to resolve its democratic problems. The upshot is that we have to consider how best to democratize *the multilevel constellation* that makes up the EU. Such a solution entails *reconstituting democracy* (rather than simply abolishing the EU or uploading nation-state democracy to the EU-level). We briefly outline three models for how to *reconstitute democracy in Europe*; each of which reflects the entity's compound character.

Keywords

Democracy - Democratization - Federalism - Integration theory - Legitimacy - Multilevel Governance - Supranationalism

Introduction

It is widely recognised that the European Union (EU) suffers from a democratic deficit, due to its weakly developed and inadequate democratic structures, a cumbersome and executive-driven policy process and an 'incomplete' constitutional arrangement. The integration project is widely critiqued, but the critics do not agree on the proper diagnosis. Some are concerned with costs and efficiency, others with technocracy and lack of popular participation and others yet with the absence of a sense of community and a common identity. Some critics will denounce the EU for its lack of ambition, whereas others will denounce it for its overly strong ambition. These disagreements stem from different perceptions of what the EU is, what it should be, and how its democratic legitimacy can and should be assessed in normative terms.

In the research programme *Citizenship and Democratic Legitimacy in the EU* (CIDEL)¹, which ran during 2002-2005, we sought to disentangle this confusion by specifying and assessing in a systematic manner, different strategies for how the EU's legitimacy deficit could be handled (Eriksen and Fossum 2004). We asked: what is the EU and whose interests does it serve? Is the EU first and foremost:

- A tool for enhancing profit and economic growth? The ensuing entity would be a mere *problem-solving arrangement*
- A collective project to define and promote a European identity? The ensuing entity would be best labelled a *value-based community*
- A political effort aimed at forging a citizen's Europe? The ensuing entity would be best understood as a *rights-based post-national union*

The findings from this project documented that the integration process has moved cooperation beyond intergovernmentalism and pragmatic problem-solving. The EU started out from humble beginnings, but with a noble aim: to entrench peace in Europe. The approach was modest and seemingly counter-intuitive: rather than locking in the former warring states in a supranational arrangement equipped with full-fledged state functions that would have abolished the sovereign statehoods (of nation states), the original European Economic Community fostered integration in such areas as trade and investment, under a common customs union. This permitted the fledgling Union to serve as a problem-solving device, that is, as an instrument to help solve those problems that the member states could no longer solve on their own. But the Union has never only been a vehicle for the member states. The findings from the CIDEL project² underscored the tenet that the EU has developed into a supranational order; an order that not only subjects the member states as its constituent parts to collectively binding decisions, but also establishes direct links to the citizens. European cooperation has turned political and constitutional. In other words, European cooperation is not only a matter of solving practical issues of low politico-normative salience; the integration process has become a process with deep implications for individuals', groups' and peoples' values and rights.

But the CIDEL project also contains broader lessons pertaining to *how* we might best address the issue of the EU's legitimacy deficit. These lessons pertain to the question of research approach: how we may best assess the legitimacy of a contested and

¹ Consult: <http://www.arena.uio.no/cidel/index.html>. CIDEL was funded by the EU's 5th framework programme.

² See the CIDEL publications listed at the end of Eriksen, Joerges and Rödl (forthcoming, 2008).

constantly developing entity such as the EU. The question of what is the most suitable research approach cannot be considered in isolation from the Union's development and the insights we may glean from the multifaceted debates on the EU. Of particular importance in that connection is that the CIDEL project ran during the period in which there was a real constitutional debate over the EU. The European Council's Laeken Declaration (December 2001) raised the constitutional issue. This had profound effects on the political and academic debates, which picked up on and framed the question of the EU's legitimacy deficit in constitutional-democratic terms. One important lesson is that the constitutional frame requires attention to the connection between *legitimation strategy* and *polity framework*. CIDEL's analytical framework, with three legitimation strategies, had been foremost tailored to the examination of the EU's legitimacy within a range of policy areas.

The CIDEL research effort corroborated the notion that democracy (understood as a procedure) is the only remaining credible legitimation principle under conditions of pluralism and complexity. Substantive values, functional results or rights do not themselves legitimate authority; they do so only to the degree that they relate to democratic institutions and can be justified procedurally. But the project's short duration in a situation of rapid changes entailed that precisely what polity configuration could be associated with a given legitimation strategy remained underdeveloped.

The main purpose of this paper is to suggest a way to move the research agenda beyond CIDEL. We start by discussing the CIDEL legitimation strategies. Thereafter, we revisit the debate on democracy in Europe. The main lesson we can discern from this multifaceted debate is what we will label as Europe's present democratic conundrum: Europe will suffer democratic losses if it does away with the multilevel structure. But the present structure is also deficient; unless it is reformed, the EU will not be able to resolve its democratic problems. The upshot is that we have to consider how best to democratize the multilevel constellation that makes up the EU. Such a solution entails *reconstituting* democratic orders (rather than simply abolishing the EU or uploading nation-state democracy to the EU-level). In the last part of the paper, we briefly outline three models for how to *reconstitute democracy in Europe*; each of which reflects the entity's compound character.

The puzzle of integration

In the EU, we increasingly find problem-solving, goal attainment and conflict resolution in arrangements *beyond* the nation-state: in policy networks and in transnational, as well as in supranational, institutions, such as the European Parliament, the European Court of Justice and the Commission. The continued albeit uneven integration in Europe has enabled the Union to expand through several rounds of enlargement, has produced a legal framework of constitutional stature, and has led to a - however fragile - common foreign and security policy. These developments cannot be accounted for solely as outcomes of threat-based bargaining between the largest member states, or as 'natural' processes of spill-over from 'low' to 'high' politics.

The European integration process represents *a puzzle* for established theories, as the member states have surrendered part of their sovereignty without being 'forced' to do so, to an entity whose democratic vocation could make it a competitor in allegiance

terms. This process has taken place within a system bereft of any major physical means of coercion, and without a distinct identity at its disposal for ensuring compliance. Many of the presumed preconditions for integration and polity-building have *not* been in place. The member states have effectively barred the EU from the measures generally seen to be required to produce a common culture or a common cultural identity. Integration has been conducted on a more or less voluntary basis. But it cannot be understood *solely* as the result of strategic bargaining because how can it be, that unequally situated governments, each in pursuit of its own self-interest, would bargain rationally with one another, and arrive at a system with some form of a democratic imprint? By the same token, it is difficult to see the *democratic* integration process as driven solely by the interests and resources of the decision makers who are compelled to make choices under conditions of uncertainty and risk. Neither can the functionalist approach explain why democracy should result from integration, as it does not spell out which feedback mechanisms that produce democratization.

The puzzle is that integration has proceeded, whereas the Communities have manifestly lacked the means for forging integration that the rulers had when the European nation states were forged. In the CIDEL project we sought to address this puzzle by establishing a third logic of integration: integration through deliberation. This third logic represents a supplement to the mentioned mainstream theoretical perspectives on EU integration. Under specific conditions integration can occur through deliberation (Eriksen and Fossum 2000).

Deliberation, which denotes a reason-giving practice – of giving and ‘taking’ arguments under critical scrutiny – is promoted through such mechanisms as public debate, institutionalized meeting places, peer and judicial review, and complaint procedures. The EU has developed a whole host of such arrangements. It shares competencies with the member states, and depends on the national administrations for the implementation of its decisions. The structure contains many veto points, there is a relative lack of forceful compliance mechanisms, representation and problem-solving take place through committees and networks; all these factors underscore a deliberative mode of decision-making. Under conditions of unanimity the members cannot simply apply arguments that convince a majority of the participants, but have to pick arguments convincing to all (Eriksen and Weigård 2003: 220). The infrequent use of majority vote – most Council decisions are unanimous – makes the EU into a kind of ‘consensus’ democracy (Lord 2004). Small countries are systematically overrepresented in the Council’s voting formula, and unanimity is required on a whole range of issues.

But whereas deliberation is necessary for integration to come about, there is nothing automatic about this: talk can be cheap. Deliberation translates into integration only under conditions of trust and law, that is:

- 1) when there is a certain level of confidence and mutual respect, a modicum of non egoistic commitment - so that people dare to let themselves be bound by ‘the better argument’; and,
- 2) when the legal structure is developed to such a degree that agreements can be made into binding laws and non-compliance can be sanctioned

(Eriksen 2005: 20)

Some institutional mechanisms are more conducive to further integration than others. The EU is a mixture of supranational, transnational and intergovernmental-type

institutions, which vary greatly with regard to integrative ability. The process of integration is often steeped in-between competing and contending institutional structures. This has obvious implications for the type of entity that is being forged in Europe as well as for the relevance of the different legitimation strategies.

Legitimation through what?

Political orders may seek justification through various means, including utility, values and rights. But can these components stand alone, and do they – even when taken together – exhaust the range of possible legitimacy bases for the Union?

Beyond utility and rights

One widely held view of the EU is that of a special type of international organisation whose particular purpose it is to solve the problems facing the nation states, notably those associated with an increasingly globalised economy. In this view, the EU's legitimacy depends on its ability to solve problems effectively and efficiently and its capacity to deliver the goods that people demand. Hence, the reference to 'output-oriented legitimation', which highlights positive results for the 'stakeholders' (Scharpf 1999). In *intergovernmental* organizations it is the results that count and state survival is the *sine qua non* of the international order. Thus, the veto-power of all participants can create legitimacy in and of itself, as parties will not consent to decisions that are contrary to their interests. Only decisions that no one will find unprofitable – *pareto-optimal* solutions – i.e. that will make no party worse off, will be produced.

Functional results, or efficiency, do not in themselves justify policies or polities. Outcomes are themselves in need of legitimation; only to the degree that they can be related to some common goods, or some commonly accepted values, do they have justifying force in a political context. 'Output legitimacy' hinges on agreement on what the outcomes are for. Which values do they protect? What interests do they count in favour of? etc. Consequential or utility-based justifications for political orders are limited both in the sense that they can lend legitimacy also to a brutal dictatorship – as long as it produces the goods, it is legitimate – and in the sense that these justifications require further qualifications. They are not stable or sufficient in and of themselves – they cannot stand alone. In this sense, the legitimacy of the Union is not *a done deal*.

The end of the so-called permissive consensus which occurred with the contestation over the Maastricht Treaty, testifies to the fact that underlying the integration process there had been a tacit value-consensus on economic growth and efficient production of consumer goods. The instruments for achieving prosperity within the EU were: abolition of trade barriers, enhanced cooperation and a free market. The conflict over the Maastricht Treaty made clear that prosperity could no longer be seen as an uncontested value. The European integration process spurred contention over the values and identities of Europeans, as concerns with democracy, sovereignty, identity and rights took centre stage in the public debate.

The historical context drove home a theoretical lesson: the problem-solving strategy as such, does not speak to *trust-generating values*; it simply presupposes such values. But it is precisely the presence of such (taken-for-granted) trust-generating and

sustaining values that ultimately render problem-solving credible as a legitimation strategy.

Both critics and supporters of European integration have picked up on this, and underlined that a community-supportive and sustaining sense of European identity is a core requirement for the Union to achieve the status of a full-blown polity, able to make collectively binding decisions, to allocate and reallocate resources. It is widely held that a legally integrated state-based order is premised on the existence of a sense of common destiny, an 'imagined common fate' induced by common vulnerabilities, so as to turn people into compatriots willing to take on collective obligations to provide for each other's well-being. This is seen to be the solidaristic basis of the nation state, as well as of the welfare state (Offe 1998). To comply with this and to be authoritative and legitimate, the EU needs a symbolic collective 'we'. A European identity is required to sustain an ability to make collective decisions over time (Grimm 1995; Miller 1995).

A value-based community will engender civil compliance and build character. In this perspective, legitimacy stems from primordial sources of belonging, which constitute the identity of the group, and provide the *cultural substrate* of collective decision-making and redistribution. The clear presence of this value-based legitimation strategy would serve as vital evidence for the proposition that the EU is something more and different from a mere problem-solving entity; and it would also be a more committing type of entity than would be a rights-based union. A rights-based Union could, over time, become a value-based community in that the establishment of rights could spur identity-forming processes and a community ethos, but it need not be so, because rights in and of themselves do not automatically generate obligations or produce identitarian commitments conducive to solidarity. Even children and slaves enjoy rights. Only citizen-empowering political rights can be said to have this function. These are the *rights of rights*, as they turn individuals into self- and co-legislating citizens with the competence to give each other rights. Co-legislating citizens are structurally placed in a position to judge the reasonableness of rights and to take on the duties involved. By implication, rights should not be thought of as possessions or as innate protections of private interests, but rather as what compatriots mutually grant each other when they are to govern their co-existence by law. 'Rights are relationships, not things; they are institutionally defined rules specifying what people can do in relation to one another' (Young 1990: 25). In this perspective, rights are inter-subjective; they entail recognition of reciprocity and they depend on *successful socialization and individuation processes* in order to work adequately. Persons who are capable of respecting the rights of others and of using their own rights in a responsible way are required for rights to function as protectors of interests. Those rights that can be understood in this way point to democracy as a mode of legitimation, as this constitutes the medium through which people, via law and politics can retroactively and reflexively act upon themselves.

Short of democracy the EU thus cannot qualify as a rights-based union proper. Moreover, democracy provides no criteria for drawing borders, as the people cannot decide on who the people is; this also means that democracy does not offer any explicit set of reasons for stopping the enlargement process. Many therefore hold up *nationhood* as a plausible solution to the circular question of how to constitute a polity democratically; that is, without predetermining the core issue: The democratic procedure cannot be used to settle the demos or the membership conditions, and democracy cannot operate without these (Dahl 1989). Many therefore conclude that

for democracy to be effective, it has to depend on primordial values or some form of *homogeneity*, that is, some form of substantial equality that makes it possible for citizens to see themselves as equals (Schmitt 1926: 15). According to this kind of reasoning democracy requires a 'thick' collective identity and community on par with a nation, which enables the citizens to see each other as brothers and sisters. Democracy amounts to a community of faith that autonomously governs itself. We return to this.

But will values and identity do as legitimation categories in a complex and pluralist setting such as that of the EU? Clearly "the multicultural reality of Europe makes it impossible for European identity to be based on particularistic conceptions of peoplehood" (Delanty 2005: 135). Further, it is notoriously difficult to establish what form of common identity, and what sense of commonality, that the notion of value-community requires. When we consider the EU from the vantage-point of value-community, the continued salience of nationalism (and other forms of diversity) among the EU's member states makes it more appropriate to consider the EU as *a Union of deep diversity* (cf. Fossum 2004) than as a coherent and unified value-community.

A Union of deep diversity

Deep diversity refers to a situation, wherein a "plurality of ways of belonging [are] acknowledged and accepted" (Taylor 1993: 183) within the same polity. Acceptance entails that special political-legal, and even constitutional, measures have been devised to preserve and promote the system's diversity. Deep diversity, as developed by Taylor is premised on the notion that rights and constitutional arrangements are inadequate as means of fostering a sense of community and belonging. Law and rights are always steeped within a particular cultural setting that provides people with deep-seated cues as to who they are and what is good and valuable. A political system, whose hallmark is deep diversity, can be federal but cannot be based on *one* nation-state. Deep diversity does not presuppose a unified people, and the constitutional arrangement, therefore, does not need an explicit popular endorsement on a par with that of a full-fledged constitution. In contrast to a rights-based union, deep diversity does not presuppose that the entity is based on a full-fledged constitution but rather on a *contract*, which amounts to a *treaty*. This is a trait of deep diversity that resonates with the EU's present constitutional structure.

Many analysts, prominent among whom is Joseph Weiler, have repeatedly stressed the importance of diversity for understanding the distinctive structure that the EU has wrought. Weiler argues that the EU has developed a unique federal arrangement, whose normative foundation is the principle of *constitutional tolerance*. This is based on two components that sit well with the notion of deep diversity. The first is the consolidation of democracy within and among member states. The second is the explicit rejection of the "One Nation"- ideal and the recognition that 'the Union ... is to remain a union among distinct peoples, distinct political identities, distinct political communities [...] The call to bond with those very others in an ever closer union demands an internalisation - individual and societal - of a very high degree of tolerance' (Weiler 2001a: 68). Weiler notes that 'in the Community, we subject the European peoples to constitutional discipline even though the European polity is composed of distinct peoples. It is a remarkable instance of civic tolerance to be bound by precepts articulated, not by "my people", but by a community composed of distinct political communities: a people, if you wish, of "others"' (Weiler 2002: 568).

The probable core tenet of deep diversity is that the polity is accepting of different collective conceptions of its cultural or national or linguistic or ethnic make-up; different visions of what the polity is, and different visions of what it ought to be. In the EU the existence of different collective goals is not only an acknowledged and accepted fact, but also something that is accommodated through various means, including differentiated patterns of citizenship incorporation, through which collectives try to maintain their sense of difference. Deep diversity presumes that a group's sense of belonging to the overarching entity passes through its belonging to another smaller and more integrated community, which again is consistent with how most of Europe's citizens consider their relation to the EU.

A Union of deep diversity would harbour a unique constitutional construction: it would not be based on the notion of final, ultimate authority, or on a single, founding norm but rather on a system whereby the lower-level units (such as member states) would be understood as constitutional chaperons. This again resonates with the EU, where the overarching entity is equipped with a constitutional authority, but the acceptance of its authority is, at least in principle, 'an autonomous voluntary act, endlessly renewed on each occasion, of subordination, in the discrete areas governed by Europe to a norm which is the aggregate expression of other wills, other political identities, other political communities (Weiler 2001b: 53). The supranational level is intended to fulfil a specified set of tasks that the lower-level entities confer on it. Further, there are provisions to ensure that the authority conferred, and the resources granted, are properly put to those tasks.

Given this significant attention to value diversity within the EU, the question of legitimacy remains a theoretical quandary: can values and particularistic identities at all do as legitimating categories for large-scale political orders?

A norm-rational order

The point of departure to address this issue is that the very existence of pluralism and value diversity calls for agreement on mechanisms of conflict resolution that speak to a higher-order system of legitimation in which clashes of interests and value conflicts can be handled with due regard to impartiality and fairness. The notion of constitutional patriotism has been presented and discussed as one such means, but one that is also sensitive to the context within which such clashes occur (Habermas 1994, 1996).

Values or principles?

Identity is an existential concept about *who we are* as well as a relational concept pertaining to *what distinguishes us from others* (Taylor 1985: 34). It is based on the simultaneous inclusion of the in-group, those sharing the same identity and sense of community, and the exclusion of those deemed not to belong by virtue of being different or of not belonging to the community.

The EU is not only distinctive as a polity that takes special heed of diversity; this is complemented with a very comprehensive inclusion of new members. The issue of enlarging the membership of the group is by definition an issue with profound identitarian implications. Every instance at which an enlargement of membership takes place is therefore a test-case of European identity. The EU has successfully completed six rounds of enlargement. It has expanded from its original six members

to a total of 27 in 2007. There is, however, a distinct difference between how the EU addressed the former Communist countries of Eastern Europe in the accession negotiations, as compared to how Turkey, a very early applicant, has been addressed. The former were held to be 'one of us', while Turkey has never been addressed in the same manner; here the questions have only concerned compliance with the criteria of democracy and human rights. But even though there is a lack of a sense of 'kinship' towards Turkey the EU has committed itself to let it accede to the Union (Sjursen 2002: 509).

While it is clear that the EU is *more than* an intergovernmental-type entity it is not clear that what this *more* entails in polity terms could easily be programmed in either a value-based or rights-based form. The discussion above has demonstrated that the EU falls well short of value-based community, in the way communitarians understand this.

Also in conceptual terms values cannot be the main mechanism of allegiance as they are by their very 'nature' particularistic and relative. In practice, they are often contested and when entrenched there will be value conflicts. In order to deal adequately with value collisions, higher order principles are needed. These are needed in order to facilitate choice, adjudication and balance between conflicting embedded values. Contrary to the communitarian view, it is allegiance to an impartial legal order based on universal norms that depicts the modern, democratic-constitutional mode of political integration. In contrast to a culturalist mode of integration, in which an order is identified in value terms, that is as an expression of a community's common values or conceptions of the good, *political integration* takes place among and beyond particular identities and group loyalties, due to adherence to principles and procedures of a universal character (Eriksen and Weigård 2003: 134-5).

We may therefore distinguish between values – as cultural manifestations of identity – and principles pertaining to human rights, democracy and rule of law – as political manifestations of identity. In line with this the modern legal order would be understood as a *norm-rational* order in which freedom, democracy, equality, and rights have obtained a *deontological* status. They constitute principles with which it is our duty to comply, even if it should be at the expense of the majority's values and collective utility. They demand *absolute validity*. This is why rights can function as *trumps* in lawmaking as well as in ordinary collective decision-making. Constitutional rights through judicial review check and overrule majority decisions because they are given superior validity. Habermas explains the fact that one basis for integration ranks above another by introducing a *conceptual distinction between values and moral norms*, where the latter refers to higher-order principles, which, thus claim universal validity. By contrast, values are understood as collective conceptions of the good life that vary according to different cultural and social contexts, and which therefore are both relative and particular in character (Habermas 1996: 259). Values compete with one another, and refer to more or less particular forms of life. They create identification in concrete communities. They say something about what is important and what counts as good for us as members of a particular group, and hence about which action-rule that should be chosen in order to reach a goal. Whether actions are governed by values or norms is reflected in our degree of commitment. When we act in accordance with moral norms, the action gives the impression of being obligatory or compulsory. By contrast, when we act in accordance with some value, it is only a matter of which action is more recommendable. This is a distinction between axiology and deontology.

Norms and values therefore differ, first, in their references to obligatory rule-following versus teleological action; second, in the binary versus graduated coding of their validity claims; third, in their absolute versus relative bindingness; and fourth, in the coherence criteria that systems of norms and systems of values must respectively satisfy

(Habermas 1996: 255)

According to this reasoning there is an alternative to nationalism and homogeneity as a basis for political integration. Democracy and peoplehood can be detached. The call for democracy as the legitimating principle of the EU testifies to the decoupling of ethnos and demos, of nationality and citizenship.

Constitutional patriotism

In modern societies, citizenship has taken a cognitive turn, which reflects the onus on basic equal rights: If compatriots are to regulate their common affairs by law, they must concede equal rights to each other. Modern states are, according to Kant, based on entitlements entrenched in constitutions as individual rights which turn human beings into a unified body of citizens capable of making the very laws that they are to obey. Increasingly, nationality and citizenship have been disconnected in modern, Western societies. After the French Revolution, nation states have not “existed in isolation as bounded geographical totalities, and they are better thought of as multiple overlapping networks of interaction” (Held 1995: 225). This is a process very much speeded up by the EU, which has “established the bold idea to disconnect nationality and citizenship and this idea may well evolve to general principle which ultimately transforms the ideal of cosmopolitan citizenship into reality” (Preuss 1998: 149). In this respect the EU pursues the modern idea of statehood, as divorced from nationhood: the polity is not bound by pre-political bounds. It is not necessary for citizens to be each other’s brother or sister, or neighbour, or native inhabitant, for political integration to come about.

In the CIDEL project, possible identitarian alternatives to nationalism were considered, notable among which was *constitutional patriotism*.³ Constitutional patriotism elicits a post-national and rights-based type of allegiance, a sense of allegiance that is not derived from pre-political values and attachments steeped in a culture, tradition or a way of life, but from a set of principles and values that are universal in their orientation. It portrays loyalty in political terms; it hinges on the validity of legal norms, the justification of policies, and the wielding of power in the name of *fairness or justice*. Constitutional patriotism is a mode of allegiance that brings about support and emotional attachment because the universalistic principles are embedded in a particular context – a particular geographical setting and set of traditions. They are interpreted and entrenched within a particular institutional setting. The universal principles help entrench a set of procedures that, when made to operate within a particular context, render this self-reflective, and hence, responsive to change.

Constitutional patriotism thus provides one set of answers or recommendations for how to reconcile universal values with context-specific ones, whilst also retaining sensitivity to difference and diversity. But these comments also underline that constitutional patriotism is premised on a *democratic* constitution. This underscores the general observation, namely that utility, values and rights do not constitute self-

³ See Fossum (2003, 2004).

sufficient and exhaustive legitimacy bases for political orders. They must all be considered in relation to democracy, and under modern conditions legitimation has become proceduralised and reflexive.

Democracy as procedure

Many students of modern politics today subscribe to the tenet that democracy is the sole remaining legitimation principle of political domination. Of the long-established authorities – religion, law, state and tradition – only democratically enacted law has survived the corrosion process of modernity (Frankenberg 2003). Religion and tradition are exhausted forces as bases for political legitimacy in modern (Western) societies. Procedural forms of legitimation have replaced substantive, theocentric forms, and hence the conception of the common good has also become abstract and has retreated into institutional procedures:

Our common good, then – the good and interests we share with others – rarely consists of specific objectives, activities, and relations; ordinarily it consists of the practices, arrangements, institutions, and processes that, in Traditionalist's terms again, promote the well-being of ourselves and others – not, to be sure, of 'everyone' but of enough persons to make the practices, arrangements, etc. acceptable and perhaps even cherished.

(Dahl 1989: 307)

One may however not follow Robert A. Dahl when he suggests that it is the purely formal aspects of the procedure that warrant legitimacy: "The opportunity to disagree about specific choices is the very reason for valuing the arrangements that make this opportunity possible" (Dahl 1989:307). Legitimacy is not mere acceptance, but a function of decision-makers' compliance with norms – or pre-established procedures – that generate rationally motivated approval (based on good reasons) from the subjects. Consequently, the procedures must be of a certain kind and quality if they are to generate legitimacy. *Fair procedures* make actors comply even when political decisions or laws are in conflict with their preferences or interests. Legitimacy then stems from the citizens' reasons for holding these beliefs – basically from the actual ability of the system to protect and further the community's integrity, its values and interests. The procedures that make such an assessment possible are the legitimating reasons on which the validity of legitimation is based. In this way it is the presuppositions for reasonable agreement themselves that have been turned into a principle (Habermas 1976: 277). The modern constitutional-democratic state testifies to the transition from material principles based on substantive common values to the procedures and presuppositions of unconstrained agreement as the legitimating forces. Legitimation has become proceduralised: the outcome is correct when it has been decided through correct procedures.

From this we may infer that the most basic procedure to be complied with in democracy is that of *publicity*. Publicity is the test of the legitimacy and fairness of politics. 'All actions relating to the rights of others are wrong if their maxim is incompatible with publicity' (Kant [1795] 1996: 347). Only laws that can be defended in a free and open rational discourse among all affected can claim to be legitimate (Habermas 1996: 116). Procedurally open deliberative processes lend legitimacy to substantive values and functional results, as well as to claims for rights and policies. In other words, only public deliberation can get political results *right*, as it entails the act of justifying the norms to the people who are bound by them. While this basic

democratic principle may not be controversial, it does not translate into a clear answer to the question of which institutional form democracy in Europe should take. What kind of democracy should be institutionalised in Europe? The problem is not only to choose between participatory and representative forms, or between presidential or parliamentary democracy, but also, and in particular, on what level(s) democracy should be institutionalised.

European democracy revisited

The academic debate on European democracy is multifaceted. It brings up the nature and character of the integration process; the issue of conceptualising democracy; the question of community and common values; political ambitions and possibilities; globalisation's many faces; and the character of the changing world order, etc. In terms of the scale and the scope of how democracy is envisaged to be institutionally configured, this multifaceted debate can be pinned down to three core axes or institutional configurations.

Rescuing or uploading democracy?

The first, most widespread and dominant axis, takes as its key premise that the nation state is the harbinger of democracy. The conundrum facing proponents of national democracy is that in today's Europe, a range of processes generally labelled under the heading of globalisation are seen to *undermine* the salience of the nation state as the embodiment of democratic government. Euro-sceptics, notably of a conservative bent, see European political integration as synonymous with the factors that drain out the essence of nationhood.⁴ Social democrats and communitarians claim that the European integration process sustains a neo-liberal supranational order, an order that undercuts both the systems of risk-regulation and the measures of solidarity that were such characteristic traits of the European welfare state.⁵ Taken together these factors are seen to sustain a system of multi-tiered democratic deficits. Many students of democracy go further and argue that the democratic deficit is not merely a contingent matter relating to the effects of globalisation, but refers to lack of core democratic components such as a common European public sphere. Some underline the structural character of the problem: it highlights built-in limitations in the *scale* of representative democracy. Robert A. Dahl (1999) for instance, has argued that, beyond a certain scale, representative democracy simply cannot work; thus, extending representative democracy to the European level lengthens the democratic chain of legitimation and *heightens citizens' alienation*. The most obvious solution is to roll back integration. But can really the rolling back of European integration *rescue* national democracy under conditions of interdependence and globalisation?

⁴ For a selection of Euro-sceptical writings, see Holmes (1996).

⁵ See Etzioni (2007); Greven (2000); Miller (1995; Offe (2000, 2003); Scharpf (1999); Streek (2000). The negative referenda results of the Constitutional Treaty can be construed as voters punishing the Union, as well as their own leaders, for actively taking measures to undermine both democracy and the ability to forge collective action (Nicolaidis 2005: 14). See also post-referendum surveys in France and the Netherlands (Eurobarometer 2005a, 2005b). Siedentop (2000) gives this argument a special twist. Whilst supporting a European federal state, he argues that the present integration process is an unhappy marriage of French *étatisme* and neo-liberal economism. This mixture threatens to undercut the prospect for democracy in Europe.

The merit of this solution (rolling back integration) is disputed by other analysts who argue that the main challenge to national democracy does not emanate from European integration, but instead from decisional exclusion, as a result of denationalisation and globalisation under which international crime, environmental degradation, and tax evasion thrive. Many of the decisions affecting national citizens are made elsewhere. Indeed, these processes reveal decreasing steering capacities on the part of the nation state.⁶ When framed in this light, analysts such as Habermas (2001) see European integration not as the nemesis of democracy, but as a means of *uploading* democracy to the European level.

Both positions in this debate take the nation state as their frame of reference and discuss the prospects for democracy in these terms. Proponents of a European federal state (e.g. Mancini 1998; Morgan 2005) would for instance argue that instituting democracy at the supranational level is the best assurance for sustaining democracy also at the member-state level. But within such a configuration the member states could no longer be sovereign *nation* states. Whether the European level could foster a viable nationalism is highly questionable. Hence, the standard federal solution fails to lay to rest the question of nationalism's relationship to democracy. The answer hinges at least in part on how we view the communitarian claim that without a collective identity, there can be no democracy.

Decentring democracy?

The second axis of debate is made up of transnationalists and multilevel governance scholars, who argue that the challenge facing Europe is neither to rescue the nation state, nor to upload state-based democracy to the EU level. The EU is seen as a possible *alternative* to the nation-state model.⁷ Further, some analysts hold the EU up as a type of polity that has prospects for developing democracy *beyond* the nation state.⁸ Ruggie (1993) sees the EU as a case of unbundling of state authority, and with this a change in the constitutive principle of territoriality. Transnationalists and multilevel governance scholars portray the EU as made up of a host of new governance structures that combine to make up an alternative to a government above the nation state. To them, sovereignty resides with the problem-solving units themselves.⁹ Dense transnational networks and administrative systems of coordination have been intrinsic to the legitimacy of the EU, and some see these as amounting to a form of *transnational constitutionalism*.¹⁰ They are based upon the private law framework of legal institutions 'that claim legitimacy beyond their own will or self-interest' (Möllers 2004: 329). This debate focuses on the conditions under which such issue areas can be deemed to be legitimate. If the self-governing collectivity is part of several communities – national, international and global – the locus-focus of democracy becomes a puzzling matter (Held 1995: 225).

⁶ See Nielsen (2004). Bartolini (2004) sees this in weakened power of centres' ability to control peripheries. Against this view we find analysts who argue that European integration *strengthens* the state. See notably Moravcsik (1994); Milward (1992).

⁷ Hooghe and Marks (2003) outline two models of multilevel governance, among which MLG II is the one closest to the non-state approach to governance.

⁸ See notably Schmitter (1996, 2000). See also Hoskyns and Newman (2000); Preuss (1996); Weiler (1999, 2001b); Zürn (1998). Lord's (2004) second democratic standard, 'concurrent consent', is explicitly designed for a multi-level system of governance, without this necessarily being tied to the state form.

⁹ See for example Bohman (2005); Cohen and Sabel (1997, 2003); Dryzek (2006); Gerstenberg (2002). For an overview of the governance literature in a European context, see Kohler-Koch and Rittberger (2006).

¹⁰ See Fischer-Lescano and Teubner (2006); Joerges et al. (2004); Möllers (2006); Slaughter (2004).

Multilevel governance scholars and transnationalists share the focus on new forms of governance, but they also differ in disciplinary orientation and focus. Multilevel governance scholars (who are generally political scientists) focus mainly on structural features of the EU. Hooghe and Marks (2003) for instance sketch two models of multilevel governance that are both radical departures from the centralised state. Transnationalists (many of whom are lawyers, political theorists and sociologists) focus less on structures and more on modes and forms of interaction. Some, notably Cohen and Sabel (1997, 2003), and Bohman (2007), straddle the line between the second and third (cosmopolitanism) axes of debate through opting for a 'cosmopolitanism restrained' which blends elements of cosmopolitanism¹¹ with (a regional notion of) transnational governance. They argue for the normative validity of a kind of polycentric system of directly-deliberative polyarchy (Bohman 2005). This entails a model of direct participation and public deliberation in structures of governance wherein the decision-makers – through 'soft law,' benchmarking, shaming, blaming, etc. – are connected to larger strata of civil society. The claim is that transnational civil society, networks and committees, NGOs and public forums, all serve as arenas in which EU actors and EU citizens from different contexts – national, organisational and professional – come together to solve various types of issues and in which different points of access and open deliberation ensure democratic legitimacy. The EU is seen as a multilevel, large-scale and multi-perspectival polity based on the notions of a disaggregated democratic subject and of diverse and dispersed democratic authority.

There are observations to support such a view and also the notion of the EU as a non-coercive deliberative system, with re-regulatory and market redressing effects.¹² The critical question, however, pertains to whether transnational governance structures can meet with the core democratic requirements of public accountability and congruence. Can the democratic requirements of equal access, transparency and openness be met or is citizens' participation restrained to *a limited segment of the citizenry*? In other words, does deliberation and problem-solving in transnational networks have democratic value? If so, what are the institutions and mechanisms we should look for? The crucial question that this debate brings forth is whether the state form and a collective identity are necessary preconditions for democracy to prevail. In short, can democracy prevail without state and nation?

Cosmopolitan democracy?

The third 'cosmopolitan' axis of debate focuses on Europe as a particularly relevant site, for the emergence of cosmopolitanism (Archibugi 1998; Beck and Grande 2005; Delanty and Rumford 2005). This cast of scholars draws variously on transnationalism; on the notion of the EU as a new form of Community; and on the EU's global transformative potential through acting as a 'normative power' or 'civilian power' (Rumford 2005; Manners 2002). Cosmopolitanism, Rumford notes (2005: 5) 'is not part of the self-identity of the EU.' Scholars nevertheless recognise the EU as a part of, and as a vanguard for, an emerging democratic world order. It is seen to connect to the changed parameters of power politics through which sovereignty has turned conditional upon respecting democracy and human rights. It is posited as

¹¹ Cohen and Sabel (2006) expressed this cosmopolitan stance more explicitly in their most recent article.

¹² Egan and Wolf (1999: 253). See Joerges and Neyer (1997); Cohen and Sabel (2003); Gerstenberg (2002); Joerges and Vos (1999); Wessels (1998); cp. Majone (2005: 143ff). See also Stone Sweet (2004) for the role of the ECJ with regard to positive integration.

one of several emerging regional-cosmopolitan entities that intermediate between the nation state and the (reformed) UN, and which become recognised as a legitimate independent source of law (Eriksen 2006; Habermas 2001; Held 1992, 1995). In the Westphalian order, states are sovereigns with fixed territorial boundaries and are entitled to conduct their internal and external affairs autonomously; without any possibilities for external actors to control the protection of human rights. But one of the main thrusts of legal developments over the last half-century has been to protect human rights. The development of the UN (and regional entities such as the ECHR), whose global entrenchment has been re-enforced through multilateral arrangements for regulating economic international affairs (such as Bretton Woods, the GATT and the WTO), and their accompanying set of institutions, first delimited, and later redefined, the principle of state sovereignty. Aggressors can now be tried for crimes against humanity, and offensive wars are criminalised. State sovereignty is in the process of becoming *conditional*; conditioned on compliance with *citizen's sovereignty*. Democracy can thus no longer stand for a national 'community of fate' that autonomously governs itself.

The debate on European democracy makes it clear that the core issue is to establish what democracy *can mean* when the nation state no longer serves as the taken-for-granted foundation. The most critical issue that the multidimensional debate on democracy in Europe brings up is how to conceptualise democracy as an organisational arrangement within a post-Westphalian global context, where states are deeply intertwined. It is marked by *complex interdependence embedded in a multilevel governance configuration*. Europe's conundrum is that it cannot simply do away with this structure without facing democratic losses. But neither can it simply rely on this structure to resolve its democratic problems. The solution is to *reconstitute* democracy, which starts from the recognition that only a political system that is able to address the complexities and contradictions brought forth by the process of continental integration – which has been step-wise through several rounds of enlargement – can ensure a viable democracy in Europe today.

Reconstituting democracy

Reconstituting democracy in Europe should take the European multilevel structure as the point of departure. This structure consists of intergovernmental as well as supranational and transnational elements; each of these entails different model constructions of how a democratic Europe would look. In other words, when we apply the democratic principle to the multilevel structure we get to three different European democratic orders.¹³

Reconstitution through audit democracy

The first model envisages democracy as directly associated with the nation state. The presumption is that it is only the nation state that can foster the type of trust and solidarity that is required to sustain a democratic polity. On the basis of a well-developed collective identity, the citizens can participate in opinion-forming processes and put the decision-makers to account at regular intervals, as well as continuously through public debate. In this model, the emerging structure in Europe

¹³ For further information on this reconstruction – and the models – see Eriksen and Fossum (2007).

is seen as a regulatory regime deeply embedded in extensive institutional arrangements of public (or semi-public) character.

The model posits that the Union be mandated to act within a delimited range of fields. The model presumes that the member states delegate competence to the Union, a competence that in principle can be revoked. Democratic authorisation by member states today, however, takes the form of a supranational Union-wide representative body. In order to account for this in an intergovernmental perspective, its democratic purpose would have to be delimited to serve as an agent of *audit democracy*, not representative democracy. The representative body would, together with transnational and/or supranational institutions (such as a court and an executive), be set up to help member states supervise and control the Union's actions. These would be specifically mandated to hold intergovernmental decision-making bodies to account. They would be constitutionally barred from legitimising and authorising law-making, as well as from expanding Union competencies. Delegation works better in some issue-areas than in others: the general stipulation is to solve problems that the member states cannot handle alone, and to delegate control where this will not undermine national democratic arrangements.

In accordance with the logic of democratic delegation, that is, which issues can be delegated without severe loss of democratic self-governing ability, the EU's conferred competencies would be foremost in the operation of the Common Market. The scope for common action in other policy fields would be quite narrow, as would be the scope for redistribution. According to this model, the present-day EU would have to be slimmed down and would not be suited to handle many of the challenges of the nation states posed by globalisation. Since the fate of national democracy is intrinsically linked to developments at the EU level, another strategy is that of reconstituting democracy at this level.

Reconstitution through federal multinational democracy

The democratic credo posits that all political authority emanates from the law laid down in the name of the people. The legitimacy of the law stems from the presumption that it is made by the people or their representatives – the *pouvoir constituant* – and is made binding on every part of the polity to the same degree and amount. A legally integrated community can only claim to be justified when the laws are enacted correctly, and the rights are allocated on an equal basis. The conventional shape of such a community is the democratic constitutional state, based on direct legitimation, and in possession of its own coercive means.

For this model to work properly within the complex European setting, which has obvious traits of deep diversity, we have to take heed of the existence of *multiple* nation-building/sustaining projects. This model can then also be modified to accommodate the fact that nation-building at the EU level would be taking place *together with* nation-building at the member state (and partly even regional) level. The modified version would be a *multinational federal European state*. In its institutional design, such an entity would have to coordinate the self-government aspirations and the rival nation-building projects that would occur within the European space (Norman 2006: 96). In constitutional terms, a multinational federation presupposes that the principle of formal equality be supplemented with particular constitutional principles. These are intended to provide some form of 'recognitional parity', for national communities at different levels of governance (in the EU at Union and

member state levels). Wayne Norman (2006: 163-9) cites seven such principles: (a) partnership; (b) collective assent; (c) commitment and loyalty; (d) anti-assimilationism; (e) territorial autonomy as national self-determination; (f) equal right of nation-building; and (g) multiple and nested identities. This model is premised on the tenet that a uniform national identity is not a core precondition for the democratic constitutional state. The multinational federal state requires citizens' allegiance; in the form of a *constitutional patriotism*, which is embedded in contextualised basic rights that ensure both an individual sense of 'self' and a collective sense of membership. This requires a positive identification of Europe, and the distinguishing of Europeans from others so as to make up the requisite social basis and 'we-feeling' for collective action and for regulatory and redistributive measures. However, as there is not much support for the idea of a 'super-state' in Europe, a third strategy is that of a regional-cosmopolitan variant of democracy.

Reconstitution through regional-European democracy

The third model envisages democracy *beyond* the template of the nation state and the states' system. This model posits the EU at the trans- and supranational level of government in Europe, and as one of the regional subsets of a larger cosmopolitan order. This implies that the Union will be a post-national government, a system whose internal standards are projected onto its external affairs; and further, that it will be a system of government that subjects its actions to higher-ranking principles - to 'the cosmopolitan law of the people'.

The EU has obtained competencies and capabilities that resemble those of an authoritative government, which we may define as the political organisation of society, or in more narrow terms, as the institutional configuration of representative democracy and of the political unit. The idea is that since 'government' is not equivalent to 'state', it is possible to conceive of a non-state, democratic polity with explicit government functions. Such a government structure can accommodate a higher measure of territorial-functional differentiation than can a state-type entity, as it does not presuppose the kind of 'homogeneity' or collective identity that is needed for comprehensive resource allocation and goal attainment. Such a governmental structure is based on a division of labour between the levels that relieves the central level of certain demanding decisions. The problem is how such an entity can be effective - implementing decisions against a dissenting minority, in the absence of state-type coercive measures. When it is the member states that keep the *monopoly of violence in reserve*, such an order can only be effective to the degree that actors comply on the basis of voluntary consent. The EU's decisions are implemented through authorised and democratically supervised national administrations. Collective decision-making and implementation in the EU thus takes place within a setting of already legally institutionalised and politically integrated orders, which can help ensure compliance. However, one may ask how such an order can 'deliver'; how can it bring about changes required by justice? How can it ensure equal access and public accountability in the complex multilevel constellation that makes up the EU? Any attempt to set up such a system in one corner of the world only, with Europe as a vanguard, is likely to be a fickle construction

Conclusion

This paper has offered a brief overview of the intellectual framework we developed in the CIDEL project which disentangled legitimacy into several components (utility, values and rights) and held these up against the European Union's development. The European Union has developed beyond that of international organisation and derivative democratic construct (an entity whose democratic quality would be entirely derived from the member states). But the step from negative determination to positive identification of type of entity requires an analytical scheme that takes the character of the polity configuration properly into account. The Union embarked on a constitution-making process, which lent symbolic credence to the notion that the question of the Union's legitimacy really must be considered as intrinsic to the question of democracy in Europe. The European integration process impinges on member states' democratic arrangements, and the member states shape the democratic arrangements at the Union level.

The real challenge facing Europe pertains to the nature and status of *democracy*, or rather democratisation, in Europe. Europe's democratic conundrum is that it cannot simply do away with the structure that has been wrought at the EU-level, without facing democratic losses. But this structure in its present form and shape also produces democratic problems. Therefore, the key issue facing Europe is the need for *reconstituting* democracy in Europe. Acknowledging this does not foreclose the issue; it offers a wide range of conceptions of democracy and standards of legitimacy. We have demonstrated that, within an interdependent world, this can take the EU in a statist or in a cosmopolitan direction. The Union's ability to pursue these directions hinges on internal as well as external factors, *including* macroscopic ones such as the future of the states' system.

Given this range of options, there is an obvious need for a clear intellectual map which sets out the main democratic options, and serves as key to more detailed assessments of the *multilevel constellation* that makes up the EU in order to establish in what direction it moves and where it fits within this vast terrain.

We have here proposed three such models for democratic reconstitution of Europe. The analytical framework that makes up these models permits us to engage with the many paradoxes, aporias and dilemmas that haunt Europe, and global processes more generally. They help shed light on the profound challenges facing contemporary Europe: overcoming nationalism without doing away with solidarity; establishing a single market in Europe without abolishing the welfare state; achieving unity and collective action without glossing over difference and diversity; preserving identity without neglecting global obligations; achieving efficiency and productivity without compromising rights and democratic legitimacy; and ensuring law-based rule as well as popular sovereignty.

References

- Archibugi, D. (1998) 'Principles of Cosmopolitan Democracy', in D. Archibugi, D. Held and M. Köhler (eds) *Re'imaging Political Community*, Cambridge: Polity Press.
- Bartolini, S. (2004) 'Old and New Peripheries in the Processes of European Territorial Integration', in C. Ansell and G. Di Palma (eds) *Restructuring Territoriality*, Cambridge: Cambridge University Press.
- Beck, U. and E. Grande (2005) *Das Kosmopolitische Europa*, Frankfurt: Suhrkamp.
- Bohman, J. (2005) 'Reflexive constitution-making and transnational governance', in E.O. Eriksen (ed.) *Making the European Polity: Reflexive integration in the EU*, London: Routledge.
- Bohman, J. (2007) *Democracy across Borders: From Dêmos to Dêmoi*, Cambridge: The MIT Press.
- Cohen, J. and C.F. Sabel (1997) 'Directly-Deliberative Polyarchy', *European Law Journal*, 3(4): 313-42.
- (2003) 'Sovereignty and Solidarity: EU and US', in J. Zeitlin and D.M. Trubek (eds) *Governing Work and Welfare in the New Economy: European and American Experiments*, Oxford: Oxford University Press.
- (2006) 'Extra Rempublicam Nulla Justitia?', *Philosophy and Public Affairs*, 34(2): 147-175.
- Dahl, R.A. (1989) *Democracy and Its Critics*. New Haven: Yale University Press.
- (1999) 'Can International Organizations be democratic? A skeptic's view', in I. Shapiro and C. Hacker-Cordón (eds) *Democracy's Edges*, Cambridge: Cambridge University Press.
- Delanty, G. (2005) 'The quest for European Identity', in E.O. Eriksen (ed.) *Making the European Polity: Reflexive integration in the EU*, London: Routledge.
- Delanty G. and C. Rumford (2005) *Rethinking Europe: Social Theory and the Implications of Europeanization*, London: Routledge.
- Dryzek, J. (2006) *Deliberative Global Politics*, London: Polity Press.
- Egan, M. and D. Wolf (1999) 'Regulatory Oversight in Europe: The Case of Comitology', in C. Joerges and E. Vos (eds) *EU Committees: Social Regulation, Law and Politics*. Oxford - Portland: Hart Publishing.
- Eriksen, E.O. (ed.) (2005) *Making the European Polity: Reflexive Integration in the EU*, London: Routledge.
- (2006) 'The EU - A Cosmopolitan Polity?', *Journal of European Public Policy*, 13: 252-69.
- Eriksen E.O. and J.E. Fossum (2000) *Democracy in the European Union: Integration Through Deliberation?*, London: Routledge.
- (2004) 'Europe in Search of Legitimacy: Strategies of Legitimation Assessed', *International Political Science Review*, October, 2004, 25, 4: 435-459.
- (2007) 'Europe in Transformation - How to Reconstitute Democracy?', RECON Online Working Paper 2007/01. Available at: http://www.reconproject.eu/main.php/RECON_wp_0701.pdf?fileitem=5456091
- Eriksen, E.O. and J. Weigård (2003) *Understanding Habermas*, London: Continuum.
- Eriksen, E.O., C. Joerges and F. Rödl (eds) (forthcoming 2008) *Law, Democracy and Solidarity in a Post-national Union*, London: Routledge.

- Etzioni, A. (2007) 'The Community Deficit', *Journal of Common Market Studies*, 45(1): 23-42.
- Eurobarometer (2005a) 'The European Constitution: post-referendum survey in The Netherlands', Flash Eurobarometer 172, June 2005. Available at: http://ec.europa.eu/public_opinion/flash/fl172_en.pdf.
- Eurobarometer (2005b), 'The European Constitution: post-referendum survey in France', Flash Eurobarometer 171, June 2005. Available at: ec.europa.eu/public_opinion/flash/fl171_en.pdf
- Fischer-Lescano, A. and Teubner, G. (2006) *Regime Kollisionen: Zur Fragmentierung des globalen Rechts*, Frankfurt: Suhrkamp.
- Fossum, J.E. (2003) 'The European Union In Search of an Identity', *European Journal of Political Theory* 2(3):319-340.
- (2004) 'Still a Union of Deep Diversity? The Convention and the Constitution for Europe', in E.O. Eriksen, J.E. Fossum and A.J. Menéndez (eds) *Developing a Constitution for Europe*. London: Routledge.
- Frankenberg, G. (2003) *Autorität und Integration*, Frankfurt: Suhrkamp
- Gerstenberg, O. (2002) 'The New Europe: Part of the Problem – or Part of the Solution to the Problem?', *Oxford Journal of Legal Studies*, 22: 563-71.
- Greven, M. (2000) 'Can the European Union Finally Become a Democracy?', in M. Greven and L. Pauly (eds) *Democracy Beyond the State?*, Toronto: University of Toronto Press.
- Grimm, D. (1995) 'Does Europe Need a Constitution?', *European Law Journal* 1(3): 282-302.
- Habermas, J. (1976) 'Legitimationsprobleme im modernen Staat', in *Zur Rekonstruktion des Historischen Materialismus*, Frankfurt: Suhrkamp.
- (1994) 'Struggles for Recognition in the Democratic Constitutional State', in C. Taylor et al.: *Multiculturalism: Examining the Politics of Recognition*. Princeton, N. J.: Princeton University Press.
- (1996) *Between Facts and Norms: Contributions to a Discourse Theory of Law*, Cambridge, MA: The MIT Press.
- (2001) *The Postnational Constellation: Political Essays*, Cambridge: Polity Press.
- Held, D. (1992) 'Democracy: From City-states to a Cosmopolitan Order?', *Political Studies*, 40: 10-39.
- (1995) *Democracy and the Global Order. From the Modern State to Cosmopolitan Governance*. Cambridge: Polity Press.
- Holmes, M. (ed.) (1996) *The Eurosceptical Reader*, Basingstoke: Macmillan.
- Hooghe, L. and G. Marks (2003) 'Unraveling the Central State, but How? Types of Multi-level Governance', *American Political Science Review*, 97: 233-43.
- Hoskyns, C. and M. Newman (eds) (2000) *Democratizing the European Union*, Manchester: Manchester University Press.
- Joerges, C., and N. Neyer (1997) 'Transforming Strategic Interaction into Deliberative Problem-solving: European comitology in the foodstuffs sector', *Journal of European Public Policy*, 4(4): 609-25.
- Joerges, C. and E. Vos (eds) (1999) *EU Committees: Social Regulation, Law and Politics*. Oxford: Hart Publishing.
- Joerges, C., I.-J.Sand and G. Teubner (eds) (2004) *Transnational Governance and Constitutionalism*, Oxford: Hart.

- Kant, I. ([1795] 1996) 'Toward Perpetual Peace', in I. Kant [ed. M.J. Gregor] *Practical Philosophy*, Cambridge: Cambridge University Press.
- Kohler-Koch, B and B. Rittberger (2006) 'Review Article: The "Governance Turn" in EU Studies', *Journal of Common Market Studies*, 44: 27-49.
- Lord, C. (2004) *A Democratic Audit of the European Union*, Basingstoke: Palgrave Macmillan.
- Majone, G. (2005) *Dilemmas of European Integration*, Oxford: Oxford University Press.
- Mancini, G.F. (1998) 'Europe: the Case for Statehood', *European Law Journal*, 4(1): 29-43.
- Manners, I. (2002) 'Normative Power Europe: A Contradiction in Terms?', *Journal of Common Market Studies* 40(2): 235-58.
- Miller, D. (1995) *On Nationality*, Oxford: Oxford University Press.
- Milward, A. (1992) *The European Rescue of the Nation State*, London: Routledge.
- Möllers, C. (2004) 'Transnational Governance without a Public Law?', in C. Joerges, I.-J. Sand and G. Teubner (eds) *Transnational Governance and Constitutionalism*, Oxford: Hart.
- (2006) *Legitime Gewaltenteilung – Nationalstaat – Europäische Integration – Globalisierung*, Tübingen: Mohr.
- Moravcsik, A. (1994) 'Why the European Community Strengthens the State: Domestic Politics and International Cooperation', paper presented at the Annual Meeting of the American Political Science Association, New York, 1-4 September 1994.
- Morgan, G. (2005) *The Idea of a European Superstate: Public Justification and European Integration*, Princeton, NJ: Princeton University Press.
- Nicolaidis, K. (2005) 'The Struggle for Europe', *Dissent*, Fall 2005: 11-17.
- Nielsen, K. (2004) 'Are Nation-States Obsolete? The Challenge of Globalization', in M. Seymour (ed.) *The Fate of the Nation State*, Montreal: McGill-Queen's University Press.
- Norman, W. (2006) *Negotiating Nationalism: Nation-building, Federalism and Secession in the Multinational State*, Oxford: Oxford University Press
- Offe, C. (1998) "'Homogeneity" and Constitutional Democracy: Coping with Identity Conflicts through Group Rights', *Journal of Political Philosophy*, 5: 163-82.
- (2000) 'The Democratic Welfare State in an Integrating Europe', in M. Greven and L. Pauly (eds) *Democracy Beyond the State?*, Toronto: University of Toronto Press.
- (2003) "'Homogeneity" and Constitutional Democracy: Coping with Identity Conflicts through Group Rights', in *Herausforderungen der Demokratie. Zur Integrations- und Leistungsfähigkeit politischer Institutionen*. Frankfurt: Campus Verlag.
- Preuss, U. (1996) 'Two Challenges to European Citizenship', in R. Bellamy and D. Castiglione (eds) *Constitutionalism in Transformation: European and Theoretical Perspectives*. Oxford: Blackwell.
- (1998) 'Citizenship in the European Union: a Paradigm for Transnational Democracy?', in D. Archibugi, D. Held and M. Köhler (eds) *Re-Imagining Political Community*, Cambridge: Polity Press.
- Ruggie, J. G. (1993) 'Territoriality and Beyond: Problematizing Modernity in International Relations', *International Organization*, 47(1): 139-74.
- Rumford, C. (2005) 'Cosmopolitanism and Europe. Towards a new EU studies agenda?', *Innovation*, 18(1): 1-9.

- Scharpf, F. W. (1999) *Governing in Europe: Effective and Democratic*, Oxford: Oxford University Press.
- Schmitt, C. (1926) *The Crisis of Parliamentary Democracy*, Cambridge: MIT Press.
- Schmitter, P.C. (1996) 'Imagining the Future of the Euro-Polity with the Help of New Concepts', in G. Marks, F. W. Scharpf, P. C. Schmitter, and W. Streeck (eds) *Governance in the European Union*, London: Sage.
- (2000) *How to Democratize the European Union – and Why Bother?*, Lanham: Rowman & Littlefield.
- Siedentop, L. (2000) *Democracy in Europe*, London: Penguin.
- Sjursen, H. (2002) 'Why Expand? The Question of Justification in the EU's Enlargement Policy', *Journal of Common Market Studies* 40(3): 491–513.
- Slaughter, A.-M. (2004) *A New World Order*. Princeton: Princeton University Press.
- Stone Sweet, A. (2004) *The Judicial Construction of Europe*, Oxford: Oxford University Press.
- Streek, W. (2000) 'Competitive Solidarity: Rethinking the "European Social Model"', in K. Hinrichs, H. Kitschelt and H. Wisenthal (eds) *Kontingenz und Krise*, Frankfurt: Campus.
- Taylor, C. (1985) 'What is Human Agency?', in C. Taylor: *Human Agency and Language. Philosophical Papers 1*. Cambridge: Cambridge University Press.
- (1989) *Sources of the Self*. Cambridge: Cambridge University Press.
- (1993) *Reconciling the Solitudes: Essays on Canadian Federalism and Nationalism*. Montreal and Kingston: McGill-Queen's University Press.
- Weiler, J.H.H. (1999). *The Constitution of Europe: "Do the New Clothes Have an Emperor?" and Other Essays*. Cambridge: Cambridge University Press.
- (2001a) 'Federalism without Constitutionalism: Europe's Sonderweg', in K. Nicolaidis and R. Howse (eds) *The Federal Vision*, Oxford University Press.
- (2001b) 'European Democracy and the Principle of Toleration: The Soul of Europe', in F. Cerutti and E. Rudolph (eds) *A Soul for Europe, Vol.1*, Leuven: Peeters.
- (2002) A Constitution for Europe? Some hard choices. *Journal of Common Market Studies* 40(4): 563-80.
- Wessels, W. (1998) 'Comitology: Fusion in Action: Politico-administrative Trends in the EU System', *Journal of European Public Policy*, 5(2): 209-34.
- Young, I.M. (1990) *Justice and the Politics of Difference*, Princeton: Princeton University Press.
- Zürn, M. (1998) *Regieren jenseits des Nationalstaats. Globalisierung und Denationalisierung als Chance*, Frankfurt: Suhrkamp.

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