Maximilian Conrad

Europeans and the Public Sphere

Communication without Community?

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For my family

"The cure for the ailments of democracy is more democracy. The prime difficulty […] is that of discovering the means by which a scattered, mobile and manifold public may so recognize itself as to define and express its interests."

- John Dewey, *The Public and its problems* (1927)

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PART ONE

INTRODUCTION

1

Democracy: The Unfinished Project of European Integration

Introduction

Almost five years after the entry into force of the Lisbon Treaty in the European Union (EU), in the midst of a European-Parliament election campaign that may for the first time have a direct impact on the selection of the next Commission President, conventional wisdom still holds that the union and its decision-making processes are characterized by a profound democratic deficit. There are numerous reasons for this perception, but the most important one is arguably that the very real gap between the union's citizens and its institutions expresses itself in a fundamental unawareness on the part of the citizens of legislation that is under preparation at virtually any given point in time. Quite simply, controversial EU legislation has a tendency to catch people off guard, as EU citizens are too often unaware of the laws that the European institutions produce until they feel the effects on their own skin. In addition to this, the EU is difficult to make sense of from the perspective of political theory, both with regard to its complex mix of supranational and intergovernmental elements (e.g. Eriksen 2009, chaps. 8-10; Wiener 2011; Eriksen & Fossum 2012) and the simple fact that it is an *evolving* political system. Quite often, this combination of an unawareness of the way the institutions work and an unawareness of what kind of legislation is under preparation results in a fundamental rejecton of the EU and its political system as a whole. These problems are exacerbated by the challenges brought about in the wake of the Eurozone debt crisis and the style of *executive federalism* through which

ever more austerity packages are imposed on the countries worst hit by the crisis (Habermas 2011).

Solutions to the democratic deficit have however proved elusive over the years. To an important extent, this is because the nature of the evolving polity remains contested, making it difficult to develop normative criteria for assessing the democratic quality of EU decision making (cf. Eriksen & Fossum 2012). The union is often and suitably described as a *polity sui generis:* at its core, it remains an international organization, although the participating member states have delegated an unusual amount of authority to the union's supranational institutions (e.g. Wiener 2011). Despite this extensive *pooling of sovereignty* (Moravcsik 1998), the fact that the union continues to be based on international treaties (as opposed to a popularly authored constitution) underlines how far the union is from becoming anything like a federal state. Nonetheless, the discourse on the democratic deficit often takes as its implicit starting point the notion that the EU should be democratic in a way at least closely resembling the way democracy works in nation states. As we will see below, political philosophy and democratic theory have only begun to question whether the concept of popular sovereignty is indeed the best normative ideal for democracy beyond the nation state. Political debate on the EU democratic deficit, however, tends to assume that only a strengthening of mechanisms of representative-democratic accountability can fix the democratic deficit in the EU.

Representative democracy is one of the cornerstones of EU governance.[1] At the same time, there are clearly also limits to the extent to which representative democracy can be institutionalized without the EU becoming too much like a state founded on the notion of European peoplehood and thus a European *demos* (cf. Eriksen 2009, chap. 10). As a matter of fact, art. 10 TEU already goes quite far in stating that citizens are represented *directly* in the European Parliament *and* via their respective governments in the European Council and in the Council of Ministers. At the same time, the intergovernmental nature of the EU continues to be reflected in the limited role that the European Parliament plays e.g. in the

[1] The union's representative elements are spelled out in art. 10 of the Treaty on European Union (TEU).

selection of key positions in the EU compared to the role played by the European Council (Conrad 2014).[2]

The contested nature of the EU as a polity also has profound implications for normative expectations regarding its democratic performance and the role that its representative institutions can play in shaping its decisions. The debate on the democratic deficit has for instance emphasized the European *demos deficit* as a factor limiting the scope of the possible future democratization of the EU. Europeans do not constitute a people, whether from the perspective of constitutional law or from the perspective of the self-perceptions of its citizens. The EU, as Jan-Werner Müller remarks, is "not based on one constituent power", but "on an expanding *group of demoi"* (Müller 2011: 201; italics in the original).

Authors in the Habermasian tradition tend to emphasize the need for European demos construction, more or less as a precondition for a meaningful reconstitution of democracy beyond the nation state (Habermas 1998; Eriksen & Fossum 2004, 2007). James Bohman (2005, 2007a), on the other hand, highlighted the problems that could arise from the postnational project of European demos construction, arguing that any such move bears the risk of creating a "hierarchy of authority" between the newly created European demos and the already existing and democratically constituted demoi at the level of the member states. For Bohman, European integration therefore necessitates a fundamental transformation of democracy both in terms of the normative ideal and the institutional design of democracy (Bohman 2007b). Instead of reconstituting democracy via the construction of European peoplehood, he proposes that democracy itself has to be transformed into something *beyond* the concept of popular self-rule in the singular. Transnational democracy would have to be rule of the peoples in the plural and should be conceived of in terms of a democratic minimum, namely *freedom from domination* (ibid.; cf. Müller 2011).

The paradoxical relationship between European integration and democracy thus becomes a problem for democratic theory (cf. Eriksen &

[2] As a case in point, the Lisbon Treaty states that the candidate for the office of Commission President has to be chosen "taking into account the elections to the European Parliament" (art. 7 TEU). However, this choice is formally still the prerogative of the European Council.

Fossum 2012). Since democratic theory has so far only produced an account of democracy as *popular sovereignty* (and thus on the basis of the idea of a unified body of citizens that perceives itself as a demos), state-centered democratic theory is the only normative yardstick available for assessing the democratic character of transnational polities such as the EU (Chevenal & Schimmelfennig 2013). Eriksen and Fossum therefore see two options for the EU: it would either have to become more like a state to fit the categories of state-centered democratic theory, which would amount to a reconstitution of Europe; or democratic theory has to develop a compelling account of democracy beyond the state, which would amount to a "reconfiguration" of democracy (Eriksen & Fossum 2012).

To the extent that debates on the democratic deficit have focused on a lack of stronger mechanisms of democratic accountability, they have therefore been barking up the wrong tree. The European Union's democratic deficit is not primarily an institutional deficit that can be fixed for instance through a gradual strengthening of the European and/or the respective member state parliaments. Such institutional reforms have of course taken place from the mid-1980s onwards, and to some extent they may even have enhanced at least the perception of the democratic character of EU law-making. Through a series of treaty-reform processes, the European Parliament has gone from being little more than a consultative body to an equal co-legislator on par with the Council of Ministers, the union's main intergovernmental institution (e.g. Bache et al. 2011: 299; Burns 2013: 159ff.). [3] Most recently, the Lisbon Treaty furthermore strengthened the role of member state parliaments as a kind of control mechanism in EU decision making.[4] Such reforms may contribute to less-

[3] Beginning with the introduction of the so-called "cooperation procedure" in the Single European Act, the competences of the European Parliament have gradually and continuously been extended. While the cooperation procedure still meant that decision-making power resided exclusively with the Council of Ministers, the Treaty on European Union (the "Maastricht Treaty") introduced the so-called "co-decision procedure" in a limited number of policy areas, later to be extended to further policy areas in the treaties of Amsterdam and Nice. In the Lisbon Treaty, finally, co-decision between the European Parliament and the Councul of Ministers is to become the rule in EU decision making.

[4] While already the Constitutional Treaty contained a provision through which national parliaments were empowered to monitor the application of the principle of subsidiari-

ening the perception of a democratic deficit. From the perspective of democratic theory, they are however more of a cosmetic than substantive nature, as they do not address the much more pressing—and much more fundamental—question of what democracy ought to look like beyond the nation state. Can democracy be reconstituted beyond the nation state without reconstituting the notion of peoplehood beyond the nation state? In other words, can the European Union become a democratic polity without developing a sense of European peoplehood first—can it become a transnational democracy of demoi (Bohman 2005, 2007a; Cheneval & Schimmelfennig 2013)?

The democratic deficit in EU decision making is therefore more of a symptom of a much broader problem, namely the problem of the lack of a democratic theory beyond the nation state. As decision making increasingly moves beyond the nation state, a fundamental need for democratic control mechanisms emerges also beyond the nation state. The starting point for Habermas's account of the "postnational constellation" is the observation that globalization (economic and otherwise) undermines nation-state democracy in a variety of ways, but also that democratic politics can catch up with globalization (Habermas 1998). In the context of the European Union as arguably the world's first postnational polity (in the making), one can however point to a much more fundamental democratic deficit than those which institutional reform could fix, namely the lack of a lively public sphere that could provide a *communicative counterweight* to the institutions of the EU political system (Conrad 2010; Eriksen 2005; Eriksen 2009, chap. 7).

This deliberative understanding of democracy as an interplay between the public sphere and the institutions of the political system is one crucial aspect of Jürgen Habermas's discourse theory of democracy (Habermas 1996). It is an understanding of democracy that can help us understand the nature of the EU's democratic deficit *beyond* purely institutional

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ty, the Lisbon Treaty goes one step further and introduces the so-called "orange card procedure": if one third of all member state parliaments find that a legislative proposal breaches the principle of subsidiarity, they can demand that the Commission abandon the proposal in question. In the event that the Commission proceeds nonetheless, the process can be stopped by 55% of member states in the Council, or by 50% of MEPs in the European Parliament (see Bache et al. 2011: 240f.; Kurpas 2007).

and/or "affective" factors (cf. Warleigh 2003: chap. 1).[5] In this deliberative understanding, representative government can claim legitimacy only if decision making is accompanied by free, lively and inclusive debate in the public sphere (Habermas 1996: chap. 7-8). Democracy is therefore an ideal that requires a highly active notion of citizenship. In the European Union, there is good reason to question whether the promise of deliberative democracy has been fulfilled in the sense of such an interplay between the public sphere and the political system. While decision-making authority is increasingly pooled at the European level, public opinion and will formation have largely remained within the member states (Gerhards 2000). Consequently, EU politics tends to take place in the shadow of an at best embryonic public sphere. This is a crucial aspect of the democratic deficit that institutional reform will not be able to fix, simply because it is located outside the institutional system of the EU (Conrad 2010).

Viewed in this light, attempts by the European institutions—foremost by the European Commission as well as to a lesser extent by the European Parliament—to contribute to the coming into being of a European public sphere (e.g. Van Brussel 2014) come across as ironic: well aware of the democratic *illegitimacy* that arises out of decision making in the absence of a shared public sphere, the EU political system depends in its legitimacy on supporting the manufacturing of its own communicative counterweight. In recent years, the European Commission has done so prominently through a "period of reflection" in the aftermath of the French and Dutch referenda on the *Treaty Establishing a Constitution for Europe*, through a *Plan D for Democracy, Dialogue and Debate*, and most recently through one of the most ambitious external communication efforts to date, namely the "presseurop.eu" website. Aiming at "promoting informed democratic debate within the EU", the latter project translates and disseminates press articles from the EU's 28 member states, and is currently available in 10 different languages.

But is a third transformation of democracy a realistic possibility (Dahl 1989: 224), that is: is democracy beyond the nation state possible to

[5] Alex Warleigh argues that the EU democratic deficit consists in part of institutional factors, but also in "affective factors" amounting to a lack of channels through which citizens can influence the EU decision-making process (Warleigh 2003: chap. 1).

begin with? As a reference point for collective identities, norms, values and traditions, the nation state is often viewed as a natural home of democracy, particularly by those who implicitly or explicitly subscribe to communitarian presuppositions about the very nature of democracy. In such readings, democracy is viewed to presuppose a normatively integrated community of values or "normative-affective community" (Etzioni 2007). Deliberation is thought to be possible only to the extent that deliberators can rely on a shared conception of the good in settling normative disputes. Most of all, a thick sense of collective identity is seen as a necessary condition for the very possibility of social solidarity (Calhoun 2002). The critique of such communitarian ideas about democracy is hardly new. Rawls' *Theory of Justice* developed a conception of social justice that takes into account that modern *societies* are rarely (if ever) truly *communities*: they are not integrated around *one*, but around several conceptions of *the good*. Societies are made up of many communities, often with mutually irreconcilable "*comprehensive doctrines*" (Rawls 1971). But the normative conclusion that Rawlsian liberalism draws from this empirical observation is unsatisfactory to those who see democratic politics as more than a mere search for compromise.[6]

Habermas opened up a radically different path. Agreeing with Rawls that the notion of societies as communities is in itself a myth, he nonetheless maintains that democratic deliberation beyond a mere search for compromise is possible. For Habermas, public deliberation has a civilizing function, forcing debaters to argue *not* on the basis of their individual values, beliefs or interests, but on the basis of a commonly acceptable human characteristic: the capacity for reason.[7] Under these conditions, deliberative democracy is possible even in diverse, heterogeneous nation state societies (Habermas 1996: chap. 5; see also Ingram 2010: chap. 6). But if democracy is possible despite such challenges, why should it be inconceivable beyond the nation state?

The crossroads which the European Union faces at present is foremost a democratic dilemma that is connected to the question of whether Europe's citizens are willing to take on the task of finishing the

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6 This argument is developed further in chapter 3.

7 This argument is developed in detail in chapter 2.

unfinished project of European integration, namely the quest for a full democratization of the EU. This point concerns the European institutions less than it does the public sphere. The European Union can become fully democratic only if a European public sphere emerges as a control mechanism in relation to the EU political system (Conrad 2010). But this can only come about at what some would consider a cost, possibly even a dramatic cost: it would require that Europeans begin to *recognize* one another as part of the same political community, as fellow citizens in the world's first postnational polity (Eriksen & Fossum 2004; 2007). Communication necessitates community, yet not in the sense of a thick collective identity, but instead in the sense of mutual recognition. The European public sphere can take the step from communicative freedom to communicative power only if and when public debate begins to transcend national borders (cf. Bohman 2007a; chap. 2). For a European public sphere to function as a communicative counterweight against the institutions of the EU political system, the institutionalization of communicative freedom also needs to be utilized by European citizens to speak up collectively against the EU legislative process whenever protest is deemed necessary. In the post-Lisbon EU, some researchers have pointed to the newly introduced European Citizens' Initiative (ECI) as a participatory-democratic element that has the potential to ignite a European public sphere (Conrad 2011), for instance via the emergence of transnational discursive spheres (Knaut & Keller 2012).

To a radical democrat like Habermas (cf. Warren 1995), the promise of postnational democracy outweighs whatever "cost" may be associated with a move of democratic decision making beyond the nation state (Habermas 1998: chap. 5).[8] But clearly, postnational democracy does not

[8] Habermas's notion of postnational democracy has to be distinguished from related notions of transnational democracy (e.g. Bohman 2005; Bohman 2007a; Dryzek 2000). For Habermas, the postnational constellation is characterized foremost by an increasing loss of problem-solving capacity that the nation state suffers in the context of globalization. his challenge can however be counteracted through a reconstitution of democracy at the European level. For Bohman, the postnational constellation necessitates something qualitatively different than the alleged search for a new demos beyond the nation state. Instead, the postnational constellation urges the search for a new democratic ideal in which democracy is no longer the rule of the demos, but rather the rule of demoi (in the plural).

appeal equally to all. Communitarian undertones pervade much of the debate on the democratic deficit, both on the left and right side of the political spectrum. A clear expression of this can be found in the debate surrounding the so-called "no-demos thesis", both in academic and popular usage. Based on the notion that an "internally coherent demos must exist prior to democracy" (Trenz 2009: 3), the no-demos thesis refers to the observation that the presumed absence of a coherent European demos makes European-level democracy difficult to achieve—if not outright impossible. There is of course a lot to this. Democracy in the EU requires that EU citizens begin to recognize one another as members of the same political community. At the same time, there is a need for caution not to confuse *recognition* with *collective identity.* Recognizing one another as equals in deliberation does not imply the existence of a thick sense of collective identity. Communication may or may not constitute community, but the latter is no precondition for the former (Eder 1999).[9]

Two different readings of the no-demos thesis should be emphasized in this context. On the one hand, the no-demos thesis comes primarily from the field of constitutional law. Famously, Dieter Grimm has argued that due to the absence of a single European demos, the EU cannot give itself a democratic constitution beyond the form of a mere intergovernmental treaty (Grimm 1995; cf. Weiler 2005). But this legal understanding of the no-demos thesis needs to be distinguished from a more clearly political reading, based in turn on implicit or explicit communitarian presuppositions. This understanding includes the view that democracy itself is impossible beyond the nation state, and has been applied not least in discussions about strengthening the EU's supranational institutions, most of all the directly elected European Parliament. The strengthening of the EP has been met with skepticism based on the view that in the absence of a single European demos, there cannot be any democratically legitimate parliamentary assembly speaking on behalf of the European people.

Such a political understanding of the no-demos thesis is however normatively problematic. Read in this way, the no-demos thesis is little more than a self-fulfilling prophecy to be employed as a potent strategy against the very idea of European demos construction, i.e. against "the

[9] This argument is developed in detail in chapter 3.

arrested development of European citizenship" (Warleigh 2003: chap. 6). On the one hand, the no-demos thesis is used *empirically* to support claims that a fundamental precondition for democracy is not met at the European level: those affected by EU legislation do not constitute one singular demos, but rather a multitude of currently 28 separate demoi. On the other hand, the no-demos thesis is used *normatively* to support claims that democratic control of the EU decision-making process must be exercised *exclusively* within the nation state. But this normative side of the no-demos thesis has problematic exclusionary connotations. It prescribes that public opinion and will formation on European-level legislation take place exclusively in the forums of the national public sphere. It therefore prescribes that the members of the national community have a privileged position in public opinion and will formation in the national public sphere, and that citizens of other EU countries need not be recognized as equals in democratic deliberation, even though they are also part of the same legal space in which collectively binding decisions are made.

Under these conditions, a European demos *and* a European public sphere are very difficult to imagine. A European demos can emerge only gradually, through the recognition of other EU citizens as part of the same political community and consequently as equals in democratic deliberation. The no-demos thesis fails to take into account that a European collective identity *need not* be a basic infrastructural requirement of democracy at the European level, but that it can emerge also in the course of democratic practice (Trenz 2009). The view that democracy is bound to the context of the nation state is as historically contingent as the notion that the demos itself is bound to the nation state: there is no inherent conceptual link between the two (Habermas 1998; Bohman 2007a). Correspondingly, the absence of a European demos is not the *root* of the EU democratic deficit, but rather one of its clearest expressions—and consequences. While certain legal and/or empirical arguments certainly support the no-demos thesis, normative arguments *against* the very constitution of such a European demos are problematic because they inhibit the very prospect for democracy beyond the nation state.

This is not to say, however, that a European demos would (or should) subsume or replace the existing demoi in the union's member states. On the contrary, as James Bohman formulates it, the current transformation of democracy requires that both bigger *and* smaller units be

involved in democratic governance, i.e. that the current problems of democracy be solved not through the search for "some optimal size or ideal democratic procedure, but rather [through the establishment of] a more complex democratic ideal" (Bohman 2007a: 2).[10] What appears clear, however, is that democracy in the European Union depends on much more than institutional reform alone. The democratic legitimacy of EU decision making fundamentally depends on the emergence of a European public sphere that can serve as a counterweight to the institutions of the EU political system. Such a European public sphere has to be the site of a lively, inclusive and free debate on EU politics. But this takes us back to the question of collective identity: how can a European public sphere emerge in the presumed absence of a thick sense of European collective identity (Eriksen 2005)?

Purpose & Ambition

The purpose of this study is to delve further into the conditions under which a shared public sphere is possible in the European Union. Against the backdrop of debates on the transformation of democracy beyond the nation state (Dahl 1994; Habermas 1998; Bohman 2007a), the study explores the role that daily newspapers have played in providing forums for transnational debate on EU constitution making *in the presumed absence of an overarching European collective identity*. In doing so, the study uses empirical means to reconsider a contentious question stemming from the realm of political theory, namely the question of the supposed co-constitutiveness of public spheres and political communities. In the dis-

[10] While drawing inspiration from the work of Dewey and Habermas, Bohman nonetheless steers clear of the concept of postnational democracy and proposes "transnational democracy" instead, which he understands foremost as a democracy of demoi (2007: 7) rather than merely as a democracy of a new larger demos, such as suggested most prominently by cosmopolitan visions of democracy. For Bohman, the link between democracy and the nation state is as "particular and historically contingent" (2007: 19) as it is for Habermas (1998: chap. 5). Dahl's question about the possibility of a third transformation of democracy, i.e. a transformation of democracy beyond the nation state, is thus a "realistic possibility if it is fundamentally a transition from a singular to a plural subject, from demos to demoi" (Bohman 2007: 21).