Democracy in new spaces. On conceptual change in two debates about democracy and scale

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Paper for the 7th ECPR General Conference,
September 4 - 7, 2013, Bordeaux
Panel 079: Democracy and Language: Exploring Semantic Transformations

Abstract:
This paper compares the current debate on democratization of global governance with controversies about the second democratic transformation in the late 18th century. Both debates focus on the question how democratic practices, institutions, and values can be transferred from smaller to more expanded spheres.

Three analogies can be derived from comparing these two debates. First, a reconfiguration of the basic democratic institutions and practices occurs in both cases, notably in the change from a direct into a representative understanding of democracy during the debates of the late 18th century, and from a representative into a deliberative in the current debate. Secondly, in both debates, a higher level of rationality is linked with the new concept of democracy. Thirdly, in both cases, the transfer of democracy towards new spaces corresponds with a weakening of the mechanisms of popular control.
1. Introduction

In his path-breaking work *Democracy and its Critics*, Robert Dahl distinguishes between two democratic transformations.¹ The first occurred in ancient Athens and established a more egalitarian form of government in the city state. The second transformation started with the great revolutions at the end of the 18th century. During this time, the principle of representative government was invented. According to Dahl, the second democratic transformation not only increased the inclusiveness of citizenship—even though this came with the cost of a new split between the electors and the elected—but also established a more effective form of government. Due to its larger scale, the new government was able to deal with problems that could not be solved by a city state, such as peace, the rule of law, and social justice. However, since the end of the 20th century, the capacity of the nation-state to provide these goods has been challenged by the growing impact of transnational politics and economics. Thus, the question has arisen whether a “third transformation of democratic limits and possibilities”² would be feasible. As is well known, Dahl himself gives a rather pessimistic answer to this question.³

However, many scholars do not share this pessimistic estimation of the prospects of democracy. Instead, they try to change the meaning, institutions, and practices of democracy in a way that the idea of democracy can survive the challenge of the post-
national constellation. They are involved in some kind of conceptual change to create a new political vocabulary. In other words, as the second transformation of democracy was only possible through a fundamental change of the concept of democracy, namely, from direct to representative democracy, we can currently observe many scholars working on a similar radical change of the concept of democracy. This change aims towards a third democratic transformation, namely, the democratization of global governance.

In this paper, I want to compare this current debate with the theoretical controversies during the second democratic transformation. Both debates focus on the question of how democratic (or republican) practices, institutions, and values can be transferred from smaller to more expanded political areas. Just as the concept of “republic” had been disassociated from its strong connection with small communities and transformed into “representative government” in large nation-states in the late 18th century, there are now many attempts to break the tight relation between the concept of “democracy” and the nation-state to enable democratic government at the supranational or even the global level. This leads to a re-conceptualizing of “democracy” that is as fundamental as the transition from the direct to the representative concept of democracy.

In the following, I am mainly interested in the conceptual strategies and theoretical moves by which scholars try to reconfigure the very meaning of democracy. The paper is divided into three sections. I start by examining the adaptation of republican gov-
ernment to a large nation-state, particularly by focusing on the authors of the *Federalists Papers* and Emmanuel-Joseph Sieyès (section 2).

The current discussion about global or cosmopolitan democracy has dimensions and ramifications that are almost impossible to overlook. Therefore, I present this debate only in a pointed and illustrative way by distinguishing between the strategy of transfer-ence, the strategy of constitutionalisation, and the strategy of a deliberative redescription of democracy. I will show that only the second and third strategies can give a convincing answer to the post-national challenge of democracy (section 3).

In the final section, I will summarize the findings of this article through highlighting three analogies between the conceptual strategies of Sieyès and the authors of the *Federalist Papers* on the one hand, and contemporary strategies to redescribe democracy on the other (section 4).

### 2. Representation against Democracy

Much has been written about the differences between the American Revolution and the French Revolution, and the debates are far from over. From the perspective of democratic theory, however, the similarities more than the differences deserve attention. The lasting result of both revolutions is the turn to representation and elections as the core institutions of popular government. Together they shall ensure republican (or later democratic) legitimacy in a large territorial state. However, this solution of the tension
between popular control and a large nation-state was not an inevitable and unchallenged achievement. Rather, it was a theoretically induced rupture with traditional ideas of political legitimacy. This could not be clearer than in the *Federalist Papers* by Alexander Hamilton, James Madison, and John Jay (section 2.1) and in the early writings of Emmanuel Joseph Sieyès (section 2.2).

### 2.1 The *Federalists Papers* and the American Revolution

As is well known, the purpose of the *Federalist Papers* was to convince the citizens of New York to support the Federal Constitution. The new constitution was to replace the Articles of the Confederation, which the thirteen American republics had established during the Revolutionary War. After the war had ended, the Articles of Confederation, which provided only a loose cohesion between the newly independent republics, became more and more inadequate in the eyes of the political elite. In particular, the political elite criticized the lack of economic and military strength – a problem that could be overcame by a closer union. At the same time, the Founding Fathers hoped to impede radical democratic demands and practices of the poorer strata of society by setting up an independent national legislature and a strong executive branch.

During the War of Independence, a strong sense of rights and of the fundamental equality of all citizens was formed within the population. This led not only to detachment from the English mother country, but also to the proliferation of radical...
democratic practices, including township meetings, spontaneous conventions of politically engaged citizens, and the practice of frequent elections of not only legislative assemblies, but also of public officials. In addition, various mechanisms bound the delegates with their local voters, such as instructions and the principle of rotation. Finally, the frequent insurrections of the people against the government, the people-out-of-doors, can also be considered an expression of widespread radical democratic ethos and practice.⁶

These democratic practices, however, were defended in the writings of the Anti-Federalists, the critics of the new constitution. Although certainly not all Anti-Federalists were democrats, at least some of them were).⁷ Their main criticism was that the new federal union would be much too large to be governed according to republican principles, and thus would become highly elitist if not tyrannical.⁸ The authors of the Federalist Papers strongly refuted this widespread conviction: If a republican government is seen as representative, then it is feasible even in large nation-states.

According to Madison, the supposed benefits of a small republic should rather be considered as disadvantages that threaten the freedom of the citizens. The danger of a tyranny of the majority and that of corruption, which he associates with direct democracy in a small territory, could only be impeded in an extended regime like the United States. As Madison famously argues in the 10th article, only a large republic has a sufficient plurality of interests and factions to hold themselves mutually in check. In
addition, the principle of representation guarantees that democratic passions do not
determine the political agenda. Rather, a filtering and betterment of decision makers
takes place through the process of representation. The effects of the new system of
representation will be, in the words of Madison, “to refine and enlarge the public views
by passing them through the medium of a chosen body of citizens, whose wisdom may
best discern the true interest of their country and whose patriotism and love of justice
will be least likely to sacrifice it to temporary or partial considerations”.

The Anti-Federalists, on the other side, feared the establishment of a new political class,
consisting of the members of a so-called natural aristocracy that would be too far away
from the world of the common people. For example, Melancton Smith writes, “I am
convinced that this government is so constituted, that the representatives will generally
be composed of the first class in the community, which I shall distinguish by the name
of the natural aristocracy of the country”. To avoid this, the Anti-Federalists plead for
elective procedures that bind the representatives closer to the electorate, specifically for
small constituencies and short electoral cycles. They also argue for the imperative
mandate, written instructions, and the rotation of the representatives.

Madison rejects these claims. He refers not only to reasons of efficiency, but argues
repeatedly that it is precisely the independence of the representatives from their local
electorate that would enable a more rational legislation. For him, it is sufficient if policy
makers are selected in regular elections by the citizens: “We may define a republic to
be, or at least may bestow that name on, a government which derives all its powers directly or indirectly from the great body of the people, and is administered by persons holding their offices during pleasure, for a limited period, or during good behavior”.¹¹ For the Federalists, the conventional understanding of republic, which the Anti-Federalists tried to defend, is placed on its head in a dual and subtly complementary way. On the one hand, the term is redefined in geographical terms. While it was self-evident for writers like Montesquieu, Rousseau, and the Anti-Federalists that a republic could only be realized in small spaces, for Madison a free republic is only possible in a large territory. On the other hand, a truly republican state only exists when particular factions neutralize or at least inhibit each other, thus requiring the widest possible pluralism of interests and attitudes, albeit filtered through elections and representation. For the theory of democracy, the Federalists’ move to link the concept of republic with a large territorial state is particularly important. The basic idea for this theoretical and political innovation was that a republic could be equated with representative government. It is no small irony in the history of political ideas that the representative system with free mandate and relatively long election periods has prevailed, but not Madison’s strict conceptual distinction between a bad democracy and a good representative republic. Another political thinker who also attempted to sharply distinguish between democratic and representative government was Sieyès.
2.2 Sieyès and the French Revolution

Abbé Emmanuel Joseph Sieyès was one of the most influential thinkers and actors of the French Revolution. His work *What is the Third Estate?* launched the abolition of the old order and, together with other writings and speeches during the early years of the French Revolution, decisively shaped the spirit of the Constitution of 1791. Sieyès tried to justify and sketch a new social and political order that he calls “representative government”. This regime would no longer rely on outmoded traditions and institutions, but would correspond to a nation state with growing social differentiation. Essential components of his new conception are the principle of representation, the separation of powers, the guarantee of human and civil rights, and an economic understanding of the social and political world.

Although Sieyès grants the legitimacy of democracy on an abstract level, it is clear to him that democratic institutions and practices cannot be realized in France. The sheer size of the nation-state requires a representative system, which is legitimized by elections. However, he doesn’t stop at this pragmatic justification. Sharing a credo of the Federalists, he is likewise convinced that the practice of representation can avoid the major disadvantages of direct democracy: namely impetuous passions and demagoguery. Sieyès speaks of stormy and unpredictable fluctuations that are peculiar to the practice of direct democracy. Therefore, the system of representative government
is a functional necessity not only due to the size of the nation state, but also to contain the evils of direct democracy.

Sieyès considers elections as a filtering process through which the wealthy and educated men become designated as the representatives. As the Federalists, he therefore regards the aristocratic effects of the election process, a process by which the citizens are changed into a mere elector of political elite, as desirable. But he even goes one step further and argues for a differentiation between the active and passive citizen. For him, the franchise has to be restricted to those citizens who are “les vrais actionnaires de la grande entreprise sociale. Eux feuls sont les véritables citoyens actifs, les véritables membres de l’association”.

Passive citizens, by contrast, are those who benefit from public services – Sieyès, for example, argues for a public school system – and enjoy liberal freedoms, which are formulated in the Declaration of Human Rights from 1789. With the election of representatives, however, only those who are characterized by their tax base as the shareholders of the society and therefore have a special interest in maintaining the social order are allowed to participate.

Thus, franchise restrictions and a complicated system of staggered elections shall ensure that the national assembly will become a deliberative arena where only the well-educated debate the common good. Furthermore, like Madison, Sieyès also insists that instructions and an imperative mandate are not compatible with a representative system.
“Il faut donc que les Opinans puissent se concerter, céder, en un mot, se modifier les uns les autres; sans quoi ce n’est plus une Assémble délibérante, mais un rendez-vous de Courriers prêts à repartir après avoir remis leurs dépêches”).

Although Sieyès rejects the imperative mandate and advocates a double filtering of the political staff, he also acknowledges the danger that elected representatives may become a political class with particular interests. Accordingly, he suggests the principle of rotation as an instrument that prevents the members of parliament from developing an esprit de corps.

Nevertheless, despite this proximity to the Anti-Federalists, in Sieyès’s political theory, those elements that contain democratic practices predominate, especially the idea of refining the political class through elections and the restrictive franchise. Indeed, Sieyès takes his doctrine of popular sovereignty from Rousseau, but this is just one element of a complex and not entirely consistent political theory. Although the “pouvoir constituant” seems almost omnipotent in Sieyès’s writings during the early years of the revolution, through various procedures and institutions he aims to ensure that the legislative process is dominated by political elites.

Even if the Federalists and Sieyès themselves preferred the terms “representative republic” or “representative government”, the result of their political theories was a fundamentally new understanding of popular sovereignty and democracy, which is different not only from ancient democracy but also from the democratic practices of the
revolutionary era. The constitutional debates of the late 18\textsuperscript{th} century thus radically transformed the concept of democracy into representative democracy. Sheldon Wolin summarizes the result with the following words: “Representative democracy is not about the demos as an actor but as a voter, job-holder, taxpayer, and rule-observer. […] the implications are not just about scale and complexity but about reducing the reach of citizenly action and the stature of the citizen”.\textsuperscript{17}

In the American context, the fathers of the constitution established and legitimized a very stable political system. The modern model of democracy also arose in Western Europe, even if in a somewhat uneven way, through the implementation of universal suffrage in the 19\textsuperscript{th} and early 20\textsuperscript{th} centuries. Until the end of the 20\textsuperscript{th} century, liberal democracy based on the nation-state, with its core institutions like the rule of law, separation of powers, representation, and universal, equal, secret and free elections, has guaranteed the legitimacy and effectiveness of the political systems in the West. However, this seems to have changed dramatically due to the post-national constellation.

\textbf{3. Democracy beyond the nation-state}

Probably no subject has influenced the debate in political science more comprehensively during the last two decades as the transfer of political decision-making processes from the nation-state to transnational and supranational levels. Indeed, the
growing importance of these levels for the government of modern societies is a major challenge to democratic theory, which has taken for granted the nation-state. In addition, all key institutions of democratic government, such as elections, parliaments, political parties, and the public sphere, are located at the national level. However, the national base of democracy is becoming increasingly weaker. Against this background, it is not surprising that the question of the democratization of global governance have moved to the center of political theory. In the extensive literature on this subject, there are three different strategies for overcoming this post-national challenge. The first tries to transfer nation-based institutions of democracy to the supra-national level (section 3.1); the second strategy is the constitutionalisation of global governance (section 3.2); the third consists in a semantic transformation of the concept of democracy (section 3.3).

3.1 The strategy of transference

David Held and Daniele Archibugi are the most prominent advocates of the strategy of transference. They argue for a “cosmopolitan democracy” that includes, in addition to the democratization of transnational and regional levels, some forms of a seemingly democratic world rule. Archibugi and Held endorse a multi-tiered system, where “decision-making centers beyond national territories are [to be] appropriately situated when those significantly affected by a public matter constitute a cross-border or transnational grouping”. With regard to the global level, both are convinced that we
can already identify the beginnings of a public sphere and civil society that have to be strengthened, as they represent the necessary condition for increasing the transparency and accountability of global governance. However, these are just the first steps toward “cosmopolitan democracy”. In addition, they advocate for a world parliament, which they regard as a cornerstone of a democratic world order. This parliamentary assembly, designed as a second chamber of the United Nations, should proceed from universal and equal suffrage where ideally all citizens of the world, but at least all citizens of democratic states, should have the right to participate. According to Archibugi, a world parliament legitimized in this way should be responsible for global issues, such as the “protection of fundamental human rights”, including the right for humanitarian interventions, the right “to redefine the boundaries and jurisdiction of the various political communities” and the “identification of the most appropriate level of governance in the case of cross-border problems involving political communities”.  

This reform agenda has been widely criticized. On a principled level, many critics, following Kant, warn against the “soulless despotism” of a world state. Others argue that a world state or a world parliament would be nothing more than an insidious form of Western imperialism. Furthermore, it is doubtful that the social-cultural and moral requirements of a world democracy are in place. In addition, there are many technical problems associated with the organization of elections to a world parliament. How, for example, should we consider the representative character of a parliament that is elected
by over four billion adult world citizens? Should every enfranchised citizen of the world have the same voting rights or should some be weighted? If so, what criteria are apt for this? How are we to prevent such elections from having the same fate as the elections to the European Parliament, namely, their being misused as national mood tests?

Last but not least, how can we bridge the gap between well informed transnational elites and normal citizens for whom the global issues at stake may be too complex or too far away from their daily concerns? In sum, the strategy to transfer institutions and practices of democracy that are anchored in the nation-state, such as elections, parliaments, and responsible government, to the global level is hardly promising considering not only the state of world politics today but also the essential challenge of scale.

At this point, there is a first analogy to the debates of the late 18th century. Especially in the writings of the Anti-Federalists, one can see how difficult it was at that time to disengage institutions and practices of smaller communities linking the political elites to the will of their voters. These included, as mentioned, short terms in office, written instructions, the imperative mandate, the rotation process, and a strong connection of the elected officials to local communities. However, with the ratification of the Constitution, these mechanisms lapsed. What had been a well-established practice at the level of colonies and the independent republics after the end of the Revolutionary War in 1783 was replaced at the new national level by a new system of representative
government. To some extent, this was due to technical reasons, insofar as these mechanisms were designed for small-scale spaces. However, as much as the authors of the *Federalist Papers*—and in the French context, also Sieyès—insisted that the old institutions and practices are dysfunctional in a large national state, another argument was more decisive, namely, that the new representative system would override the vulnerability to irrational factors such as the demagoguery, passions, and narrow-mindedness of the old regime. The filtering of the popular will, afforded by the principle of representation, would guarantee a higher rationality in political decisions. As I will show in the next section, this argument can also be found in the current debate on the democratization of global governance, particularly in the writings of those authors who try to establish a new understanding of democracy. There are two interconnected ways of making this conceptual move. One is the strategy of constitutionalisation, which tries to tame the impact of nation-based decision making with regard to higher global standards of legitimacy; the other is the strategy of a deliberative redescription of the very meaning of democracy.

### 3.2 The strategy of constitutionalisation

In recent years, considerable literature has been written about new transnational or even global forms of constitutionalism. It is a scholarly reflection about the emergence of new international regimes, treaties, and laws since the second half of the 20th century,
accelerating after the fall of the Soviet Union. This new international law ranges from the human rights declarations of 1948 and the charter of the United Nations, the treaties of the European Union, the statutes of other international organizations such as the World Trade Organization and the International Monetary Fund, the establishment of international courts, to the written rules of global public policy networks and self-organization processes of private global actors like the *lex mercatoria*. According to some scholars, these new developments are not only a reaction to the globalization of culture, politics, and trade, but also the perspective, if not already the existence, of a more lawful and therefore more legitimate form of global governance. This is not the place for reconstructing the scholarly debate about global constitutionalism. In the following, I merely want to highlight a second analogy to the debates in the late 18th century. This analogy consists in a conceptual move from popular sovereignty to a higher, seemingly more legitimate law.

As is well known, the invention of written constitutions was one of the central achievements of the revolutionary era. For both Sieyès and the authors of the *Federalist Papers*, constitutions institute a framework for republican politics. It is a framework that simultaneously enables and abridges popular sovereignty. As Sejersted puts it: “The point is that constitution-making was directed against the power of the state, no matter who held power – a king or a democratically elected assembly”. However, authors who argue in favor of a constitutionalisation of global governance mostly do not
consider transnational law as a check on popular sovereignty, and this seems to be a crucial difference from Madison, Hamilton, and Sieyès. Quite the contrary, the former authors see constitutionalism as a crucial step in enabling a more democratic world order. Nevertheless, at least some scholars have attempted to discredit the old nation-based understanding of democracy. At this point, as I will show below, we can observe the same conceptual moves that the fathers of the new nation-states made previously.

The trend towards transnational law and its binding force is not welcomed unanimously. Indeed, many critics have cast doubts—and this resembles the criticism of the new American constitutions by the Anti-Federalists—about its democratic genesis. They see the new world order as engendered by international elites without the consent of the governed. Some even argue that the regime of international law serves mostly the interest of a new world ruling class, the “global aristocracy”.

To devalue this kind of criticism, scholars like Kumm and de Wett question the legitimacy of national-based decision making in a highly globalized world. For de Wett, “democracy does not necessarily equate to legitimacy”. This is especially the case when democratically elected parliaments make decisions that harm the interests or the rights of non-citizens or foreign states. Kumm mentions the example of the United States refusing to comply with international treaties on the reduction of carbon dioxide emissions to illustrate the offspring between national-based democratic decision-making and what he calls “basic procedural fairness” at the global level. Because many
policies go beyond the borders of the nation-states in a highly interdependent world, the fundamental democratic norm that all individuals should be able to influence decisions that affect them seems to be neglected.

However, this is only the first step in delegitimizing critics of international law-making. The second move is to denounce those who complain about a democratic deficit in the transnational or supranational level as parochial. De Wett argues that even well-established democratic decision-making practices may be illegitimate insofar as they tend to “exclude many who are affected by their policies” like emigrants and other non-citizens. She also mentions that only well-organized interests are able to determine the outcomes of the decision-making processes. This mirrors the fear of the tyranny of the majority and the fear about the power of factions so famously related to democratic practices in the *Federalist Papers*. A further argument also recollects the strategies of the Founding Fathers. This move is to blemish democratic practices as voluntaristic and tyrannical. We can find much the same in a recent article by Kumm: “If We the People willed into being a constitution that declares that the Sharia, as interpreted by learned theologians sitting on the highest court, is part of the supreme law of the land, then nothing in democratic statist’s conception of constitutional authority would suggest they could not do that”. As with the nation-state in the political theory of the Federalists, so for Kumm the higher international law, especially the human rights regime, checks the voluntaristic and therefore seemingly irrational will of the people.
Nevertheless, de Wett and Kumm do not want to throw the baby out with the bathwater. Both refer to new ways of holding international decision makers accountable. Thus, Kumm speaks of “appropriate forms of participation and deliberation”\textsuperscript{35} that have to be institutionalized at the transnational level. Likewise, de Wett asks for a “more accessible and transparent decision-making process”\textsuperscript{36} and refers to international nongovernmental organizations (NGOs) as representatives of the stakeholders. Thus, both are not far away from scholars like Gould, Benhabib, and Fraser who try to re-articulate the relation between democratic practices and human rights at the transnational and global level.\textsuperscript{37}

These authors and many others consider a global constitution that protects human rights only as a necessary but not as a sufficient condition for a democratic world order. In other words, the human rights regime has to be supplemented by further forms of democratic legitimacy. They therefore search for channels of democratic decision making beyond the national state. Nevertheless, these democratic forms should not conflict with the rules of the human rights regime. Like de Wett and Kumm, these authors do not simply try to transfer well-established democratic practices and institutions like elections, parties, and parliaments to the global sphere. They are rather looking for new and more rational ways of “democratic” decision making. Before I argue in the concluding section that in this move we can also see a further analogy to
the conceptual strategies of Hamilton, Madison, and Sieyès, I briefly sketch this deliberative account of supranational or even global democracy.

3.3 The strategy of redescribing

In contrast to Held and Archibugi, advocates of the strategy of redescribing do not want to overcome the democratic deficit of global governance by transferring well-known democratic institutions, but by establishing a new understanding of democracy. A first step consists in the appreciation of new forms of political engagement. As the already-mentioned Benhabib and Gould, authors such as Dryzek, Young, and Bohman interpret internationally operating NGOs as representatives of a global demos or as global, no longer nation-state-bounded, “demoi”. Together with the assumption of a growing global public and an increasing constitutionalisation of world politics, they consider these international NGOs as essential components of a new democratic world order, representing not only the interests and needs of different stakeholders, but also universal interests such as environmental sustainability or a fairer world trading system. The inclusion of international NGOs such as Amnesty International, Greenpeace, and Transparency International in the decision-making processes of the world's financial institutions or even the United Nations should therefore lead to a democratization of global governance. The crucial argumentative move is to ascribe to these civil society actors the task of injecting general interests into decision-making processes of global
governance. In this way, they argue, one can replace the non-realizable actual representation of the world population. Accordingly, they propose some kind of “virtual representation”, based on the assumption that in the NGOs an epistemic and perhaps morally superior knowledge is pooled.39

This new understanding of democracy is mostly supported—and this is the second step—by theories of deliberative politics. Their academic attractiveness lies in the promise of reconciling democracy with rationality. All those reasons that are not generally applicable should be sorted out through a public discourse that is as inclusive as possible. The relevant procedures should not only help to raise awareness of individual preferences, but also serve as a “discursive filterbed”.40

Especially in view of the processes of global governance, many proponents consider a deliberative understanding of democracy as a promising alternative to the “nation-state container”. This alternative suggests that political elites have to justify their decisions to a supranational or global public and would therefore be compelled to a fairer, less interest-based politics. In this way, the interests and arguments of the emerging international public opinion could be fed into decision-making processes. Advocates of deliberative approaches argue that elections, representative assemblies or referenda are not able to ensure the quality of democratic global governance. Therefore, new deliberative assemblies and networks of decision-making processes in combination with a transnational or even global public sphere have to take their place. On the one side,
these deliberative bodies turn out to be more flexible insofar as they are no longer tied to a national public. Rather, they can diffuse into transnational sectoral arenas and are not bound to highly regulated procedures like elections. As John Dryzek puts it, “Deliberative democracy is particularly well placed to take on the global challenge, in part because elections do not constitute its sine qua non”. Thus, deliberative practices can link with the relatively informal processes of global governance, for example by representatives of NGOs participating in global governance networks or by the rulers of world politics justifying their decisions to a transnational audience.

On the other side, however, deliberative processes are more demanding than elections and referenda. While the quality of preferences was previously not a criterion for the admissibility of the individual vote, in the deliberative conception only rational or universal reasons are allowed to terminate the decision-making process. Thus, the deliberative theory has changed the very concept of democracy. The core of the legitimacy requirements is no longer the participatory component, but the rationality of the discussions and the concluding decisions. Last but not least, there is the danger of a slippery slope from deliberative politics, through epistemic communities, to the rule of experts. In the context of the debate among political scientists about the democratic deficit of the European Union, one can observe exactly how this works. Here some scholars (even regard the decision-making processes of European comitology, which both lack transparency and are highly exclusive, as deliberative, and therefore
democratic, processes. At this point, we can therefore observe a third analogy between the current debates and the discussions in the age of the great revolutions. I will explain this point in the concluding section.

4. Democracy without demos

In the constitutional debates of the great revolutions, as well as in the current discussion about the possibility of a democratization of global governance, those practices and institutions that previously enabled democratic government are firstly discarded because of practical considerations. As radical democratic practices like frequent elections, rotation, and the imperative mandate had reached their limit at the end of the 18th century in the context of a large nation state, today it seems impractical to transfer institutions which are anchored in national democracies, such as elections, representative legislative bodies, and political parties, to the global level. Just as representative mechanisms had been established in the late 18th century, so today deliberative processes shall guarantee the democratic quality of global governance. However, this represents only one side of both reinventions of democracy. The other side is that the respective proponents of the new procedures attribute to them not only a technical necessity, but also a higher form of rationality. In the constitutional debates of the revolutionary era, the Federalists and Sieyès had argued repeatedly that the new representative mechanisms would lead to a higher-quality policy. A representative
government is no longer vulnerable to “the tempestuous waves of sedition and party rage”, as Hamilton writes in the ninth article of the *Federalist Papers*. Instead, the principle of representation allows a filtering and rationalization of the political views and passions.

Nowadays, the proponents of a deliberative model of democracy in accord with proponents of global constitutionalism likewise refer to the higher rationality of the new model. They attribute to deliberative processes an epistemic content that they set against a merely voluntaristic understanding of democracy. According to Habermas, “embedding the will of the electorate and the formal procedures of deliberation and decision-making in the vibrant and maximally unregulated circulation of public opinions exerts a rationalizing pressure towards improving the quality of the decisions”.

In this understanding of deliberation, “good reasons” that are generated in an anonymous public sphere, not individual interests or common values, shall determine the political process. If the sewage of the public sphere does not work sufficiently, a system of sluices guarantees “the discursive rationalization of the decisions”. These sluices are mainly parliamentary spear minorities and judicial bodies. As shown above, the last have already emerged on the supranational and global level. Essential elements of deliberative democracy are thus arenas in which rationality through the give and take of reasons will unfold, on the one hand, and legal entities that function as a safety net, on the other hand. The emphasis on the epistemic in contrast to the
seemingly voluntaristic elements of democracy also makes it possible to interpret as “democratic” even those processes in which the participation of affected people is rather marginal. Especially with regard to the supra-national and global context, the epistemic element threatens to displace the participatory component of democracy. Here we can see a third analogy to the constitutional debates of the late 18th century.

Thus far, I have carved out two analogies. The first analogy is the failure to transform established democratic practices and institutions to the new scale and therefore the establishment of a new understanding of democracy. The second analogy consists in the emphasis on a higher rationality of the new decision-making processes. Yet, there is also a third analogy, namely a weakening of the mechanisms of elite control. Even if Sieyès and the authors of the *Federalist Papers* were successful in pushing down the radical democratic practices of the revolutionary era, their conceptions still included the mechanism of regular elections as at least one way to control political elites. The deliberative conception of democracy, however, does not provide an effective substitute for this form of popular control. Habermas combines the epistemic function of the public only in the national context with universal and equal suffrage of parliaments. Although, in a reply to objections, he stresses that it is necessary to include “all possible stakeholders in the consultation and decision-making process”\(^{46}\), he does not show how this requirement can be met beyond the national state.\(^{47}\) Instead, it is the “general accessibility”\(^{48}\) that should guarantee the democratic character of deliberative decision-making. At the
supra-national and global level, this accessibility can only be realized in a highly advocatory way through the actions of an international civil society in the anonymous world of public discourse.

When Habermas and his followers couple the abstract criterion of accessibility to the predictability of “rationally acceptable results”, the tension between deliberative and participatory elements is dissolved at the supranational and global level to the detriment of the latter. Insofar as only weak publics exist at these levels, the demand for effective participation is sacrificed. Obviously, most supporters of deliberative theory do not intend to weaken participatory elements, but through the appreciation of the argumentative process at the expense of seemingly voluntaristic procedures like voting, they pave the way for the interpretation of elite decision-making processes as democratic).

To sum up, as Sieyès and the Federalists rejected institutions such as imperative mandates and short terms of office which had guaranteed closer ties between the representatives and the citizen, so nowadays in deliberative theories of global democracy elections and referenda only play minor roles. From this follows a final thesis that leaves the field of theoretical debates: The transfer of democratic processes and legitimacy to larger spaces is available only at the cost of a significant weakening of the mechanisms of popular control.
Dahl and Tufte have already pointed out that there is an irreducible tension between size and democracy. Gains in the “system capacity” that may follow the widening of the space of government have to be paid with losses in the dimension of “citizen effectiveness”.\textsuperscript{50} The larger the extent of a political community, the more the political elites will remove themselves from the ordinary members of the political community. From this point of view, it is therefore unconvincing to redescribe supranational or even global decision-making processes as democratic.

Notes


8. Even if most Anti-Federalist like their Federalist counterparts used normally the concept of republic, they strongly linked its meaning with democratic institutions and practices of the revolutionary era. As it will be shown, the Federalists in contrast tried mostly successful to separate the concept of republic from democratic practices and institutions.


15. Œuvres de Sieyès. I, 4, 71. “The whole system was designed to function as an immense filtering mechanism”, Michael Sonenscher, “Introduction,” in Emmanuel Joseph Sieyès: Political writings (Indianapolis: Hackett Pub, 2003), xxi; for the


18. This does not necessarily mean that there is also a weakening of the power of nation-states. As some authors have shown, at least some nation-states like China, the United States, and Russia are still the most powerful players in world politics. In most western countries, there is also an increase in observable state activity.


28. That today most scholars consider constitutions as a central feature of democratic rule is a result of the conceptual change of democracy during the 19th and 20th centuries. As John Dunn, *Setting the People Free. The Story of Democracy* (London: Atlantic, 2005) shows, the liberal understanding of democracy has become hegemonic.


35. Ibid., 213.


43. Habermas, “Political Communication,” 143.

44. Ibid., 144.

45. Such as the *European Court of Human Rights*, the *Dispute Settlement Body of the World Trade Organization*, the *International Criminal Court*, or the *International Court of Justice of the United Nations*.


47. This is the main reason why Habermas himself does not speak of democracy beyond the national state in his model of “global domestic policy without government”. However, the advocates of deliberative conception of global democracy do not follow him in this point.
