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**DEMOCRATIC GOVERNANCE  
BEYOND THE NATION STATE?**

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## 1. Introduction<sup>1</sup>

If the EU were to apply for membership in the EU, it would not qualify because of the inadequate democratic content of its constitution. Nevertheless, a good 50 percent of the acts passed in France today are in fact merely the implementation of measures decided upon in the opaque labyrinth of institutions in far-away Brussels,<sup>2</sup> so, is France still democratically governed? The picture is similar with respect to other international institutions in the OECD world. The WTO system of agreements, for instance, comprises almost 10 000 pages and is the result of marathon negotiations lasting over a decade and in which over 150 states and thousands of experts participated. Although these agreements contain far-reaching implications for employees in crisis-prone industrial sectors and in agriculture, the German government is generally almost overzealous in implementing the demands stipulated in the agreements. Did German citizens really have a recognizable influence on these decisions? The problem is clear. Although security and social welfare, two important aims of governance, can be better achieved with international institutions than without them, the mere existence of international institutions is no guarantee of good governance. Apart from producing effective solutions to problems within the fields of security and welfare, governance must also fulfil certain procedural requirements in order to be rated as good. From the point of view of democratic theory, however, international institutions have very shaky foundations. Against this background, Robert Dahl (1994) pointed almost paradigmatically to a fundamental dilemma of politics in the age of globalization: the contradiction between "system effectiveness and citizen participation."<sup>3</sup>

This paper aims at questioning the notion of a contradiction between – to use the terms of Fritz Scharpf (1997b) – *output legitimacy* (acceptance created by system effectiveness) and *input legitimacy* (acceptance created by democratic procedures). I shall first argue that viewing the problem as a choice between "effective problem-solving through international institutions" and "democratic political processes" is already in normative terms a false approach (Section 1). International institutions not only increase system effectiveness or output-legitimacy, but are also a normatively sensible response to the problems for democracy that are caused by globalization. At the same time, it is indisputable that the actual functioning of these international institutions does not meet democratic standards. In Section 2 I present the skeptical argument that most deficits in the working of international institutions cannot easily be remedied, since democratic majority decisions depend – *in descriptive terms* – on a political community that is based on trust and solidarity. Although other forms of transnational interest aggregation, such as intergovernmental bargaining and

<sup>1</sup> This project began with an invitation from Louis Pauly and Michael Greven to further develop an argument that was first put forward in Zürn (1998: chap. 13). This article represents a significant extension and revision of the first fruit of the project, which will be published shortly (Greven/Pauly 1999). The author wishes to thank Oliver Gerstenberg, Edgar Grande and Bernhard Peters for helpful comments, and Vicki May for translating parts of the manuscript and brushing up the other parts.

<sup>2</sup> See Majone (1996: 59). For Germany, von Beyme (1998: 24-25) focuses on key issues and thus arrives at smaller, but still significant percentages.

<sup>3</sup> Early contributions to the current debate were, among others, Czempiel 1991, Gilbert 1990, Held/McGrew 1993, Scharpf 1993, Pogge 1992 and Zürn 1992a. See Dryzek (1996) and McGrew 1997 for good surveys and Kaiser (1972) for a similar argument in a yet unchanged world.

arguing among transnational epistemic communities may exist, the lack of a transnational *demos* combined with the existence of transnational social spaces poses a problem that cannot easily be overcome. Skeptics therefore see a structural dilemma that cannot be reconciled by democratizing international institutions; to a certain extent they are necessary for effective policies, but they are structurally undemocratic. The skeptical argument is founded on two more or less explicit *background hypotheses* that can be empirically challenged. The first background hypothesis states that a *demos* cannot exist at the transnational level. In Section 3, I will modify this statement in theoretical terms and offer some conceptual distinctions that may prepare the ground for further empirical investigation. The second background hypothesis of the skeptics postulates a zero-sum relationship between national sovereignty and supranationality. Thus, any institutional solution between the poles of nation-state sovereignty and supranational statehood, be it the EU or a world state, will necessarily encroach on both system effectiveness and democratic legitimation. Against this background I shall in Section 4 make some concrete institutional proposals that undermine the zero-sum logic of the skeptics, concluding that in a denationalized society, democratic legitimation can only be achieved by a mixed constitution comprising majority procedures and negotiation mechanisms.

The problems and issues discussed in this paper have emerged in different contexts, most prominently in the debate on the democratic deficit of the EU. The EU is a special case since it represents a new type of political system, made up of national and European institutions which are constituted in relation to each other. West European national institutions and the EU institutions are so closely interwoven that they can no longer be conceived as separate political systems (see Jachtenfuchs/Kohler-Koch 1996; Marks et al. 1996). This multi-level system of the EU has two distinct features that separate it from other international institutions. First, the regulations issued in the different European sectors (European regimes, if you wish) are so closely related to each other that as a network they affect a number of political issue areas at once within a more or less clearly defined territory. This justifies the use of the terms *European Community* and *multi-level system*. In contrast, issue-specific international institutions such as international regimes are more functional, and the sum of any number of international regimes does not cover a recognizable territorial space.<sup>4</sup> Here, the term *multi-level politics* (for each specific institution) is more appropriate. The second distinctive feature of the EU multi-level system is that in contrast to international regimes, which are by and large passive, some European institutions, such as the European Court of Justice and the European Commission, are indeed supranational in that they have authoritative powers which directly affect national administrations and societies. In spite of these far-reaching differences, the thrust of this paper applies to both international institutions in general and the European Union in particular. Where specific steps in the argumentation refer to one or the other type of institution I shall qualify my statements accordingly.

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<sup>4</sup> For surveys on international regimes see Levy et al. (1995) and Hasenclever et al. (1998).

## 2. Denationalization and Democracy

"Persons (...) should be free and equal in the determination of the conditions of their own lives, so long as they do not deploy this framework to negate the rights of others" (Held 1995: 147). On the basis of this principle of autonomy, democracy is, in very general terms, a process of public will-formation and decision-making in which everybody affected by a decision has the same opportunity to actively participate and exert their influence.<sup>5</sup> Moreover, democracy – as understood here – is required to produce normatively justifiable solutions. Such a concept of democracy rejects purely proceduralist or republican interpretations that reduce democracy to a decision-making system regardless of the content of the decisions. At the same time, it challenges purely liberal or constitutionalist definitions which regard individual political rights as pre-politically given and seek to protect them from the outcomes of the democratic process. This concept of democracy is reflective in the sense that the fundamental normative requirements of the democratic process, such as autonomous individuals with freedom of opinion and information, and the democratic process itself are seen as mutually reproductive.<sup>6</sup> It consists of two components: a *democratic principle* – that is, everyone affected by a decision should have a chance to participate – to which most theorists of democracy would agree, and a *deliberative principle* – any decision should be backed up by arguments committed to values of rationality and impartiality – which is more contested (cf. Elster 1998a: 8). In order to show that globalization is already causing problems for national democracies, I will refer to the democratic principle and thus argue that this is true for most concepts of democracy. In order to show that the social conditions for democracy beyond the nation state are not necessarily impossible to fulfil, I shall also refer to the deliberative principle, thus taking up the most ambitious conception of democracy. In doing so, the most difficult yardstick is used for both steps of the argument.

How does societal denationalization – in my opinion a more precise term than globalization<sup>7</sup> – affect democracy as we know it? A logical corollary of the democratic principle is the congruence between social and political spaces (Scharpf 1993, Held 1995:16), which was for a long time not treated as a fundamental problem in modern democratic theory. The notion of a nation state consisting of a more or less contained national society, a clearly demarcated territory and an administrative apparatus constituted to provide services for this society and territory, led theorists to treat congruence as given. The notion of a territorially defined nation state was hence used as a shortcut to ensure the spatial congruence between rulers (the nation *state*) and subjects (the national *society*). Yet this notion becomes problematic as

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<sup>5</sup> Besides Held (1995) see especially Rawls (1971) and Dahl (1994), two foremost contemporary thinkers on democracy.

<sup>6</sup> This formulation takes up the central thoughts of deliberative democratic theory. See, among others, Cohen (1989), Cohen/Sabel (1997), Elster (1998b), Habermas (1994), Benhabib (1996), Gerstenberg (1997a).

<sup>7</sup> Societal denationalization can be defined as a shift in the borders of dense transactions (these borders are defined as the place where a significant reduction in the frequency and intensity of given interactions occurs, cf. Deutsch 1969) beyond national borders, but not necessarily to the extent of being globalized. In a research project funded by the German Research Association we developed 72 indicators to determine the extent of societal and political denationalization. See Beisheim et al. (1999), and a summarized version in Walter et al. (1999). See also Goldblatt et al. (1997).

soon as the nature of the relevant community is contested, as has happened in the course of societal denationalization. The increase in cross-border transactions infringes on the normative dignity of political borders (Schmalz-Bruns 1998: 372; see also Held 1998).

For the purposes of democracy, spatial congruence is necessary at two critical points: first, between the people who are affected by a decision and their representatives in the decision-making system (input congruence) and second, between the space in which regulations are valid and the space in which the social interactions to which the decision refers take place (output congruence). If there is no *input congruence*, then a group affected by a decision but not participating in its making can be considered to have been determined by others instead of self-determined. Traditional forms of foreign determination or dominance were asymmetrical – for instance, when a small group of colonial rulers ruled over a large group of people in a colony. Today, however, foreign determination has taken on a different appearance. It tends to be more symmetrical and is based on manifold externalities, as a result of which many political decisions have, if not unlimited, at least transboundary effects. For example, the decisions of the British and German governments in the 1960s and 1970s not to implement certain environmental protection measures led to acid lakes and high fish mortality in Scandinavia. However, the Swedish fishermen were not in a position to participate in public will-formation and were not allowed to participate in decision-making in Great-Britain or Germany. This constitutes a democratic deficit. As early as 1945, Carr saw the moral deficits in exclusive political communities whose privileges were established on the basis of exporting harm abroad. What was true then is even truer today in the age of societal denationalization: the extension of the moral and political community to encompass the interests of all those affected by decisions made within that community is a normative democratic requirement (see also Linklater 1998: chap. 5).

The congruence of the space for which regulations are valid and the boundaries of the relevant social transactions – i.e. *output incongruence* – is also significant for democratic legitimation. According to Alexy "*de jure* freedom, that is the legal authorization to do or refrain from doing something, is worth nothing without *de facto* freedom, that is factual freedom of choice" (Alexy 1985, 458, translation: M.Z.). In a denationalized world ruled by a system of formally independent nation states, there is a danger that political communities cannot reach a desired goal due to conditions outside their jurisdiction. For instance, a social policy desired by the majority of the population of a given political community can become unaffordable for reasons of international competitiveness. In this case, the political system is unable to act on behalf of the collective, thus producing a new type of "non-decision." "Non-decisions" were identified as a normative deficit of existing democracies by critical theorists a long time ago (Bachrach/Baratz 1974). The systematic incorporation of such "selectivity practised by political institutions" – to use another concept to grasp this problem (Offe 1972: 74) – is attempted, for instance, by the so-called Ordo-Liberals who strive for a European economic constitution which on the one hand fosters European market integration, but on the other prevents political interventions in the market. Such a "constitutional division of economic powers" (Mestmäcker 1994: 274) constitutes a democratic limitation. Economic liberties, the domestic market and the system of undistorted competition must be the justifiable results of a process of public will-formation and decision-making. They cannot simply be withdrawn from this process and declared as pre-political issues.

Of course, it is necessary to be "realistic" about setting democratic criteria, and to avoid falling victim to the myth of "democratic omnipotence" (Scharpf 1997b). Political systems always had to take external restraints into account. But from a critical perspective it is equally vital not to simply resign and adjust normative standards to political reality. There is unquestionably a "need to re-set the standards by which we assess legitimacy" (Majone 1998:5). However, the new concept must derive from normative standards which adequately reflect new circumstances, and not be purely the result of empirical observations. If, because of an output incongruence, certain traditional governance goals which were pursued and achieved in the heyday of the democratic welfare state can no longer be achieved, then there is also a democratic deficit.

Thus, choosing between the alternative of "effective problem-solving through international institutions" or "democratic political processes" is not a particularly fruitful exercise. In democratic terms, international institutions are a sensible response to the problems facing democracy in times of societal denationalization as they help to redress the incongruence between social and political spaces. Theoretically, the "emergence of denationalized governance structures" (Joerges 1996) helps to bring all those who are affected by a political decision into the decision-making system, thus observing the principle of "no taxation without representation". What is more, international institutions help to increase the factual freedom of political communities. Governance beyond the nation state can therefore improve both social welfare *and* democracy in the face of societal denationalization. In this sense, international institutions are not the problem, but part of the solution to the problems of modern democracy. This theoretical consideration is reflected in a European-wide survey which shows that a similar percentage of the population is dissatisfied with the working of democracy at the national level (48 per cent) and at the European level (49 per cent) (see Eurobarometer 1994). The current major problem for modern democracy is not political but societal denationalization which undermines the normative dignity of political borders by increasing political externalities in integrated markets (due to input incongruence), and by reducing the autonomy of nation states (due to output incongruence).

### **3. Social Prerequisites for Democracy Within and Beyond the Nation State**

Although in principle, international institutions may compensate for democratic deficits brought about by input and output incongruence, at the same time they create new democratic deficits. The greater the significance of such international institutions, the greater the need for democratic legitimation of their decisions. At the moment – and this is where analysts are almost unanimous – this legitimation is clearly inadequate. There are two strands of thought among those who identify a democratic deficit in the way international institutions work. One strand points to institutional deficits in the EU and other international institutions that can be adjusted through reforms, provided there is the right political will.<sup>8</sup> Another strand considers these suggestions as naive and even questions the *mere possibility* of democratic processes beyond the nation state because the EU and other

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<sup>8</sup> Thus argue many in favor of a strengthening of the European Parliament. See, for instance, Hänsch (1986) and Williams (1991).

international institutions cannot meet the social prerequisites for democracy. I wish to introduce here a third position, which accepts the focus on social prerequisites, but also emphasizes the complexities and dynamics of the relationship between political institutions and social attitudes, seeing in them a potential to foster democracy beyond the nation state through institutional reform that aims to meet the social prerequisites for democracy.

According to skeptics, democratic legitimacy is only possible within the framework of a *demos*, i.e. a political community with the potential for democratic self-governance as expressed in the concept of the modern nation. Beyond the nation state, the social prerequisites for a democratic political community – the political space – are missing (Greven 1997, 1998). Peter Graf Kielmannsegg (1994: 27) eloquently summarizes this point of view with respect to Europe: "Collective identities develop, become stable and are passed into tradition in communities of communication, of experiences and of memories. Europe, even within the narrower scope of Western Europe, has no communication community, hardly any common memories and only limited common experiences (translation: M.Z.)". Hence, the connection between nation and democracy is not an historical coincidence but systematic and indissoluble.<sup>9</sup> A *demos* as exemplified in the modern nation state requires cultural homogeneity, and without a *demos* there is no democracy.<sup>10</sup>

This line of argument is particularly relevant to *majority decisions*, which are often regarded as the central component of the democratic process. The principle of majority decisions holds that when a collectively binding decision is taken everyone must comply with it, including those actors who voted against it (Scharpf 1997a: chap. 7). As a rule, however, outvoted actors will only accept a decision if certain sanctions are applied for non-compliance *and* if the burdens imposed by the decision are regarded as an obligation. In order to accept an obligation, i.e. to voluntarily act in accordance with an inconvenient norm and not simply do something out of a fear of sanctions, people must have two firm convictions: *trust* that all members of the community will also abide by the norm, and *solidarity* towards those who may benefit from it (Offe 1998: 104). Following this argument, however, it appears that both the necessarily high degree of trust and solidarity and the establishment of an accepted system of sanctions are only possible within the context of "both a commonly inhabited (and usually undivided) *territory* on the one hand and a *history* that is interpreted as 'concerning all of us' on the other." (Offe 1998: 101, translation: M.Z.). Therefore, without a nation and sufficient cultural homogeneity there seems to be no basis for a democratic majority decision (Miller 1995).

It is consequently argued in comparative politics that where there is no sufficiently stable national identity it is better to give precedence to bargaining and "consociational" procedures rather than majority decisions. Accordingly, Gerhard Lehmbruch (1992: 210), one of the

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<sup>9</sup> See also Decision on the Maastricht Treaty of the 2nd Senate of the Federal Constitutional Court from March 13th, 1990 - 2 BvR 94/88 u.a., in: Europäische Grundrechtezeitschrift 20:17, 429 - 446.

<sup>10</sup> The number of terms that are used in order to describe the social prerequisites for democracy are manifold: sense of community, sense of identity, *demos*, nation, solidarity and trust are only the most important ones. I use the terms as follows: Political community is the most generic term describing any collective in the name of which political decisions are made. The specific type of political community that is capable of organizing itself democratically is called a *demos*, which fulfils different social prerequisites such as possessing a collective identity or sense of solidarity. However, since I present some of the sceptics' arguments in their terms, it is not possible to be entirely consistent in this section.

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foremost analysts of so-called consociational or concordant democracies, writes with regard to countries such as Switzerland or Austria: "In the development phase of culturally fragmented societies, which is characterized by vertically integrated 'factions' or 'pillars', concordant democracies are strategically planned by the organisational elites of the rivalling sides, as they know that they cannot reckon with certain gains in majority decision procedures (translation: M.Z.)."

Nevertheless, even negotiation systems that require unanimous decisions are dependent on the participants' attitudes to each other, in other words, on social prerequisites. In the first place, the absence of a minimal sense of "togetherness" tends to make relations among social units competitive. Competitive relations, however, encourage participants to be relative gains-seekers, impeding cooperation in the pursuit of longer-term objectives (Grieco 1990, Scharpf 1997a). This means that efforts to coordinate the improvement of welfare often fail before they begin, and this is clearly inconsistent with the democratic requirement that outcomes be normatively justifiable. At the least, actors have to accept each other as *autonomous individuals, endowed with rights and legitimate interests* in the political process. Even if this minimum requirement is fulfilled, coordination in bargaining systems still depends on additional, favorable conditions (Zürn 1992b: chap. 2). Efforts to coordinate through bargaining are often only successful if the participants have a positive attitude towards each other, i.e. if there is a *weak form of collective identity defined by a utility function in which the welfare (or the suffering) of the collective is part of the individual preferences*.<sup>11</sup>

Yet even negotiation systems with participants bound together by a weak collective identity easily produce deficient outcomes as long as bargaining dominates over arguing. Bargaining is a form of interest-aggregation that builds on the exchange of threats and promises (Elster 1993). It reflects the "exchange perspective" on governance according to which the art of politics is the crafting of pareto-improving changes. It assumes a given structure of rights and rules, a given distribution of preferences and a given distribution of resources (March/Olsen 1995: chap. 1). Arguing is another way of reaching a decision when the initial distribution of opinions is not consensual. It is based on claims of validity rather than threats and promises and reflects an "institutional perspective" of governance according to which common values are crucial to the understanding of politics. Arguing is a major component of deliberative democracy. Although solidarity is not imperative for a model of deliberative democracy among public interest-oriented associations, the deliberations of the representatives imply that at least *common goals and values* exist – that is, a third reference point independent of the participants' individual interests that either really transcends individual interests or at least unleashes the "civilizing force of hypocrisy" (Elster 1998a: 12). If there are no common goals and values to which reference can be made, deliberation cannot take place. In this respect, it appears that deliberative networks depend on the existence of favorable attitudes on the side of the participating actors.

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<sup>11</sup> The uses of the term collective identity are manifold (cf. Jepperson et al. 1996, and Waever et al. 1993). I use it here in the following way: Social identity describes an individual categorization to one group on the basis of common features. Converging social identities that are also socially expressed and thus create a sense of belonging are weak collective identities. Weak collective identities are indicated by a utility function in which the welfare (or the suffering) of the collective is part of the individual preferences. National identities are an example of strong collective identities with individual interests subordinate to the well-being of the collective and thus a willingness on the part of the individuals to make certain sacrifices.

As with majority decisions, it also appears to hold true for negotiation systems based on unanimity that the democratic quality of decision-making depends on the existence of certain social prerequisites in the respective political community. Without at least a weak form of common identity, negotiation systems cannot claim to have a democratic quality. In other words, democratic governance beyond the nation state without at least elements of a transnational *demos* is not possible.

Moreover, any decision-making system based on negotiations between representatives of functional or territorial interest groups that waives majority decisions has additional weaknesses. As a rule, consensus-oriented deliberations and negotiations are more successful with a small number of actors and (at least sometimes) *in camera*.<sup>12</sup> Yet both closed sessions and a biased selection of participants contradict democratic principles. Most importantly, the accountability of decision-makers decreases significantly. Negotiation systems as a whole are not directly subject to any form of democratic scrutiny, there are usually no constituents who can punish the negotiation-system as a whole. The indirect legitimacy of those negotiation systems thus depends on the accountability of each participant in the negotiation system. The ability of constituents to reverse decisions *via* their representatives depends in turn not only on the existence of real power on the side of the constituency to punish its representatives, but also on the existence of sufficient information about their activities. But it is precisely these negotiation systems with separate decision-making levels and which adhere to the international diplomatic rules of secrecy at the top level, which do not deliver the information constituents need. Within these settings, the opportunity of strategic manipulation of information is wide open to decision-makers.<sup>13</sup> The lack of transparency also makes it impossible to judge whether or not the selection of certain participants leads to a systematic exclusion of relevant points of view. In other words, in their current form, negotiation systems beyond the nation state are linked with unequal chances of participation and a disregard of the principle of public accessibility (Benz 1998).

Furthermore, even when consensus-oriented negotiation systems are open to many actors, as a rule they deal with specific problems in given issue areas. The most inclusive issue area-specific negotiation systems include representatives of all groups from different countries which are in one way or another the objects of a given regulation. In such cases, issue networks are set up which at best constitute sectoral publics with close communication between the participants (Eder/Hellmann/Trenz 1998: 324-326). Such sectoral publics permit a higher level of active participation in comparison to the general national publics. However, a broader public brings in the interests of all those who are indirectly affected by a regulation and builds a link between the regulatory needs of specific issue areas (system integration) and the perceptions of the people (social integration) (Habermas 1994: 78) . Hence, issue

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<sup>12</sup> See Benz 1998. See also Elster 1993 for a detailed analysis of the advantages and disadvantages of publicity in constitution-making decision systems.

<sup>13</sup> See the analyses that are informed by the notion of two-level games for this point, especially Putnam (1988), the contributions in Evans et al. (1993) and Zangl (1999). See also the accusations of the Greens in Germany regarding the policy of the Kohl government on an energy tax. In the national context, demands for an energy tax were staved off by referring to the need for an European policy on this issue. However, in the relevant European negotiation system, Finance minister Waigel secretly blocked such a policy. Interview with a staff member of the Green faction in German Parliament, 26.5.1998.

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area-specific negotiation systems tend to produce results that externalize costs, thus raising the problem of coordinating different issue areas. Will-formation in the broader public seems to be an adequate mechanism for the control and coordination of issue area-specific negotiation systems. The establishment of issue area-specific negotiation systems within a national *demos* reduces the tendency of cost externalization and even rent-seeking in such systems. For instance, outright egoistic behavior appears to be a much more common feature among European Commissioners than among national politicians. In this sense, the institutionalization of a broader public that reaches beyond the spheres of issue networks and can possibly sanction them through majority decisions seems to be a prerequisite for the smooth functioning of issue area-specific negotiation systems (Peters 1997).

There is a further drawback to non-majoritarian decision-making procedures. Negotiation systems that require unanimous decisions can never lead to redistributive measures, because any "rational" faction would veto any measure that required them to relinquish resources. What is more, "(...) negotiation systems will not be able to deal effectively with issues involving high levels of distributive conflict among the parties to the negotiation" (Scharpf 1997a: 209). Even within the field of regulatory policy, then, the implementation of non-majoritarian decision-making procedures only has limited possibilities, since it poses problems for regulatory policies with significant (re-)distributive implications. To rely upon non-majoritarian decision-making processes as the linchpin of democratic governance beyond the nation state, as does Majone (1996, 1998), is therefore to evade the problem. If the implementation of social policy and regulatory policies with strong distributive implications are hampered at the national level by international competition, and obstructed at the international level by non-majoritarian decision-making processes, then the initial question re-emerges how effective and democratically legitimate governance beyond the nation state can be accomplished. At all events, the national constellation in which "cultural integration legitimated duties of solidarity even in the strong sense of accepting individual disadvantages for the sake of the whole, and functional completeness of the national economy made it possible", (Streeck 1998: 19) seems to be a thing of the past. The postnational constellation (Habermas 1998) therefore requires a re-thinking of the criteria for democratic governance, looking beyond national social democracy on the one hand and a merely normative justification of already observable elements of governance beyond the nation state on the other.

A close examination of the social prerequisites for democracy brings the problems of any notion of democracy beyond the nation state to the fore. Majoritarian decision-making is hardly achievable beyond the national level since it requires some form of collective identity that includes trust and solidarity. Negotiation systems based on argumentative consensus-building also only work if they can build on at least a weak form of collective identity which includes the mutual acceptance of autonomy and common values. Therefore, negotiation systems are also dependent on the fulfilment of social prerequisites by the collective to be governed. Moreover, these negotiation systems display specific weaknesses such as a lack of transparency, deficits in the coordination of cross-cutting issue areas and problems in agreeing on redistributive policies. Although consensus-oriented negotiation systems will be an important element of any form of democracy beyond the nation state, the democratic quality of governance cannot be enhanced by drawing up a "new model" of democracy which completely downgrades majoritarian decision-making processes.

#### 4. Disaggregating the demos

One virtue of international institutions lies in their acknowledgement that those affected by political decisions are often not all situated within one national jurisdiction. Moreover, they may restore the factual freedom of politics. Nevertheless, without any form of *demos* international institutions will necessarily have democratic deficits. Against this background skeptics argue that the democratization of international institutions is unattainable, since a *demos* is systematically related to national identity. However, if the arguments concerning the social prerequisites for democracy laid down in the former section are further developed, it can be demonstrated that *demos* is a broad and ambiguous term. The very strong claim of the skeptics that there is no *demos* beyond national borders needs differentiation. Only by deconstructing the all-embracing term *demos* can it be established what element of a *demos* is required for what component of democracy, and the validity of the skeptics' statement thus be tested.

*Rights:* The members of a *demos* acknowledge each other as autonomous individuals, each with a right to personal self-fulfilment. In this sense, civil liberty rights, including the right to physical integrity as well as the right to participate in will-formation and decision-making processes, are constitutionally embodied in any democratic political community. Within the OECD world, a transnational concern for human rights can largely be assumed to exist. Increasingly, civil society actors sue for human rights and protection from arbitrary violence on a transnational scale, and people organize themselves transnationally to prevent infringements of human rights "abroad". Societal denationalization has heightened the significance of these transnational monitoring activities. Even the legally binding incorporation of individually suable human rights is guaranteed by the European Human Rights Commission, and there is evidence of similar developments outside of Europe, too (Donnelly 1993, Evans 1997). If problems with clear transboundary implications arise, it is more or less accepted that all the affected countries are fully entitled to have their say as long as they are represented by democratically elected politicians. Moreover, this principle is additionally fostered by the transnational mutual acknowledgement of the importance of participation in decision-making processes at the national level. The steady increase in election monitoring, for example, shows that political rights, including those of people in other countries, are increasingly being defended on a transnational scale (Rosenau 1997: 259). The acknowledgement of each other as autonomous individuals, each with a right to personal self-fulfilment, which is the fundamental principle of any democratic political community, thus seems to cross national borders in denationalized societies.

*Trust:* The members of a *demos* accept that once an obligation has been entered into, it must be complied with. This aspect of a democratic political community also appears to be relatively well-established in the OECD world. It is generally accepted that agreed international obligations should be fulfilled and this is increasingly demanded by national populations. Indeed, if this were not the case, it would be hard to explain why most western states comply with international contractual obligations (Henkin 1968, Chayes/Chayes 1995).

The origins of these principles can be seen as mutual obligations that arise in a society of states and may thus be construed as sense of duty at the state (rather than the individual) level (Bull 1977). However, it can be demonstrated that the compliance pull of international regulations increases when societal participation in decision-making processes is possible (Victor et al. 1998: Part II). Moreover, the compliance pull of international regulations is strongest when they are politically, juridically and socially internalized (Koh 1997). If it is true that societal participation in the making of international rules and their internalization increases rather than decreases rule compliance, it is safe to assume that a mutual obligation to follow rules once they have been agreed upon has developed in the OECD world. Today, political trust is not restricted to the national and the intergovernmental sphere, but has also entered the transnational sphere.

*Public spirit:* Members of a fully developed *demos* also show a sense of collective identity if their preferences as individuals include a concern for the well-being (or the suffering) of the collective. In its weak form, such a sense of collective identity (*Gemeinsinn*, or public spirit) is a precondition for public deliberations about the right solution for the community as a whole. Where there is no *Gemeinsinn* there is no arguing. Although reference is often made to common values in the OECD world, there is little transnational public debate on the "right" policies for the Western world as a whole. However, transnational sectoral publics and "sectoral *demos*" (Abromeit/Schmidt 1998), which can at least roughly be described as holding deliberations on the right policies, do exist. Against this background it comes as no surprise that in more recent analyses of democratic legitimacy the focus has shifted to international political processes in which aggregative decision-making is dominated by deliberative components that emphasize arguing over bargaining. In 1996, for instance, in the multi-level system of the European Union, there were 409 committees active in the implementation of general Council decisions. These committees enjoy extensive interpretative freedom in their work (see Falke 1996; Wessels 1998). Their members are mainly experts and representatives of concerned interest groups, as well as national civil servants selected by their governments, and the committees' decisions usually meet with approval (see, e.g., Eichener 1996, Joerges/ Neyer 1997). Particularly within the field of environmental politics, similar developments can even be observed at the international level. After the admission of transnational nongovernmental organizations (NGOs) in the process, international negotiations received an impetus that clearly distinguished them from conventional intergovernmental negotiations. The inclusion of NGOs has elevated the status of epistemic communities (Adler/Haas 1992, Princen/Finger 1994), which has helped strengthen deliberative elements at the expense of simple bargaining elements, and also contributed to the relativization of particular interests by public interests (see Gehring 1995). These developments can be taken as an indicator for the presence of a weak form of collective identity which is necessary to transform intergovernmental bargaining into transnational negotiations and thus enhance their democratic quality.

*Public discourse:* Public spirit can be transformed into public discourse if most of the members affected by the decision have a *capacity to communicate publicly*. The participation of expert communities and the direct addressees of regulations in deliberative issue networks is possible because they are public spirited and they possess the capacities and resources to communicate with each other in arenas beyond the nation state. Transnational sectoral publics (Eder/Hellmann/Trenz 1998: 324-326) rest on social differentiation and stratification

and evolve as issue networks around specific issue areas. These sectoral publics are dense communication networks with permeable borders, allowing a more active participation than the broader public discourse. However, sectoral publics are always in danger of becoming captive to particular interests and developing rent-seeking behavior, neglecting the public interests. The decisive question is therefore how effectively those at the social periphery can transport their problems and issues into the political center (see Peters 1994: 56). In this sense, a broader public discourse extending beyond the sectoral publics should be institutionalized to avoid the systematic emergence of two problems: the misappropriation of issue networks by particular interests, and the lack of coordination between issue networks (see Zürn/Wolf 1998). However, in contrast to sectoral publics, the institutionalization of a broader public discourse is dependent on a common language and media as well as a party system, and as yet, the infrastructure for a broader public discourse is still quite weak at the European level and hardly developed at all beyond that.

*Solidarity:* In its stronger form, a collective sense of identity provides the basis for (re)distributive processes within a political community. Solidarity is the willingness of individuals are prepared to give up things they value for the sake of the collective, and the acceptance of redistributive policies is the best indicator for this. Although the EU's Regional and Structural Funds reflect some awareness of redistributive obligations at the European level, a recognizable sense of transnational social obligations is barely perceptible. While redistributive programs to deal with catastrophies exist, they have an *ad hoc* character and aim mainly at rescuing people. Humanitarian activities of this sort are more accurately interpreted as evidence of support for the notion of a transnational concern for human rights. On the other hand, it is not clear whether this strong sense of collective identity as suggested by the acceptance of redistributive measures is necessary for democracy. National democracies differ widely in their use of redistributive policies, and even within individual nation states, acceptance of such measures varies from one region to another.

The preceding differentiation shows that the skeptics' notion of a *demos* consists of a number of analytically separable components. Although the mutual acceptance of rights, mutual trust, public spirit, public opinion and solidarity are all important underlying conditions for democratic processes, not all of them are requirements for all types of democratic decision-making. In the OECD world, it seems to be generally accepted that all those affected by a denationalized issue must be represented in the process of international policy formulation. Mutual political rights and congruence are thus acknowledged as a transnational normative criterion. At the same time there are some issue areas in which transnational sectoral networks deliberate semi-publicly over the right common course of action to take. Elements of a transnational political community with supervisory functions can also be identified in the monitoring of national governments' implementation of international policies and in the transboundary recognition of individual human rights. These observations in no way suggest that the democratic legitimacy of governance beyond the nation state is already sufficient. However, it does indicate that democratic processes beyond the nation state must not be ruled out as an unalterable matter of principle until all aspects of a *demos* are fully developed. Equally, there is no reason to assume that the fruition of a *demos* depends on a high degree of cultural homogeneity and is thus only feasible within a national context. It seems much more practical to establish what kind of democratic processes can be generated on the basis of the (partially) given components of a *demos*. To this end, more

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systematic research should focus on the question which aspects of a transnational *demos* already exist and can be further developed within a democratic framework. In any event, the above disaggregation of the term *demos* raises justifiable doubts about the first hypothesis of the skeptics that there is no *demos* other than the national.

At the same time, the disaggregation of the term *demos* suggests that solidarity and public discourse are the two weakest features of an emergent *demos* beyond the nation state. With respect to public opinion discourse it can reasonably be argued that this is not due to a lack of transnational public spirit, but rather to infrastructural difficulties, that is the absence of a common language, common media and a common party system, which are vital for public discourse. At all events, the existence of transnational issue networks with deliberative elements indicates that the lack of cultural homogeneity does not appear to be the major reason for the absence of a broader public discourse.

Cultural heterogeneity seems to be most relevant with respect to the development of a sense of solidarity. For the skeptics, democracy beyond the nation state is unthinkable because the central element of their notion of democracy is social rights. In their view, individual acts of solidarity depend on cultural integration (cf. Streeck 1998: 19). Solidarity, however, also implies the exclusion of others (Linklater 1998: 113). It can reasonably be assumed that here the skeptics confuse citizenship rights, which were "extremely exclusive from the very origination of the concept" (see Preuss 1998: 20) with democracy, which is an all-inclusive concept. The skeptics' argument and their tendency to overgeneralize it is driven by the fear of "a liberal bias of intergovernmental and non-state political arenas" (Streeck 1998: 15). Even if there is no strong sense of collective identity in terms of solidarity and willingness to make sacrifices, this does not mean that the social prerequisites for democracy are completely lacking.

## 5. The Democratization of International Institutions

The second descriptive statement that underlies the skeptical argument postulates a zero-sum relationship between national sovereignty and supranationality. Following this argument, the democratization of international institutions is impossible since any institutional reform will reduce either system effectiveness or democratic legitimation. "Any solution between the extreme poles of nation-state sovereignty on the one hand and accomplished European supranationality on the other (...) will necessarily infringe on both the protective capacity of the welfare state as well as democratic legitimation" (Offe 1998: 119; translation: M.Z.). Again, trepidation about a liberal bias and the dissolution of national solidarity seems to lie behind this statement. Since, in the view of skeptics, a normatively acceptable form of solidarity depends on cultural homogeneity, they appear to lend cultural homogeneity a normative status.

In purely normative terms, however, cultural pluralism is actually a logical precondition for a democratic process. In Oliver Gerstenberg's words (1997b: 350): "Democratic self-government is not thwarted by, but rather benefits from, the heterogeneity of participants and

comprehensive moral outlooks."<sup>14</sup> The practicability of democracy is not dependent on a fully cultivated *demos* from the outset. Moreover, a *demos* is not a pre-political entity, the result of cultural (in an apolitical sense) or even ethnic homogeneity. As the development of democratic nation states has shown, the components of *demos* and democracy are mutually reinforcing. As March and Olsen (1995: 37) put it: "[Good citizens] deliberate on the basis of a sense of community that is itself reinforced by the process of deliberation."

To be sure, the borderlines of a *demos* are not automatically identical with those of social spaces. The theory of nationalism identifies a number of requirements for the development of a *demos*, for example, the increasing density of transactions (Deutsch 1953), the functional requirements arising out of growing interdependencies (Gellner 1983), the existence of an administrative apparatus (Breuilly 1994) and sufficient means of communication (Anderson 1991). Clearly, then, the boundaries and the strength of a *demos* are not given, but socially and politically defined. The complex and dynamic relationship between political institutions and the different aspects of the *demos* can be used in a way that challenges the zero-sum logic of the skeptical argument. If it is possible to identify institutional solutions that improve democratic legitimation without downgrading the effectiveness of social policies, then the second hypothesis of the skeptics can be rejected.

What kind of institutional policy would facilitate the development of democratic governance beyond the nation state? The answer is a policy comprising a mixture of different democratic components. In order to find the ideal combination it is necessary to make two categorical distinctions, one pertaining to the constitutive processes of a democracy and the other to the constitutive actors of a democracy. With regard to the first distinction, we must note that a democracy comprises both aggregative and deliberative elements. Aggregative processes, in which all the participants try to assert their interests unconditionally, are not sufficient to constitute a democracy. Deliberative processes are also necessary, in which all participants have to justify their concerns as a matter of public interest, and in this respect, argue instead of bargain with each other. Nevertheless, it is highly improbable that deliberative processes will culminate in a consensual decision as a result of this discourse. At some point, during the process, there will be no other alternative but to terminate the deliberations and move on to a process of aggregation, or to vote and come to a decision by unanimity or the majority principle.

Turning to the second distinction it is important to see that although the normative reference points of democracy are ultimately individual, autonomous persons, the actors in a democracy can be individuals or corporative actors. In a parliamentary democracy, for example, individuals vote for representatives who are answerable only to their consciences. Individual democratic actors also act in so-called direct democratic processes, for instance at municipal meetings and in referenda. In contrast, collective organizations represent the interests of their members. Representatives of these organizations attend international negotiations as agents of the organizations and are thus answerable to their organizations (rather than to their consciences). Here, the organizations function as actors.

Crossing both types of actors with the two fundamental democratic processes yields four

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<sup>14</sup> In a completely different historical context, Friedrich (1939) feared that the democratic requirements for a shared ethos may lead to totalitarian indoctrination.

single components of a democratic process, each of which signifies a different form of interest mediation (see table 1).<sup>15</sup> The bracketed terms in each box identify problems associated with a bias in favor of that particular component.<sup>16</sup> The key is to find the appropriate mix of components for a given political community.

**Table 1: Components of a democratic process**

	ACTORS	Individuals	Organizations (territorial or sectoral)
PROCEDURES			
Deliberative		Direct deliberative democracy ("Schwatzbude")	Associative democracy (expertocracy)
Aggregative		Majoritarian democracy (telecracy)	Bargaining democracy (Eurocracy)

It has been found that the appropriate mix depends on historical circumstances. The citizens' meetings in Athenian times, for example, when the low number of potential participants made the proceedings easy to survey, were dominated by direct-deliberative elements. In large democratic federal nation states like Germany, by contrast, all components are relatively evenly represented. There is majority-voting in elections, and bargaining within the federal elements of the German political system. Meanwhile, the "Verbändestaat" (state-dominated and penetrated by interest associations) denounced by Theodor Eschenburg in 1963 gave rise not just to bargaining, but also to public interest-oriented deliberations, for instance in corporative organizations. Finally, the German Parliament – in theory, at least – is the locus for public debate on choosing the "right" political course.

In the EU and other international institutions, however, there is today a strong bias towards the aggregation of state interests. Intergovernmental negotiations, which are mostly of a strategic nature (but see Müller 1994), take place *in camera* and follow the principle of unanimity, represent an infringement of democratic principles (see Section 2), while other forms of interest mediation beyond the nation state are underdeveloped, or are, like majority decision procedures, problematic in the absence of social prerequisites. However, in the face of denationalization, neither traditional intergovernmental bargaining nor consensus-oriented forms of decision-making by experts or majority voting alone can do the job. As with national democracies, it is, as Benz (1998) puts it, a question of finding the right combination. Given this analysis, for the democratization of international institutions and the EU it is necessary to focus on three aspects: First, the democratization of territorial representation in international bargaining; second, the strengthening of other components of the democratic process; third, institutional solutions that strengthen the transnational demos, particularly its weaker elements such as transnational public discourse and transnational solidarity.

In order to disprove the skeptics' zero-sum hypothesis, institutional solutions to the problems

<sup>15</sup> See also Heinelt (1997), who distinguishes between territorial, administrative, civil society and functional forms of interest mediation within the EU.

<sup>16</sup> For a similar typology of democratic components see Cohen/Sabel (1997). Instead of including constitutive actors in the second dimension, these authors distinguish between direct and representative proceedings.

described must respond to one of these three demands without weakening other democratic components or reducing system effectiveness. Skeptics are most often concerned about reduced system effectiveness, especially in the field of social policy. It should therefore be ascertained whether any of the institutional suggestions for democratizing international institutions restricts the chances for welfare policies. If "pareto-improving" suggestions are conceivable that enhance democratic legitimation on one count without decreasing it on another, or reducing system effectiveness, they can go a long way towards weakening a further background hypothesis of the skeptics.

*Bargaining procedures – democratization of territorial representation:* A central feature of multi-level politics is that national representatives agree *in camera* on norms and rules to be implemented at the national level. As a rule, the same government representative who conducted the negotiations then lobbies for the approval of the results by his or her national parliament and public. The problem with having the same agent to act on different levels, however, is that she or he is better informed than anyone else. This can be put to strategic use or abuse. One example of this is an increase in credit-claiming and scapegoating in national politics. Thus, every economic crisis is caused by a worldwide economic depression, and every economic boom is the result of national economic policy; a rising crime rate is a manifestation of international trends, but a drop in crime is brought about by the implementation of national measures, and so on. Furthermore, the fact that the executive is typically better informed than actors in other branches of government puts the latter at a disadvantage in the agenda-setting process (Moravcsik 1994, Rieger 1995, Wolf 1997).

In international regimes with a limited range of regulations the afore-mentioned problems of multi-level politics are tolerable. Because the opportunities for linkage across relatively narrowly defined issue areas are limited, it is comparatively easy to keep track of the organizations' affairs. In such cases, simpler measures are sufficient to increase transparency and facilitate the monitoring of executive activities. For instance, every national negotiating team (which as a rule is made up of government representatives) could be accompanied by a small group of observers without the right to speak or vote, whose main function would be to inform the national public about the government's point of view, behavior and bargaining strategy. This group could include members of the parliamentary opposition, but to prevent the possibility of information being strategically abused by the opposition, it should also include well-known and highly credible experts from the relevant issue area.

In the case of the European Union, where the government conferences and the European Council negotiate on almost all internationalized issue areas, the problem of non-transparency is particularly acute. It is almost impossible for citizens to hold specific governments or representatives responsible for political outcomes. In multi-level systems with relatively distinct borderlines (i.e. with an identical membership over a large number of issue areas) different persons, each having their own legitimacy, should represent different levels of the system. For the EU, this would mean that the national representatives of the Council of Ministers would be elected directly by their national constituents in an election separate from that for the national government. This would drastically shorten the Council of Ministers' chain of legitimization and at the same time transform it into a legitimate collective body. Both the national governments and the national representatives in the Council of Ministers would then have to account for their policies individually before the public. This

would almost certainly lead to frequent conflicts, which would have the much-desired effect of promoting transparency, and make it clear to the public what their role is within the a multi-level system. It would then be much easier for the national public to decide who is responsible for what policy. The American political system, in which governors are elected separately from senators, is an example of such an arrangement.<sup>17</sup> The democratization of territorial representation in the European decision-making system in this way would also be beneficial to the growth of a European sense of identity. At the same time, it would reinforce the deliberative component of the process insofar as the national representatives would be forced to emphasize the European dimensions of their policies in order to maintain the support of the electorate.

Moreover, there are no grounds for the assumption that this form of democratization would further impair system effectiveness in the field of welfare policy. On the contrary, the privileged position of national executives as a link between the levels was regularly exploited precisely for the purpose of liberalizing the economy and cutting back welfare. Thatcher's interest in a common market has been intimately connected with her interest in dismantling the British welfare state (Moravcsik 1998: chap. 5), Clinton used NAFTA arbitration proceedings to curb a protectionist Congress (Goldstein 1996), and German Finance Minister Waigel used his position to stave off demands for an energy tax (see footnote 12). These examples are hardly accidental. In many national democracies, welfare systems are so strongly institutionalized and so widely accepted that significant cuts can only be made by strategic maneuvers (see Pierson 1996). Contrary to the skeptics' hypothesis, then, the democratization of territorial representation should increase rather than reduce system effectiveness in the field of social policy.

*Associative Democracy - Increasing the Representativeness of Deliberative Networks:* Despite the arguments against institutionalizing deliberative bargaining networks (see Section 2), their added potential for democratizing governance beyond the nation state should not be neglected. Some studies of comitology within the EU come to very positive conclusions. On the one hand, EU committees explicitly fulfil the congruence requirement because they take the interests of all those affected by an issue into account, and not just those within a particular country. On the other hand they are conducive to deliberative behavior which transcends strategic intergovernmental bargaining (Joerges/Neyer 1997). Similarly, Giandomenico Majone (1996: 286) advocates the role of independent agencies as a means of social regulation: "Recent empirical research provides additional evidence in favour of the thesis that non-majoritarian decision-making mechanisms are more suitable for complex, plural societies than are mechanisms that concentrate power in the hands of the political majority". The democratic potential of incorporating NGOs and epistemic communities has been demonstrated with respect to environmental policy. Issue networks become upgraded to sectoral publics through the incorporation of these groups and the diffuse interests they often represent (Beisheim 1997, Schmidt/Take 1997, Wapner 1995).

The democratic quality of deliberative issue networks is heightened if the participating organizations are representative in two respects. First, they must adequately represent their membership; and second, they must not be an elite group. Decision-making networks must

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<sup>17</sup> See Riker (1955) for an extremely instructive analysis of the development of the American Senate.

in principle be open and transparent to all the groups affected by the regulation – self-selection of the members of a deliberative decision-making network must be ruled out.

Transnational issue networks should therefore be strengthened, but at the same time subjected to entry criteria. These criteria should be designed to permit all those interest groups to participate (i) which can offer a satisfactory justification for their concern and thus be helpful in the implementation of the regulation in question; (ii) which have established organizations in several of the countries concerned; and (iii) whose internal structures and procedures are democratic and open to scrutiny. From the point of view of democratic theory, the last requirement is of central significance if the role of the interest group or epistemic community in decision-making processes extends beyond merely exerting influence to counteract other interests. If an interest group, an NGO or an epistemic community participates in either the making or the implementation of a collectively binding decision, or if the exit option is not cost-free for its members (i.e. the source of the group's influence), the group must be democratically organized. This means that its membership must be open to all regardless of party-membership, race or sex; organizational leadership must be freely elected; its political structure, including the disclosure of its income and expenditure, must be open to all members; and it must not pursue profit-seeking activities.

There are no reasons why a better representation of widespread interests in deliberative issue-networks should impair welfare system effectiveness. On the contrary, a more balanced representation of issue networks at G-7 meetings should improve the chances of developing an international framework which takes individual national welfare policies into account. For instance, an agreement that the poverty rate in OECD countries should not exceed 10 per cent would constitute an international regulatory policy that facilitates redistributive policies at the national level. An international regime such as this would take the different national economic productivities into consideration and leave it up to member states to decide on the measure and welfare system by which the goal is to be achieved (the poverty rate is assessed relative to national average income). In this way, such an international regime would have little (if any) redistributive implications at the national level and could thus conceivably be the result of deliberations among all the affected interests within an issue network. Again, welfare system effectiveness and the democratization of political institutions beyond the nation state are not mutually exclusive.

*Majority voting – Promoting Referenda:* Political scientists usually advise against legitimation by majority voting in international decision-making systems. This is indeed a valid warning against naive conceptions of a European or world-wide state system, but at the same time it reflects a static view of democratic political institutions, which are not just founded on the basis of *demos*, but in turn also generate and reinforce them. Rainer Schmalz-Bruns (1997: 65) correctly notes that "taking a side-entrance (by the bargaining method) seems to sap more potential for a sense of political community than it creates" (translation: M.Z.). It thus seems desirable to identify procedures which could be helpful in improving the social prerequisites for democracy, especially those which contribute to public discourse (see Section 3). Given the interactive relationship between *demos* and democratic institutions, such an improvement would itself contribute to democratization.

The aim must therefore be to introduce majoritarian procedures that, initially, function in the

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absence of a fully developed European demos while at the same time fostering its development without endangering what has been already achieved. Within the context of the European multi-level system, European referenda on more general issues could be a useful instrument. Although the national referenda on the Maastricht Agreement clearly exposed the EU's legitimacy problems, they also showed that such significant political events can encourage public discourse (see Luthardt 1993). A referendum is more than just a ballot. It differs from pure "telecracy" by virtue of a phase of public discourse which is at least as significant as the ballot itself. If referenda were held across Europe it would be futile to instrumentalize them for national purposes (as happened with the referenda on the Maastricht Agreement). European-wide referenda could then constitute a political decision-making instrument for an extended political arena, with the potential for both community-building and even encouraging public deliberation. In addition, referenda could be called for the specific purpose of increasing the chances of reversing those policies in the EU which appear to be rent-seeking. Referenda are furthermore a good mechanism for breaking real or perceived political cartels (Frey 1994; Wagschal 1997), and political systems that feature direct democratic elements seem to have a longer time-horizon (Schmidt 1998).

This is not as far-fetched as it may seem. Comparative democratic research has shown that referenda help to counterbalance deficits in bargaining democracies (see Schmidt 1995: chap. 3.4). In highly heterogeneous societies, national political systems which feature strong bargaining components not seldom offer considerable possibilities for direct citizen participation as well. Two particular examples are the US, where strong direct democratic elements exist at a local level and in individual states, and Switzerland, where more referenda have been held since 1945 than in any other democratic system. Nor do direct democratic elements offer a "premium for demagogues" – as the former German Federal President Theodor Heuss suspected. Rather they act as a stabilizing force by offering the electorate a means of checking the high-handedness and empty actionism of the political class. Referenda are also accredited for their integrative effect. Of course, referenda can increase the cost and duration of a decision-making process. Contrary to popular opinion, however, this does not seem to be the EU's major problem with decision-making. Although the time it takes for an EU regulation to come into effect, from the day it is officially proposed by the Commission to the day of the Council's final decision, has increased over the past few years to around 160 days, this is not appreciably longer than in most national political systems (König/Schulz 1996). Thus it comes as no surprise that a number of proposals have been advanced for the introduction of European-wide referenda to counterbalance the dominance of bargaining democracy (Abromeit 1998, Grande 1997).

The question that remains to be answered is what decisions should be put to European-wide referenda. Clearly, there are a number of issues for which referenda are not the appropriate form of decision-making, at least initially. In the first place, an issue must be significant enough to generate the publicity needed for a referendum. A new milk quota regulation is therefore not a suitable subject. Second, the issue to be voted on should not be one that has primarily redistributive implications, as this may give rise to conflicts between member states which could jeopardize the existing level of integration. Redistributive measures are generally accepted only if the *demos* already has a strong sense of identity; they do not provide a good basis for generating such an identity. Thus, given that a European political community has yet to be formed, the reform of the common agricultural policy would not be a good candidate

for a European-wide referendum.

This leaves policies that are a result of majoritarian politics (Wilson 1980). These are policies which spread costs and benefits evenly across the population and transcend the (ever-present) interests of particular parties. A classic example is defence measures, which would be quite appropriate for European referenda – for example, a proposed extension of common foreign and security policies. Similarly, the results of negotiations for entry into the EU could be decided on by referenda, not only in the countries under consideration but in the whole of the Union. Environmental policy is a third candidate inasmuch as environmental measures typically lead to higher consumer prices but generate benefits that are enjoyed throughout Europe. Where constitutional questions<sup>18</sup> are concerned, however, referenda should be held under the application of strong restraints and with a qualified majority, if, for instance, a qualified majority in the European Parliament were to vote for a referendum, or a transnational quorum of ten percent of the European electorate were reached. For "normal" (as opposed to constitutional) policies lower, but still transnational quora should be sufficient to call a referendum. The European Parliament should decide on policies to be categorized as majoritarian and these should be specified on a list which can be supplemented over time.<sup>19</sup>

In the short run, this form of democratizing international institutions will by definition not curb the effectiveness of social policies. In the long run, it could even foster solidarity.<sup>20</sup> This appears, then, to be another institutional proposal that may promote the democratization of supranational institutions without reducing system effectiveness.

*As Much Direct Deliberative Democracy as Possible:* In a direct deliberative democracy, collective decisions are made by public deliberation in local fora in which any individual concerned can participate. Some theorists see direct deliberative procedures as the central component of a future democracy project (Cohen/Sabel 1997, Cohen/Rogers 1998), despite the claim that direct deliberative democracy is unable to solve today's crucial problems and in fact reduces system effectiveness. Indeed, many transactions are transnational, which renders direct deliberative policies ineffective. However, it might be appropriate to reinforce the direct deliberative component for the regulation of issues which arise at a local level. *Ceteris paribus*, it is easier to democratize decision-making processes in small communities, and it is easier for individuals to cope with the complexity of governance if there are clearly defined areas in which their direct participation and influence can be experienced. In this

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<sup>18</sup> The term "constitution" is more broadly applied here than the legal term, which is related to the traditional state concept. In this paper, constitutional questions include all those questions concerning the structure of the European polity.

<sup>19</sup> An institutional proposal that follows the same logic is the introduction of EU-wide party lists instead of national party lists for elections to the European Parliament. Suggestions for common electoral systems are already to some extent discussed in the EP. See Reuters, 15.7.1998, which refers to proposals put forward by the Greek Christian Democrat and member of the Committee on Institutional Affairs Georgios Anastassopoulos. I owe this hint to Thomas Lundberg.

<sup>20</sup> Institutional policies which generate a sense of community are hardly transferable to multi-level politics outside the EU system. The multi-level politics of conventional international institutions differ from the European multi-level system in that the different sectoral European regulations are extremely tightly interwoven. They thus form a kind of network which constitutes a new political arena (albeit with rather hazy outlines), within which majority voting is plausible. Only with a durable political arena such as this does it make sense to introduce majority decision-making procedures which are potentially beneficial to public welfare.

respect, the strengthening of direct deliberative democratic elements in small regional political units seems to be an urgently necessary correlate to the strengthening of bargaining elements beyond the national realm.

Moreover, the development of new communication technologies makes the application of this type of decision-making plausible, even for transnational issues. As an example, the development of some of the technical standards related to the Internet, such as the TCP/IP protocol, seems to come close this form of interest mediation. The TCP/IP protocol is developed by the Internet Engineering Task Force (IETF), a sub-organisation of the Internet Society (ISOC). This issue network is open to all users who are registered on the Society's mailing list and thus constitute a membership. Decisions are made on the basis of discourses in different fora that are regulated by a number of procedural rules. Decisions are taken on the basis of a strongly qualified majority and after a new standard has demonstrated its effectiveness it is put into practise. The decision are then made public with the help of the mailing lists (see e.g. Hofmann 1998).

Of course, it is unlikely that direct deliberative democracy conceptualized thus can be applied to effect redistribution in a transnational context. Nevertheless, it would certainly not reduce system effectiveness in those issue areas in which it could be applied. Moreover, direct deliberative democracy carries an implicit notion of "egalitarianism" which is normatively defensible and yet quite critical of traditional welfare policies (Cohen/Rogers 1998).

In sum, the institutional suggestions discussed in this section can improve democratic legitimation without downgrading the effectiveness of social policies, thus casting doubt on the second hypothesis of the skeptics. Although the skeptics' focus on the social prerequisites for democracy is useful, the emphasis on the complexities and dynamics in the relationship between political institutions and social attitudes facilitates a vision of democracy beyond the nation-state through institutional reform.

## **6. Individuals and Democratic Governance Beyond the Nation State**

The nation state acquired a symbolic framework at an early stage of its history which facilitated the development of a strong national identity. This made the nation state uniquely able to go beyond face-to-face relations and serve the collective desires of the so-called imagined community (Anderson 1991). In many instances, the emergence of a strong national identity brought great suffering in its wake but, in time, national identity was matched with a civil constitution in most OECD countries. A fully developed civil political community not only facilitates the democratic process, but is also constituted by it. On the basis of this two-way causal relationship, democratic multi-level politics may eventually create an orientation towards a public interest beyond the nation state. Nevertheless, for the time being, democratic governance beyond the nation state must manage without a fully developed demos comprising all the components dealt with in this paper. In any case, governance beyond the nation state will satisfy the demand for a collective identity much less completely than did the nation state of the early twentieth century, and this will simply refer

the problem of identity back to the social sphere. Ultimately, democratic governance beyond the nation state is based on a political and moral vision of reflective self-regulation by self-governing individuals and organizations who are prepared to forgo their own rational interests if there are good universalistic reasons for public interest-oriented behavior.

This vision implies the participation of competent citizens (Münkler 1997) with an unprecedented degree of intellectual capacity, normative tolerance and solidarity. As far as the first element is concerned, individuals are better equipped than ever. In 1892 the correspondent of a well-known journal wrote that, as a result of the spread of modern newspapers, the inhabitants of a provincial village knew more about general social and political developments than the head of a government had one hundred years previously (Giddens 1990: 77). The same could be said today. Anyone today who visits a large city only once a year is confronted with a broader array of lifestyles, cultures and social environments than could ever have been envisioned by our great-grandparents. In the modern age, and particularly in the last few decades, individuals have achieved new levels of self-determination and competence and are much better able to fulfil a central requirement of democratic governance beyond the nation state.

Whether this skill revolution (Rosenau/Fagen 1997) is sufficient, however, remains to be seen. "World citizenship with republican intentions" (Beck 1998) requires moral as well as cognitive competence, and here the outlook is somewhat bleaker. There is a widely held view in sociology that public spirit and solidarity are decaying, a civil deficit attributed to the all-dominant power of market structures, which consume the potential for solidarity, and state welfarism, which strips individuals of their sense of joint responsibility. There is, however, also empirical evidence that paints a different picture (see, for instance, Wuthnow 1991) and rejects the idea that individualism and public spirit are mutually exclusive. In the final analysis, the chances for democracy beyond the nation state depend on people. But that is really nothing new.

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