European governance and the deliberative challenge

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(draft book chapter for the volume Transnational Citizen Participation in Europe. (E)-deliberative Model of European Governance in a Comparative Perspective. Edited by Raphaël Kies and Patrizia Nanz, Ashgate, forth.).

Introduction: Is there a deliberative infusion of European governance?

The European Union of today, it seems, discovers its citizens. Article 11 of the Treaty of Lisbon envisages citizens’ initiatives as a new, and democratic, piece within the EU’s significant portfolio of modes of governance, hereby trying to transpose direct democratic instruments onto the supranational arena. Furthermore, the increasing number of transnational citizen deliberation forums, initiated, if not organized, by the European Commission, also seems to testify the EU’s desire to establish direct contacts with individual citizens (see the empirical chapters in this volume; see also (Abels 2009; Boussaquet and Dehousse 2008; Culpepper and Fung 2006; Karlsson 2010). Whereas the shape of the citizens’ initiatives is only about to become concretized in secondary law,¹ so that their potential impact and relevance can only be the object of speculation, there are already a number of experiences with transnational citizen deliberation forums. Thus, recent events seem to suggest that the EU is seeking to install elements of a ‘strong democracy’ (Barber 2003) in order to gain democratic legitimacy.

These governance innovations are only the most recent attempts by the EU, notably the European Commission, to establish new governance arrangements that should also be democratically innovative, often from a deliberative democratic perspective:

(1) The multitude of expert committees, known as the system of comitology (Dehousse 2003; Huster 2008; Wessels 1998), have been interpreted as being examples of constitutionalizing ‘deliberative supranationalism’ (Joerges and Neyer 1997) whose deliberative qualities are able to improve the legitimacy of the regulatory decisions taken by the EU.

(2) Increasingly, also the so called new modes of European governance (Citi and Rhodes 2006; Héritier 2001; Kohler-Koch and Rittberger 2006; Treib et al. 2007) have attracted attention from the perspective of democratic accountability (Borrás and Conzelmann 2007;

Føllesdal 2011; Héritier and Lehmkuhl 2011; Weale 2011). Hereby, research on the open method of coordination (OMC) is particularly instructive, because it analyzes, with some initial optimism, the potential of policy coordination to enhance the EU’s democratic quality through the participation of civil society actors (Friedrich 2006; Kröger 2007; dela Porte and Nanz 2004).

(3) Taking the formalized procedures between labor and capital in the Social Dialogue as example (Falkner 2006), the European Commission tried, in the early 2000s, to also establish a Civil Dialogue between itself and civil society organizations. Again, this procedure has attracted broad scholarly attention from the wider perspective of deliberative democracy, often under the headline of participatory governance (Obradovic 2005; Ruzza 2007; Friedrich 2011b: chapter 4; Kohler-Koch 2010; Smismans 2006; Steffek et al. 2008).

(4) And now, the citizens’ deliberation forums seem to establish yet another democratic governance innovation of the EU.

But what are the prospects of this latest invention? In order to gain a better understanding about the chances and difficulties of citizens’ deliberation forums, it is important to learn from the past experiences of those governance innovations which have been inspired and/or analyzed from the perspective of deliberative democracy. Consequently, this chapter seeks to deepen our understanding of the apparently intensifying relation between European governance and deliberative democracy (see introduction of this volume). Three main questions are addressed: Why does European governance comes increasingly together with elements of deliberative democracy? Does the linkage of European governance with deliberative practices contribute to the democratization of the European Union (EU)? What lessons can be drawn from past experiences with regard to transnational citizen deliberation forums in the EU?

In order to answer these questions, I will, firstly, illuminate some of the reasons why this linkage between governance and deliberative democracy has emerged. Secondly, I will examine secondary research of the above mentioned governance innovations named above in order to judge their democratic performance and their democratic potential, respectively. In order to do so, an evaluative standard needs to be developed that focuses on the core of democracy; this standard should be, as I will argue, political autonomy. I will claim that governance innovations, in order to be of value from a deliberative democratic theory perspective, needs to meet procedural criteria of deliberation at the micro-level, as well as external criteria that link these innovations to the policy processes of the EU, at the macro-
level.² It will be discussed that, as it now stands, the governance innovations of the EU have significant shortcomings on both sides. Internally, they fall short of respecting normative demands. Externally, they are either too distanced from public accountability mechanisms or disembedded from the system of authoritative decision taking in the EU, or both. Thirdly, I will reflect upon the consequences of these insights on the prospects of citizens’ deliberation forums as appropriate means to democratize the EU. The key argument will be that unless these forums overcome the shortcomings presented before, they will hardly become a new mode of democratic governance in the EU.

**Comprehending the link between governance and deliberation**

*The historical context*

The governance turn (Kohler-Koch and Rittberger 2006) and the deliberative turn (Pollack 2005: 387; Neyer 2006) in EU Studies, as well as the close linkages among both in EU politics and academia, are, to some extent, rooted in wider discourses about the transformations going on in modern, complex societies, and can particularly be tracked down to both the debates about the ‘crisis of the state’ (Deutsch 1981) and, internationally, to those of ‘Globalization’ and ‘Europeanization’ (Wallace 2000; McGrew 1997).

In the 1970s, what some call the ‘golden age of the nation state’ (Leibfried and Zürn 2006), the congruence of social and political spaces (Held 1995: 16; Zürn 2000) facilitated the production of a high level of social normative goods, such as welfare, individual and collective political autonomy, or the rule of law. However, this strong performance of the unitary, territorially confined system of political authority within the sovereign nation state became under pressure. It could no longer sufficiently ‘protect the lives of its citizens’ (Deutsch 1981: 331), partly because of internal ‘contradictions of the welfare state’ (Offe 1984), partly because the ‘growth of dangers of an order of magnitude beyond the size of the national state’ (Deutsch 1981: 331) constrained the state’s sovereignty, understood as its ability to effectively controlling different classes of events, be they humanitarian, economical or environmental in nature (Rosenau 2002: 70).

These multiple diversification processes within and beyond the state undermined the imagination of a central authority capable of achieving democratic legitimacy through electoral means of representation (Kröger and Friedrich in prep.); hence, new concepts and

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² See also Dryzek {2010} for the distinction of micro- and macro-effects of deliberative governance arrangements.
practices of effectively steering and of democratically legitimizing public affairs were needed. It is in this context of state transformation in which both the concepts of governance and of deliberative democracy emerged and gained tremendous attractiveness in political science and political practice. Each of the concepts will now be outlined, respectively.

Approaching governance

The ‘governance concept’, in most of the literature, refers to an organization of public policy making that is not centralized by a unitary government in a nation state. Public policies are, instead, brought into being through ‘negotiated interactions of public and private actors in a given policy arena’ (Pollack 2005: 381) that is usually described as being decentralized and non-hierarchically structured. This arena is not territorially confined, thus it can also be a supranational or even a global one. Hence, formal and informal issue-specific networks of varying compositions of participants come together to decide upon individual policies. The integrative function of government, which is, ideally, able to link issues together and prioritize policies, cannot easily be reproduced by governance arrangements (Pierre 2000; Rhodes 1996).

Conventionally, one distinguishes between a political and an analytical conception of governance (Dingwerth and Pattberg 2006). Politically, in line with the, at that time, dominating neoliberal agenda, governance is partially an attempt by the state to restrict itself and to give as much competences as possible to societal actors. The administrations have started to encourage the establishment of issue networks and to open themselves towards societal actors. Analytically, in the social sciences, governance has not evolved into a theory of contemporary public policy making; rather, governance is an analytical perspective that is sensitive to gradual changes in political and administrative practices at all levels of political action.

Approaching deliberative democracy

‘Deliberative democracy’, in its various guises, offers an alternative vision about democratic processes of political will-formation beyond the classic dichotomy of individual liberties (liberal theories) vs. the common good of a society (republican theories). Deliberative democracy offers a third normative model of democracy (Habermas 1996) that emphasizes that public will-formation processes are enabled through intersubjective communications in

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3 These authors distinguish between an analytical, a political and a societal perspective of governance.
the public sphere so that public interests are commonly created through deliberation rather than aggregated and voted upon (Chambers 2003).

By introducing the notion of inter-subjectivity, deliberative democracy offers a way of coping with the unavoidable fact of diversity and plurality in modern political bodies. The preferences of each individual can be articulated in the public sphere and there, inter-subjectively, processes of societal preference priorization takes place. Each preference is therefore integrated into a web of communication that shapes the interests of others and reacts to the environment (Habermas 1999: chapter 9). With this concept of a deliberative public sphere it is possible to overcome the problem to either go back to a metaphysical common good and the image of a homogeneous group for democratic politics, or to retreat to a monadic conception of society that consists of individuals who merely aggregate their existing interests. Hence, if one accepts the possibility of (transnational) rational discourses, the door for mutual understanding and public action beyond the state is opened.

Conceptual overlaps in theory and political practice

Governance and deliberative democracy meet each other as both are grappling to come to terms with the ‘politics of difference’ (Benhabib 1996) necessary in the face of the inescapable complexity and heterogeneity of contemporary societies, politics and science. Governance scholars have started to acknowledge that any binding public decision that impacts people (in different countries) needs to be, if possible democratically, legitimated; and here, approaches of deliberative democracy seemed to be the natural allies. Close interactions of various public and private actors in issue networks that seek to come to common solutions by arguing about the best solution can, at first sight, easily be reconstructed in terms of deliberative democracy. Also, there is increasing awareness about the limits of expertocracy, as even the sciences cannot give simple truth advices to the policy makers. One could say that today deliberative participation and democracy ‘is not only seen as a normative requirement for a democratic society but serves increasingly as a counter to the uncertainties of science’ (Fischer 2000: 222). Both, governance and deliberative democracy, share an epistemic dimension and a participatory dimension (Elster 1998; Eriksen 2009: chapter 3; Friedrich 2011b: chapter 2).

Thus, the rather technocratic concept of governance profited from a normative upgrading through its closeness to deliberative democracy. At the same time, theories of deliberative democracy, by being linked to actual policy processes, won a much needed pragmatic flavor. By concentrating on the epistemic dimension of politics, by overcoming the tight coupling of
politics with the centralized authority of government, and by de-personalizing politics into more anonymous networks and publics, both concepts seem to have found a common ground that appears, to many scholars, a promising way to think about democratic governance innovations to ease, if not solve, the democratic deficiencies of politics beyond the nation-state.

But not only scholars, also political practitioners, in the EU context particularly the European Commission, were eager to make use of both of this concept. The governance perspective gave the Commission, whose work has always been significantly dependent on external input, a greater legitimacy by picturing itself as organizer of expertocratic policy processes, thus being seemingly oriented at formulating objective policy aims in a crude epistemic understanding of deliberative democracy, instead of implementing particularistic interests as articulated within power politics. In fact, here one can ‘detect an overlapping discourse between the science and the politics of European integration’ (Pfister 2011: 4), not least stimulated by significant research grants offered by the EU on issues of governance that further invigorated this normative framing. Hence, the European Commission rapidly reacted to this new insights as it realized with astonishing clarity that governance could be used to bolster not only its effectiveness, but also its legitimacy (Magnette 2003). It established a ‘new programmatic framework for framing the activities of and visions’ (Pfister 2011: 5) that found its most prominent expression in the White Book on Governance in Europe (2001) that was a hallmark for the political and academic debates about governance and democracy in the EU. In the wake of the white paper and its preparatory working groups, often dominated by (social) scientists with a deliberative leaning (de Schutter et al. 2001), the concept of deliberation and of European governance became very closely related to each other in the Euro-political discourse that lasts until today and which may find its continuation in the context of citizen deliberation forums.

The democratic quality of European governance from a deliberative perspective

Above, the common ground between governance and deliberative democracy was established. This does not mean, however, that the adaptation of deliberative thoughts into the practice of European governance automatically makes the latter more democratically legitimate. In order to come to reasoned normative judgments about the democratic quality of European governance.

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4 See, for instance, the pan-European research networks NewGov (http://www.eu-newgov.org/) and Connex (http://www.connex-network.org/).
governance innovations, this section outlines a normative standard as basis for empirical investigations.

**Autonomy as the core of democracy**

Discussing the democratic quality of European governance modes is a tricky thing because there is no such thing as a common definition of democracy. To complicate matters, theories of democracy are inextricably entangled with the practices and institutions of democracy; accordingly, there cannot be all-accepted standards and measurement criteria. Thus, it is indispensable to clarify the understanding of democracy and to elaborate, on this basis, a tentative list of criteria for judging the democratic quality of the European governance innovations. In this section, I will abstain from retelling the universe of different definitions of democracy. Instead, I propose a strategy to establish an understanding about the normative core of democracy and interpret this core from a deliberative perspective.

As a category of political philosophy, the concept of autonomy assumes the individual’s ability to reflexively decide upon its own life, uncoerced by social or political circumstances. So, autonomy centrally refers to individual self-rule (Christman 2008: 96). Yet, in any given society, a person’s ability to self-rule also requires the capacity to equally participate in the making of collective decisions. Hence, autonomy means two things, the individual’s ability for self-determination and the status that comes along with this ability in society to be part of collective self-determination (Christman 2008). Normatively, thus, autonomy includes a private and a public dimension, both of which inextricably “require each other” (Habermas 2001: 767). Consequently, democracy would be a means to organize governance in a normatively appropriate way, justified by "the promotion and enhancement of autonomy, both for individuals as citizens, and for the collectivity" (Held 1995: 146).

By concentrating on the collective dimension of autonomy, one can say that the European governance modes are then democratically legitimate if they either protect and/or enable the conduct of collective autonomy of European people. Thus, the making of binding decisions through European governance is then democratically legitimate if the decision takers are authorized by those at which the decisions are directed, and if the latter can exercise control over the former. Furthermore, it must be assured that the formation of the political will equally respect every person affected, otherwise individual autonomy would be harmed. This means that a political system with authoritative powers can only possess democratic legitimacy if there are mechanisms of popular control and of practices conducive to political equality, both of which are necessary to realize autonomy.
In the unitary governmental systems of nation states, these requirements found their dominant institutionalization in different shapes of electoral democracy whose democratic quality can be assessed \textit{i.a.} through assessing the realization of political equality as guaranteed formally through the formula of one person one vote and through the examination of the effectiveness of public control, visible \textit{i.a.} through the establishment of new majorities in the parliamentary assembly and, accordingly, in government. In the heterarchical context of the EU, however, there is no such powerful institutional translation of the normative ideal of democracy available. The EU does not possess a unitary government but, instead, is characterized by a multitude of actors that are taking part in policy making. Consequently, it is difficult for the people to know whom to authorize to make decisions and to identify those who bear political responsibilities. Furthermore, the EU does not possess a clear constituency beyond the formal arrangement of European citizenship, but, instead, owns multiple \textit{demoi} (Bohman 2007) that are neither politically nor socially integrated to the extent of a nation state’s constituency. These characteristics of a diffuse authority distribution, which violate the relative transparency of conventional representative government, are already relevant for the so-called Community Method that entails both supranational elements of electoral democracy and intergovernmental elements of indirect legitimacy, by relying on the interactions of the European Parliament and the Council. But in the more fluid governance arrangements, the problems of opacity potentially aggravate. Furthermore, as the boundaries of hard law, which is collectively binding, and soft law, which is not binding, are becoming blurred in governance practices, it becomes more complicated for those affected to know that they are affected. If, however, the affected persons are an opaque and fluid entity, and if the policy processes are obstructing an undistorted view on the making of collectively binding decisions, the fundamental possibility of exercising collective autonomy is endangered.

\textit{Measuring the democratic quality of European governance innovations}

It is here that the model of deliberative democracy steps in as a promising normative perspective to establish tools that are suitable to judge governance innovations concerning their effects on autonomy. In particular, deliberative democracy opens up the perspective on the practice of self-constitution of constituencies (countering understandings of a \textit{demos} as something given), it points to the demands on equal participation in policy processes, and it makes the requirements visible to organize policy processes reflexively and transparently in order to enable measures of popular control. In the previous section, I characterized the model of deliberative democracy as a democratic theory that underlines the importance of free and
reasoned deliberations among all those concerned by collectively binding decisions. Each included person must be considered as politically equal. This characterization, I argued above, points at two dimensions of deliberative democracy, an epistemic dimension and a participatory dimension, both of which needs to be related to each other in order to render the deliberative perspective fruitful for empirically assessing governance modes.

The *epistemic dimension*: Some interpret this dimension restrictively, arguing that deliberative democracy demands of political processes to result in a rational consensus about the goals and the means to achieve them (Eriksen 2009). Although deliberation certainly has a strong leaning towards consensus, given the idea that the power of the better argument prevails, the epistemic dimension should be understood more broadly. It gives us an understanding about the performative function of deliberation to create a common vision of a public good in the process of deliberation. Hereby, it might be instructive to distinguish between consensuses about broad societal goals from consensuses about the appropriate means to achieve them. Thus, the epistemic dimension enables a perspective that unlinks collective decision making processes from the pre-politically given existence of a collectivity (a *demos*), which is constructed through territorial, functional or even cultural bonds. To the contrary, an engagement in deliberative processes can be conducive to the self-constitution of such a collectivity through collective deliberations in the public sphere about the collective’s policy preferences. In public deliberation processes, thus, individuals are practicing collective autonomy.

Yet, it is also clear that deliberative democracy should not be reduced to its epistemic dimension. The closer political activities are linked to concrete decision making processes, i.e. the more pragmatic the deliberations become, the more it becomes crucial to reflect about who should become included in deliberative processes, thus to consider deliberative democracy’s *participatory dimension*. In the social theoretical stance of deliberative democracy, as put forward by Jürgen Habermas (Habermas 1992), societal deliberation takes place in the public sphere and is fairly unlinked from concrete participants, accordingly. In concrete policy processes, however, different perspectives need to be more strongly linked to concrete actors who represent the different concerns on, ideally, equal terms, being an expression of collective autonomy, accordingly. Thus, deliberative democracy needs to think about equal and representative participation or, as John Dryzek calls it, ‘discursive representation’ (Dryzek 2010), if it wants to strengthen its ‘feasibility’ (Bohman 1998) both in applied politics as well as in evaluative research.
In view of that, the pragmatics of deliberative democracy requires a set of institutional practices that aims at protecting and/or enabling the practice of collective autonomy by means of respecting the principles of deliberative democracy in both dimensions. The epistemic dimension demands two things, in particular: At the micro-level, policy processes need to be of a deliberative quality based on reflexive procedures of mutual justification of arguments; furthermore, equal access to information is a necessary condition for successful deliberations. At the macro-level, and related to the issue of transparency, the publicity of the deliberation process is crucial. Without publicity, the public has no chance to influence and learn about the discussed issues and the performative potential of constituency construction cannot be realized. And without this, popular control cannot be made operational. The participatory dimension requires certain standards at the micro-level, specifically. Foremost, without an equal access to the deliberation processes, any further examination of a process’ normative quality would be meaningless. This, however, is more easily said then implemented, because who knows, and decides, in advance about those that are concerned by a decision and need thus to be included? To complicate matters, in complex societies, let alone at the supranational level of the EU, multifaceted representation relationships are necessary to realize equal access, because modern democracy cannot be thought of without collective actors, and with them the question of representation is inextricably linked. Deliberative processes need, thus, to be at least transparent about the selection of participants, reflexively linking these decisions to the discussions about the particular topic in the public sphere that will give hints about those that are directly concerned.

To sum up: in order to protect and enable collective autonomy, European governance innovations need to achieve, at the macro-level, publicity in order to link their themes to the public sphere (fragmented as this is in the EU), so that the people in the EU are not hindered to deliberate the salient issues. At best, they provide mechanisms to reflexively interact with the public in order to make popular control possible. At the micro-level, equal participation of representative actors need to be secured and, then, the implementation of policy making structures that enhances the quality of deliberation guaranteed. For both, informational transparency about the content and the inclusion criteria are important. If European governance innovations possess some of these characteristics, they would not only not harm, but strengthen the exercise of collective autonomy in the EU. Certainly, these conceptual reflections on how to measure the democratic quality of European governance innovations need further specification in order to establish more precisely operationalizable criteria, but such efforts go beyond the scope of this chapter. However, the foregoing remarks should
suffice to enable the establishment of a valid picture of the deliberative democratic quality of three selected governance modes, which will be introduced in the following section.

Coping with deliberative democracy? European governance innovations and democracy

In this section, I will reflect upon the extent to which recent governance innovations in the EU constitute examples of ‘democratic innovations’ in a normatively meaningful sense. I will focus, in particular, on three governance modes: the comitology system, the open method of co-ordination and the civil dialogue. By looking at secondary analyses available about these governance arrangements, I will show that they fall short of minimal democratic criteria set from the perspective of deliberative democracy.

Deliberative democracy and comitology

Although comitology is not a new phenomenon, it dates back to the 1960s (Töller 2002), it attracted significant scholarly attention since the late 1990s by both political scientists and legal scholars (Dehousse 2003; Huster 2008; Wessels 1998). This renewed attention was part of the governance turn in EU Studies as well as the search for instances of good, or even democratically legitimate, forms of European governance (Gerstenberg and Sabel 2002; Héritier 1999; Joerges and Neyer 1997; Joerges and Vos 1999).

The term comitology refers to a web of EU-level committees in which the executives of the European member states take the lead in formulating the correct implementation of EU secondary law, hereby controlling the European Commission. The system of comitology is an intimate part of the authoritative system of the EU as it decides upon a common European interpretation of EU’s framework laws; hence, it is a strong component of the EU’s supranational character as well as an example of how the boundaries between executives and legislative powers in the EU are intermingled. According to Gerstenberg and Sabel (Gerstenberg and Sabel 2002: 318f), there is widespread scholarly agreement about what comitology is all about, but disagreement about the interpretation of these facts. The committees are, according to this interpretation, venues where both the territorial and the epistemic diversity concerning specific policy issues come together in a discussion that aims at establishing commonality through innovation. Acknowledgement and responsiveness of difference, the adherence to the principle of justification and, thus, emphasis on learning processes are central to this model of good governance (Joerges 1999). In a constructivists’ perspective, Weiler describes this deliberative character as being, at the same time, trigger for
and result of socialization processes and a growing supranational we-identity of the participants (Weiler 2002: chapter 10) and Joerges and Neyer (Joerges and Neyer 1997) famously characterizes comitology as an example of ‘deliberative supranationalism’ that might not stop too far from being a ‘substitute democracy’ but, at least, being an example of democratic experimentalism (Gerstenberg and Sabel 2002: 320f).

These few illustrative glimpses into the scholarship on comitology suffices to make it understandable that scholars of the governance perspective as well as of a deliberative democracy perspective had become attracted by the practices of and within these committees. At the organizational micro-level, comitology can be interpreted as a successful interpretation of the epistemic dimension of deliberative democracy, enriched by the almost immediate binding effects of the decisions that are taken in the committees. Also, the collective autonomy of the people in the EU is, to some extent, protected, but only along national lines through the guaranteed inclusion of delegates of all member states.

However, at the macro-level, the impact of these deliberations on the construction of a common European public good is largely absent. There is hardly any possibility for the European public as such to know about comitology and to establish mechanisms of popular scrutiny and control. In addition to this, comitology’s expertocratic character comes at the cost of its participatory dimension that is so crucial in order to provide deliberative procedures with a democratic flavor (Elster 1998). Overall, thus, despite potentially good quality of deliberation at the micro-level, the deficiencies of the comitology system particularly at the macro-level of deliberative democracy are stark and neither protecting, let alone enabling the practicing of collective autonomy at a European scale.

**Deliberative democracy and the open method of co-ordination**

A crucial part of the governance turn in EU Studies has been the discovery of the so called *new modes of European governance* (Citi and Rhodes 2006; Héritier 2001; Kohler-Koch and Rittberger 2006; Treib et al. 2007). This literature highlights the importance of non-hierarchically organized policy networks. Central to this literature, however, was in particular one procedure initiated at the Lisbon Summit of the European Council, March 2000, namely the open method of co-ordination (OMC). Its main characteristics are the setting of common objectives, the definition of commonly agreed benchmarks, the spreading of best practices and the enhancement of policy learning. All this was supposed to be achievable by giving the member states considerable leeway to determine their particular engagement in the process and their policy choices. Most scholars call the OMC a ‘soft law’ approach of ‘new
governance’ in the EU that attempts to achieve common European goals without traditional means of the integration process, such as regulations and directives (De la Porte, 2002; Hodson and Maher, 2001; Mosher and Trubek, 2003).

Research on the OMC quickly got hooked by the normative promises linked to the OMC for several reasons (Cohen and Sabel 2003; Smismans 2004; Télo 2002). First of all, the OMC promised to strengthen the EU’s social dimension and would render the EU more (socially) legitimate in the eyes of European people. Secondly, its alleged ‘openness’ to a diversity of social actors triggered expectations to make the OMC a valuable instrument for increasing participation and deliberation in EU governance. Thirdly, its emphasis on subsidiarity, and thus on the EU’s multi-level character, was expected to be attractive to the people and to contribute to the closure of the perceived gap between the EU and its citizens (Kröger 2009). However, after some initial enthusiasm (Armstrong 2003), and despite of some conceptual attempts to interpret the OMC as being a primary example of experimental governance and democracy (Zeitlin 2005; Sabel and Zeitlin 2008), most of the empirical literature that has sought to gauge its democratic potential has come to rather skeptical conclusions (Buechs and Friedrich 2005; Friedrich 2006; de la Porte and Nanz 2004). This literature applies, by and large, elements of the participatory dimension of deliberative democracy. The OMC failed to establish access beyond bureaucrats and experts and did not make significant efforts to include the voices of all those concerned, and will arguably keep on failing to do so as long as the political will remains weak.

Overall, one can argue that the OMC falls short of its high expectations towards inclusiveness and mutual learning processes through deliberation. In fact, normatively, it seems to be even more problematic than the comitology system, because there the closeness to the system of authority enables at least some elements of peer accountability among the member states. But in the case of OMC, its soft law character proved to be rather de-motivating for both public and societal actors. However, having said this, soft law can influence gradual policy shift by changing discursive frames. For instance in the case of Germany, the adoption of the term ‘social exclusion’ or ‘inclusion’ from the EU level tend to obfuscate the somewhat stronger notion of ‘poverty’ (Friedrich 2006). Consequently, given the almost total ignorance of a wider public, be it European, national or sub-national in scope, the OMC potentially significantly endangers the exercise of collective autonomy also within the member states by a silent infusion of EU-level ideas which might not be supported by the national constituency (Jacobsson 2004). So, the OMC does not only fail to establish a transnational, even sectoral
public sphere on specific policy issues, it also does not protect the exercise of territorially organized collective autonomy, it even endangers the latter.

**Deliberative democracy and the civil dialogue**

Unlike the comitology system and the OMC, both of which are clearly circumscribed procedures, the civil dialogue is an attempt by the European Commission to coin a new phrase that describes its relation to the organized civil society in European policy-making. In fact, as elaborated elsewhere (Friedrich 2011a), the Commission’s language with regard to the participation of non-state collective actors have gradually shifted from an interest group and lobbying language towards the normative language of participatory governance and democracy. An important step of this normative (over-)loading of the inclusion of non-state collective actors was the invention of the term ‘Civil Dialogue’ in the mid-1990s, evidencing that the Commission had taken increasing notice of the “legitimacy capital” of such a civil dialogue’ (Smismans 2002: 11). However, and unlike the Social Dialogue, the civil counterpart still lacks any concrete institutionalization, and it took until a Commission’s discussion paper for it to overcome the confines of social policy. In the White Paper on European Governance (see above), the idea of participatory governance was pushed forward, suggesting that these ideas should complement the regular Community Method in which is now, since the Lisbon Treaty, called the ordinary legislative procedure.

Evidently, scholarship on EU democracy was very attracted by the normative emphasis of participation and a number of empirical research has been undertaken to assess the normative quality of the emerging participatory regime of the EU, once more having been heavily influenced by the participatory dimension of deliberative democracy (Ruzza 2007; Friedrich 2011b: chapter 4; Finke 2007; Kohler-Koch 2010; Smismans 2006; Steffek et al. 2008). The research established that, over time, participatory provisions have been broadened in scope, expanding first to the social partners and today encompassing both special interest and public interest organizations. However, this expansion in scope has been paralleled by decreasing regulative breadth. To date, the system of participation for civil society organizations remains encased in a soft and lofty language, full of normative exuberance but with little substantial provisions. In addition, the more actors have, at least potentially, gained access to EU policy-making processes, the less explicit the rules for participation have become – so that, at the end of the day, it is hard to distinguish empirically between participation and lobbying. The

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European Transparency Initiative has invigorated this fuzziness and the new Lobby Register pushes the participation language backwards, suggesting that the high tide of the participatory democracy talk might be over.

The empirical results give no indication to suggest that, at the micro-level, the civil dialogue or participatory governance in the EU was successful to stimulate inclusive deliberation among different public and social actors. Discretionary pattern of participation and consultation violates the principle of access equality which is indispensable for any democratic exercise of collective autonomy. If it has any democratic quality at all, it would be to stimulate public discussion at the macro-level. The civil society organizations are usually trying to bring the themes of policy-making into broader circles of discussion at all levels of the EU. Thus, the emergence of sectoral public spheres might be enhanced through participatory European governance, but the extent of this potential needs further research as it, inter alia, relies on how successful the civil society organizations are to fulfill its transmission belt function (Nanz and Steffek 2004).

Lessons for transnational citizen deliberation in the European Union

The democratic deficiencies of the governance innovations
This chapter has, in a first step, illustrated that ideas of deliberative democracy, in conjunction with the governance turn, has been a source of inspiration for EU scholars and politicians alike. Deliberative democracy offered new research perspectives by promising of de-coupling the normative ideal of democracy from its close relation to the institutions and practices of the territorial nation state. In a second step, existing research was examined in order to assess the normative quality of the deliberative infusions of European governance. It was shown that the establishment of true deliberative processes, which combine both the epistemic and the participatory dimension of deliberation, poses significant challenges to the institutionalization of European governance. The micro-politics of the comitology system bear some features of epistemic deliberation; the civil dialogue has potential to strengthen sectoral European public spheres; and the OMC is even diminishing national collective autonomy without succeeding to establish a transnational dimension. Whereas comitology is effective, but exclusive, the OMC and the civil dialogue are better on inclusiveness, but lack effectiveness and are rather marginal with respect to influencing policy outcomes and doubtful with respect to political autonomy. Thus, there appears to be a trade-off between effectiveness and inclusiveness that needs to be borne in mind by designing citizen deliberation forums in the EU.
Altogether, there is reason for caution concerning too much enthusiasm about the democratic quality of the deliberative infusion in European governance. At the micro-level, such governance innovations would need to find a balance between the epistemic and the participatory dimension of deliberation: only with equal access to the deliberation processes and, at the same time, with methods that aim at a high quality of discussion, such procedures would gain democratic potential. Hence, the organizational dimension of deliberation forums is crucial. At the macro-level, two different aspects need differentiation, the effects on the public sphere and the impact on actual decision-making. To the first aspect: publicity is essential in order to make such procedures not only visible to the public, but to stimulate the public to engage in debates in order to make use of the performative function of deliberation and to make the governance arrangements object of public control. To the second aspect: the insufficient linkage of deliberative governance arrangements to the system of authority in the EU is problematic. Neither the theories of deliberative democracy, so far, have provided a convincing vision about how to make deliberation ‘feasible’ (Bohman 1998) at EU level, nor do the scholarly insights suggest that the EU really strives to reconfigure its practices of decision-making and policy implementation along the requirements of deliberative democracy.

Whereas it is still too early to judge whether the transnational, deliberative citizens’ forums at EU-level might prove to be having any democratic significance at all (see the empirical contributions in this volume), the empirical insights gained by the research on governance innovations, as introduced above, offers some hints where these forums need to be particularly carefully designed.

Consequences and outlooks for transnational citizen deliberation forums

At the micro-level, it is essential that transnational citizen deliberation forums are very carefully designed in particular with view at the selection of participants and of expertise, in order to meet requirements of political equality in the participatory and the epistemic dimension, alike. But how to secure equal access of individual citizens to transnational deliberation forums? There are a number of possibilities that are situated along the continuum of self-selection and top-down selection, the latter being either based on randomness (Buchstein 2009; Sintomer 2010) or on social structural considerations in order to secure empirical representation. The practices in the EU need to be carefully assessed with view at these selection processes. In order to be relevant also in the epistemic dimension of deliberation, the selection of expertise is similarly important. The emphasis on
intersubjectivity in theories of deliberative democracy is, not least, a reaction to the contingency of (also scientific) knowledge. Hence, scientific diversity needs to be mirrored in the selection of experts. But, of course, the question of who selects the selectors arises.

At the macro-level, two issues will be crucial for the democratic quality of transnational citizen deliberation forums in the EU, namely their linkage to the system of authority and their potential to contribute to the self-constitution of the European citizens as a political community.

As was argued above, the increase in participatory talk at EU level was accompanied by a decrease in policy effectiveness of the participatory governance innovations. One crucial reason for this is that both the link of the OMC and of the civil dialogue to binding policy making at EU level was either nonexistent (OMC as soft law) or only spuriously visible (civil dialogue). But European governance innovations that would fail to have any policy significance at all, even if they were perfectly deliberative, would also fail any democracy test. This is so because democracy, as was argued above, is about enabling and securing the exercise of collective autonomy, and this necessitates policy impact. Democracy as a system that organizes self-rule cannot exist without a clear vision about authority, about who the bearers of authority are, where the authoritative decisions are taken, and who has the authority to supervise upon their implementation.

Furthermore, a deliberative forum that would meet the micro-level requirements without any public visibility would resemble an educational exercise for the participants rather than a governance innovation. Yet, it is important to be aware that ‘public’ means, in this context, two things: namely both the weak and the strong public, i.e. both the mediated public and the public of policy-makers. The wider public needs to know about these processes, hoping that they could contribute to stimulate trans-European discussions about specific policy choices. If the deliberative experiments succeed to initiate public debates on EU issues, and if the participants serve as local multiplicators, citizen deliberation may become an important means to strengthen the identity dimension of democracy, a potential outcome that appears to be of more fundamental importance to European democracy than yet another technocratic deliberative European governance arrangement.

Without any doubt, it would certainly be utopian to believe that the transnational deliberation forums will be very closely linked to the decision-making processes in the near future. However, if properly institutionalized, they could succeed in making use of the performative potential of deliberation. If the EU manages to push these forums to such an extent as to establish a truly effective mechanisms for generating processes of transnational will-
formation, citizen deliberation forums could become the so far missing stone in the EU’s democratic mosaic that establishes transnational awareness of commonalities and differences and that generates common visions about problems that are of concern to all people living in the EU.

Certainly, the challenges are high; will they successfully evade the fate of becoming a technocratic top-down exercise for a selected few but transform into a well-known exercise to inform all? Is it, at all, possible for a governance innovation, initiated by a bureaucracy, to become emancipated? This, of course, depends on the political will by the EU institutions to overcome its attitude of giving the EU citizens lessons about the worthiness of EU integration; and, at the same time, it depends on the engagement of citizens to take these forums as opportunities for transnational public discussions about central issues that are of common concern. What could this mean, in practice? It would mean to establish such forums at a regular basis at different places on different topics and to establish mechanisms that require the EU institutions to justify their policy choices in the light of the outcomes of the deliberative forums. Again, such a requirement to reflexive justification is only then normatively worthy if it goes beyond a mere summary of statements without argumentative surplus. Experiences with feedback mechanisms to the Online Consultation, however, do not give too much reason for optimism in this respect. Yet, regular forums and regular feedbacks could easily be taken up by the media and trigger transnational discussions.

Despite these challenges, a chance for the success of transnational deliberation forums in Europe might lie, quite fundamentally, in the crisis of representation. The EU’s representative system could be enriched by deliberative governance innovations, if properly implemented. The weakness of established representative practices and concepts bear a democratic chance in that the elitist character inherent in representation is challenged. The more decision-makers are required to actively claim their status as representatives, by justifying their actions and by seeking legitimacy, the more the representative space in the EU could democratically profit from deliberative infusions. Deliberative forums could be a means to overcome the narrowness of aggregative representation towards ‘discursive representation’ (Dryzek 2010) that would not aim at aggregating existing interests but that would enhance the EU citizens’ ability to self-constitute what they perceive as the public good; thus, they could enhance the exercise of collective autonomy in Europe.

Thus understood, citizen deliberation forums would be an innovative way of re-thinking the relation of key concepts of democratic theory, namely representation, participation and deliberation and their practice. In the EU, political representation might profit from being
more strongly linked to deliberative and participatory forms of governance. But, vice versa, the practicability of participation and deliberation at a transnational scale demands also the respect of principles of representation. In democratic innovations like the mini-publics or Consensus Conferences the central democratic concepts of deliberation, participation and representation are joining forces. The partaking in such endeavor is a moment of participation, but in order to be democratically meaningful, its selection needs to be based on representative criteria, and the actual functioning of these procedures then needs to be organized deliberatively. There is much need for both, further practical innovations and conceptual reflection on the relation of these different concepts and how to make them fruitful for democratizing European governance through the establishment of citizen deliberation forums.

References


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