

A Public no Demos: What Supranational Democratic Legitimacy (in the EU and Elsewhere) Requires

Axel Mueller

Q1

For Jürgen Habermas and Jo Cox,
Two non-violently combatant
Tireless Europeans

1. Preliminaries: The EU and Supranational Democratic Legitimacy

Disputes about the question of the relationship of democracy and economy in the EU have a long history and found their expression in the extended period of self-finding of the EU between the poles of being merely an international agreement of economic cooperation and of being a political project of European unification necessarily issuing in a national (perhaps federal) state. The question how much EU-sovereignty can be legitimized within national decision-making political communities is, if anything, more pressing now than at the inception of the EU.¹ At the same time, the recalcitrance of problems during the latest crisis in the Eurozone, and the energy of the rejection of supranational governance in the name of returning to familiar patterns of national sovereignty in recent elections and openly anti-democratic and xenophobic popular movements often avert deeper, *principled* doubts. One of these more principled skepticisms concerns the very possibility that any governance-structure like the EU could produce democratically legitimate decisions binding national democratic sovereigns. *How much* EU-sovereignty is legitimate can only be asked assuming it false that *no supranational sovereignty at all can be legitimate*. Such profound skepticism as it expresses itself in the successful Brexit-referendum and the wave of announcement of similar ‘taking back of control’ referenda throughout the member-states, however, requires *normatively* to believe it to be true that national decision making must have priority, which is itself only a legitimate norm if the national level is *per se* more legitimate than supranational decision-making that includes the national government merely as part of a group of decision-makers. This usually implicit assumption is also the backdrop for the legal reasoning that led several European national supreme courts (most notoriously the German constitutional court) with constitutionally assured democratic credentials to reaffirm their authority in jurisdiction, and to reject as lacking

in democratic credentials any limitation by the EU-treaties-demands of applying and enforcing supranational regulations. The proponents in both examples question supranational authority and legitimacy: Do such new and complicated administrative forms of governance as exemplified in the EU-structures face a *principled* challenge, that of not being able to legitimately constrain national decision-powers that the peoples of Europe democratically decided on their own to give to their, but not to their neighbors' governments?

In the following, I examine such skepticism-inducing doubts. The most ambitious sort of explicit argument in favor of these doubts is the so-called 'no demos' argument. It states that since there is no naturally grown 'people', there is no proper subject of self-determination in the EU, and thus no possible democratic legitimation-substrate. In this form, it appeals to an alleged general principle of legitimation—no demos, no democracy. It thus requires in fact responding to the more general question of whether and how such *types of supranational governance* as the EU generally can issue legitimate claims on national member-governments and peoples. My answer will be that, provided constitutionalizing structures like those in the EU, the perception of a principled problem with supranational governance is confused.

I will begin by discussing two representatives—Grimm's metaphysical and Streeck's conceptual version—of specific and, unlike sheer nationalist populism, serious arguments that are often used to establish that the EU-institutions meet a legitimacy-disabling condition (II). After quickly examining the logical structure and purported evidence behind the guiding no-demos intuition behind them (III) and finding them lacking, I will then move to a more principled discussion of reasons that show why 'no demos' ploys *must* fail to challenge the *possible* legitimacy at the supranational level, as exemplified in the multi-level EU-architecture. This more general line of argument aims at identifying a logical gap in any no-demos based attempt to justify principled skepticism regarding supranational legitimacy. The technical *logical* demonstration that no form of the no-demos ploy works is laid out in section (V). However, a substantive analysis of the defects of no demos arguments limited to this formal point remains incomplete. An additional step of conceptual analysis is required to identify the underlying conceptual (or ideological) state-theoretic principle that these arguments share (regardless of the differences in their political background theory) and take for granted as a premise. Section (IV) performs a stepwise removal of purported rational motivations for the assumption forming this premise that the absence of a grown *Staatsvolk* entails legitimation problems. In a new argument criticizing the no demos ploy, I propose a three-dimensional interactional model of the pragmatics of legitimation to fix possible pragmatic sources of deficiencies of democratic legitimation. I assume them as necessary conditions in the sense that systematic lack of access to any of them would mean a systematic assignable democratic deficit. I then demonstrate the *feasibility* in all three dimensions of access to necessary conditions of democratic legitimacy for supranational structures of governance on the basis of three pragmatic approaches to democratic legitimacy, those of Möllers, Habermas and Dewey. These substantive conceptual arguments in favor of the structural ability

of supranational associations to acquire legitimating power for political decision-making together with identifying the decisive premise of the no-demos ploys reveals in a novel way that *any* no demos argument *must* invoke some material metaphysical intuition about peoplehood beyond the requirements on legitimation identified along the three dimensions of possible legitimation-defeaters. This complements the logical critique of the no demos ploy (sec. V) with a critical analysis of its own basic background metaphysics.

Why? Well, it is often suspected but has never been proved that the whole argument *must depend* on a nationalistic *and in no way democratic* bias. My argument and three-dimensional model provide such a proof by exhibiting the inevitable metaphysical background assumptions and their logical status as unsupported premises invoked by the no demos ploy. In spite of the elaborate apparatuses utilized to pump the no-demos intuition, no-demos ploys—whether the specific versions discussed in the first part or the generic argument-form analyzed in the second part of the present article—can be shown to have no footing at all in the material requirements of democratic legitimation. Without denying potentially numerous political reasons to demand more and stronger democratic controls in the actual institutional design, I conclude that there are no principled reasons to abandon or discredit the European project (and its authority over national legal orders in the member-states) because a grown European *Staatsvolk* is absent.

2. The EU and its Discontents: Two Versions of the No-Demos Argument

According to standard legal opinion, the process of constitutionalization and the creation of a regional regime of democratic guarantees in the territory comprised by the territories of member states of the EU can be seen as largely accomplished.² Precisely because of this, procedures lacking democratic credentials become prominent, such as the efficiency-justified but not transparent and only weakly democratically accountable intergovernmental mode of governing institutionalized in the Council, of which the Euro-policy is representative. Such deficits invite anxieties about the Lisbon treaty that a ‘Monster Brussels’³ is ‘seizing powers from us’,⁴ where the presumably well-defined ‘us’ in question is a variable ranging over national democratic (=‘self-determining’) sovereigns.

Any diagnostic of institutional democratic *deficits* implies reference to some real institutional arrangement in which democratic procedures are, according to the theorist, manifest in a less deficient way. However, given constitutionalization, it is no matter of course that this standard has to be a national constitutional democratic order. It *could* be the EU—minus the to-be-reformed ‘deficits’. So how is it that precisely this option is so easily ruled out in many of the discussions that indicate democratic deficits and conclude the undesirability or impossibility of a democratic EU (and thus justify their rejection of EU-interferences with national legislative and judicial authorities)?

To start an understanding, suppose we set the ‘normal legislative process’ in the two-layer legislative structure of the EU-administration described in the Lisbon

treaty as the standard for non-deficient democracy. To work, it has to be construed as resting on a two-layer structure of appropriately legitimizing *constituencies of citizens*. Relative to this functioning standard of democratic governance, the intergovernmental mode would come out as 'deficient'.⁵ But decisions at the EU-level authorized by the EU-parliament (etc.) in normal legislative process could well count as democratically legitimized, and as expressing the intention that a deliberative decision-making process among the represented people would have produced. So, given that EU-parliamentarians are elected in EU-wide elections: what's wrong with this reasoning?

This is the entering wedge for the no-demos intuition: the relevant deliberating public represented by EU-MPs would have to be the totality of EU-citizens. The legitimacy of EU-regulations therefore depends on the assumption that the totality of EU-citizens forms an articulate people capable of deliberating and of reflectively forming its own will as 'sovereign' in the constitutionally relevant sense. According to no-demos-advocates, this assumption *cannot* be satisfied. Usually rephrasing 'constituency' as 'European people', they then make their case by evidencing its absence. For nationalistic populists⁶ the assumption is a *definitional* falsehood, while social scientists and legal scholars such as Streek and Grimm—who reject nationalism—nonetheless articulate *metaphysical* and *conceptual* reasons in support of the intuition. These reasons apply to the foundations of the apparently *good* (i.e. non-deficient) case, so if they are right, *no other* mechanism of EU-governance will count as democratic, given the wide agreement about the intergovernmental decision-mode's relative democratic deficiency.

Dieter Grimm states the *metaphysical* argument in succinct form:

'There are no indications of the appearance of a European people (*Staatsvolk*) to which to attribute constitutional sovereignty. (...) The Maasticht treaty envisions a federal European state without there (...) possibly being a corresponding European people (...) [Because] it [the population, AM] disintegrates into national particles on the occasion of forming public opinions and articulating interests [in the absence of European media, parties, a common language, education and culture, AM], the European democracy-deficit inheres in structural conditions and cannot be removed by any institutional reforms'.⁷

All the decisive elements of Grimm's position are contained in this one sharp paragraph. Europe is not a nation-state and thus (by definition) does not possess a 'Staatsvolk'. It therefore lacks a *pouvoir constituant* as much as it lacks any sort of integrated set of legal subjects or citizens that would be in a position to justify the rules that affect them. The treaties might (as they eventually have) *call* the populations of the national member-states of the EU 'citizens', but this would be legal verbiage because the 'pre-legal' and 'pre-constitutional', informal conditions of 'peoplehood' are not and either cannot (language, history) or will most likely never be (regional affection of 'being in this together', solidarity and other social mechanisms of integration like 'identity forming symbolic acts') in place in the right way,⁸ that is: in the way they presumably are in the member-nations.

The challenge posed by *this* kind of objection to recognizing a binding priority for EU-regulations aims to be more fundamental than mere nation-state bias. If it were true the very idea of allowing EU-regulations to constrain the sovereign national legislator would be entirely misguided. They could not possibly have the same degree of legitimacy as the national legislator's decisions because the type of supranational regime exemplified in the EU generally cannot deliver democratic legitimacy. Therefore, the acceptance of EU-regulations as part of the legal order of the national member-states—in particular as binding the decisions of the National Supreme Courts as guardians of the national democratic constitutions in which these regulations do not appear—is tantamount to accepting heteronomous imperatives ('Fremdbestimmung'). Conversely, strengthening the EU-parliaments' role in the EU-level legislative processes would not, in spite of the EU-MPs' unimpeachable credentials as directly democratically elected representatives, reduce democratic deficits. To the contrary, MPs who cannot represent anyone in particular for lack of either a people or a functioning EU-wide public discussion and deliberative process of will formation preceding the elections are essentially free-floating agents with powers to decide matters that bind all national parliaments and courts with entrenched democratic credentials.⁹ The relatively simple no-demos intuition thus becomes highly relevant in the context of determining the default priority for legitimation purposes. According to Grimm, it must lie with the national parliament's decisions as long as the EU has not re-constituted itself as a sovereign national state on its own.¹⁰

The weakness of the extreme generality of this 'argument' becomes obvious when we observe that Dieter Grimm could easily switch from asserting on the basis of one and the same reasoning that, given the absence of a people (= the attendant integrative social mechanisms etc. that are supposedly pre-conditions of legitimation and the authority of legal norms even for those who disagree), (a) the EU was democratically *in*constitutionalizable in the quote given in the text (from 1992) to (b) demanding (in Grimm 2004) that the EU would at least *need a constitution*, or some sort of people-constituting act, because only such an act would create the 'people' required for legitimation-purposes.

That the same reasoning can serve an affirmation and one of its negations reveals the no-demos intuition as a presupposition in the sense of philosophical semantics: an invariant condition for affirming and denying the same proposition. Politically, it shows both as sides of the same, nationalistic coin.¹¹ Methodologically, the unquestioned and unargued identification of nation-state populations with relevant legitimation-audiences for norms does all the work. This state-philosophical principle simply asserts that the institutions of existing nation states are necessary conditions for democratic legitimacy. The general, self-immunizing move in defense of the argument against criticism of this principled premise that characterizes much of Grimm's subsequent writings is to reject certain forms of transnational social and communicative integration (e.g. via the discussion of norms in the respective national publics, shared consequences, etc.) as *insufficient* for the purposes of *rational* democratic legitimation, insisting on the non-existence of an adequate EU-people. However, as thus *presupposed*, the intuition cannot *also*

give an uncontroversial reason for the impossibility of legitimizing the priority of supranational legal provisions vis-à-vis national ones.

Wolfgang Streeck, in his most recent book *Gekaufte Zeit*,¹² provides a very different radical *conceptual* argument by portraying the EU as a sophisticated, through and through ‘post democratic’ ‘liberalization machine’ that was always and still is exclusively aimed at and supported by the long-term intent to rid the world of the contingencies of normative civic contestation and interest articulation for the benefit of a neoliberal ‘depoliticization of the economy as a whole’.¹³ His diagnostic follows social scientists who see the process of EU-integration over the past 30 years as significantly framed by the globalized attempt—or ‘frivolous experiment’¹⁴—of transforming the former state-embedded market economies into market-embedded states.¹⁵ Given this anti-political *nature* of the EU-project, the regulations at the EU level are to be seen as responses to a different logic than the legal orders at the national level that at least pretend, and are bound by the constitutional order to be democratically justified norms. The national political and legal orders represent, in this sense, the interests common to the people submitting to their laws, to whom they are accountable, and upon whose deliberating interventions and participation their content relies. In contrast, the regulations at the EU-level respond to what Streeck polemically calls the ‘Market-constituencies’, i.e. the shareholders and their profit-orientation. If this is so, then EU-regulations neither represent, nor reflect the participation of stakeholders like you and me, and therefore no interests of the people at all. They are non-political in nature, and lack any democratic motivation, left alone legitimacy. In unmasking the EU-regulations as in this way democratically *vacuous*, Streeck wishes to deflate the perceived dangers stemming from dismantling the EU-institutions that allow market operations to have such drastic effects on member-states, and in this sense, to kiss the project of a deepening political union good-bye once and for all. It rested on a category-mistake in the first place, naively mistaking external imperatives of economic power for what they were ideologically sold as, viz. political structures of participation. Returning to smaller—presumably national—administrative units that deserve the application of the political concepts will actually help focusing our powers on *politically* possible (potentially anti-Market) solutions to the problems caused by the crisis. If anything, the EU is part of the problem, and costs to any of us in point of democratic legitimacy can’t exist because the EU-institutions aren’t designed to represent us anyway.¹⁶

3. Tacit Non-Empirical Assumptions Behind the ‘No Demos’ Argument

To investigate the merits of the ‘no demos’ pattern underlying these otherwise very different rejections of the democratic legitimacy of the priority of EU-level regulations vis-à-vis the national level, I will take three steps. In this section, I will distinguish the metaphysical no demos argument aimed at establishing the impossibility of supranational democratic legitimacy from a scatter of empirical and additional considerations about actual democratic defects and difficulties of supranational

1
2
3 decision-making in the EU that typically embed the argument. I will then (sec. IV)
4 use a three-dimensional pragmatic model of necessary conditions of failures to
5 establish democratic legitimacy to show that the no demos skepticism cannot es-
6 tablish any of these failures as structural features of the actual EU-institutions or
7 supranational governance-structures of the EU-type in general. The third step
8 (sec. V) will be to demonstrate by formal analysis of the dialectic that no other
9 defense of the no demos intuition is open to its proponent than establishing either
10 of three systematic democratic deficiencies.

11 Although the present section aims at ferreting out the proper core of the no
12 demos argument from irrelevant trappings, the three dimensions of lacking demo-
13 cratic credentials of justification for regulations (or the 'three dimensional prag-
14 matic model') also guides my review of the role of empirical deficiencies
15 typically embedding no demos arguments, so that I will briefly sketch its outlines
16 already at this point, reserving further explanation for later (sec IV).

17 The underlying conception or ideal of democratic legitimation I assume is
18 shared by all members in the debate. It is roughly that of deliberative democracy
19 according to which the normative authority of enforceable regulations of collective
20 life depends on their being rationally acceptable after a thorough review of the rea-
21 sons in favor and against them in maximally inclusive, communicatively open, and
22 unforced discussions aimed at assessing the regulations' compatibility with the
23 autonomous will and legitimate interests of those affected by the regulation (in-
24 cluding standing unchallenged expressions of such liberty and interests in the con-
25 stitution and the legal system). Given this conception of legitimacy and its
26 dependence on actual discursive procedures of exchanging reasons purported to
27 be cognitively available to everyone in the process for the purpose of articulating
28 a collective will, one can demonstrate that a given type of procedures of justifica-
29 tion and discussion of rules lacks democratic credentials (as opposed to, e.g., policy
30 making efficiency or technocratic or bureaucratic review) by showing at least one
31 of the following three demands as not met (I label them 'DD' for 'democratic
32 deficiency'):

33
34 (DD 1) First, decisions and (procedures for) justifications thereof lack democratic
35 credentials if they constitute infractions of or ignore a knowable *collective will*,
36 intention or democratically protected interests of citizens.

37 (DD 2) Second, decisions (etc.) lack democratic credentials if they infringe, ignore
38 or disregard without proper reasons a *collective opinion about one's rights* that con-
39 fers consent.

40 (DD 3) Third, decisions (etc.) lack democratic credentials if they falsely presup-
41 pose the *existence of* or misidentify *an actual community of those who are inevitably*
42 *affected by* and entitled to a justification of collective decisions (e.g. by excluding
43 from having a say or a hearing some of those affected, or by referring in the justi-
44 fication to claims of definitely unaffected agencies).

45
46 On this background, let's first examine where in the communicative legitima-
47 tion-structure there is an objective substantive demand on the process requiring
48

social stability of the demos—type assumed in the no demos argument. According to the requirements on the political realization of communicative justification for collectively binding action norms, it is indeed necessary for any community with democratic and deliberative majority decision procedures to bind the losers in such legitimating discourses reasonably to the rules they actually reasonably reject. More generally, if social integration under conditions of free and equal contributors to political justification discourses should not be jettisoned by disagreements, one needs some background solidarity or concern for the integrity and permanence of the group that is engaged in regulating itself in these reflective discourses. Thus, the no demos intuition seems motivated as a reminder of an *empirical* presupposition of the self-regulation through discourses allowing disagreement, viz. the existence of a community that is socialized robustly enough to prioritize the fact of being the self-regulating community one is over the possibly adverse outcomes of discursive collective will-formation.¹⁷

But this is too weak to decide over the right and legitimacy of prioritizing EU law (or supranational regulations in general) over national decision-making. After all, this empirical presupposition as such does not speak of national (as opposed to, e.g. regional or municipal or even global) communities, only of communities. Likewise, it recruits solidarities and social cohesions of a more robust sort than those founded merely on agreement in one's normative opinions, but not necessarily such that are determinable by pertinence to the legal, cultural and economic community of a nation-state.¹⁸

As opposed to this empirical point, the no demos-intuition gets traction (as Grimm unequivocally claims) in the context of questions about the general *structure of the EU as a social organization* and its capacity to yield, even in optimal compliance with standards of democratic governance, *proper democratic legitimacy* for EU-law's priority over national decision making. At issue is the *normative* question whether the type of decisions taken at the supranational level in an institutional design such as the EU can be taken as sufficiently and independently justified enough according to some democracy principle to enjoy the priority over (at least equality to) national legislation that the treaties and standard EU legal positions attribute to them. In the context of this normative inquiry, the EU thus appears not as it is *de facto* at a given time (including attested democracy deficits), but as a *type of governance-structure*, and it is criticized on account of the incapacity of such orders in general to yield proper democratic legitimacy for its norms and regulations to justify their figuring as constraints in national decision-making. We thus need to distinguish this more-than-empirical normative core from empirical problems with democratic governance in *de facto* EU-practices.

3.1. Worries About Institutional Democracy-Deficits in the EU as-is (and Their Irrelevance)

It is uncontroversial that there still are serious institutional democratic deficits to be removed in the actual EU-decision making process. But the treaties have increasingly sought to allocate competences in most fields except for the decisive

ones of social, economic and fiscal as well as exterior policy to the possible purview of 'ordinary legislative procedure'. Thus, the densification of democratization seems to have become a concern for the EU on its own, one of the distinctive features of its own institutional and bureaucratic development. The same goes for the accountability-enabling structures of transparency that came on the agenda since Lisbon. Thus the institutional history and empirical trends of the EU do not seem to warrant a generalized suspicion (cf. Streeck) about the legitimation-ability of the supranational institution of the EU as 'undemocratic' *as such and as a whole*.¹⁹ Although there are sometimes deep-reaching and vexing problems in finding institutional solutions to requisite democratizations of EU-institutions, even less support accrues from here to the view that the *structure of supranational governance exemplified in the EU as such* suffers from an inability to yield democratic legitimation (as this is a normative and not a political matter, I can luckily remain silent about the current *dysfunctionality* of the political process under the widespread fall-backs to nationalist election-strategies; if anything, they show that the political project of taking power away from potentially resentment-driven national governments has been too meek). I will thus set aside the *empirical* arguments about institutional democracy-deficits as not sufficient to prove a general legitimation-deficit from the supranational architecture of the EU.

This is suggested even more by a direct threat of incoherence to views that aim at expanding such empirical worries into *principled* worries about the capability of the EU as the supranational structure it is to yield legitimacy. Precisely when complaints about *insufficient* democratization are issued, and more so if this is done in contrast to already existing areas of proper democratically legitimate EU-governance, one is no longer in a position to doubt the possibility of EU-wide legitimation. This is so simply because actuality implies possibility.

3.2. Worries About Cultural and Linguistic Demos-Deficits (and Their Irrelevance)

A more systematic worry arises from the heterogeneities bound together in supranational institutions. For deliberative democrats, the first two dimensions of democratic credentials of justifications require in the case of the EU that (vs. (DD 1)) there be such a thing as an EU-wide *collective will* formation and normative discussion of proposed policies and decisions at the supranational level, and (vs. (DD 2)) that the communicative socialization taking place in such discussions produce awareness of reasons that are capable of informing *collective opinions about everyone's rights* that can confer rational consent. Correspondingly, doubts regarding the feasibility at the supranational level of such necessary conditions of the legitimation-functions exercised in civil society are an important source of the no demos intuition. However, most features of the decision-affected body of EU-populations that are frequently cited for such doubts are actually incapable of demonstrating principled reasons against the possible democratic legitimacy of EU-regulations.

Above all in Grimm's version of the no-demos argument, which in this regard is responsive to a large component of public sentiments within the EU-member-states such as they expressed themselves in the rejection of the constitutional

referenda and by the recent surge in parliamentary and extra-parliamentarily expressed nationalism, we find the gesture towards an allegedly deeper problem. His case rests on the conviction that there can be no democratic legitimacy without a minimally homogeneous deliberating public sphere in sufficient similarity with those we have come accustomed to in post-enlightenment national liberal democracies. This is the place for which the continuously reiterated facts about diversity and heterogeneity across the EU in cultural, linguistic, historical, economic, welfare systematic, banking traditions, or whatever other respects are expected to deliver evidential support against *the very idea* of EU-legitimacy. However, even if one accepts (as I do) the largely deliberative model of democratic legitimation and its precondition of a functioning public sphere for the communicative exchange of arguments for and against normative claims in the relevant legislative proposals, all of these presumed evidence-statements pertain only to the *empirical* conditions of democratic *politics*, like the assumption that people who deliberate have to understand one another, or that welfare systems to be combined into European welfare regimes with a view to social justice and thereby universal acceptability have to avoid duplicating bureaucracies etc. But the mere fact that the public (in this case: the totality of EU-citizens regardless of their national or ethnic heritage) organized by the laws it is supposed to be the author of is *multilingual and complicated* in its family histories and weird customs does not as such disable it to be one that can organize itself as author of its own laws.²⁰ In purported arguments trying to get direct mileage against legitimacy out of the mere fact of cultural and economic heterogeneity in the constituting power, lack of a shared, linguistically consolidated heritage looms large. However, what is at issue in legitimation discourses are not expressions of claims (i.e. linguistic entities) but the *normative contents* expressible in whatever language it takes to convey them to the audience that has to decide whether or not to agree to be counted among their authors. On this background, the repeated and inflated reference to linguistic diversity as an obstacle to forming a people in the sense of democratic theory can only indicate the need for methods to safeguard same inclusion to people with, e.g., different languages and limited literacy. The same applies, *mutatis mutandis*, to the other mentioned issues. True, they present empirical difficulties, conundrums and apparent lose-lose scenarios,²¹ but in themselves offer no support for the assumption of a *principled* normative ('structural') problem about supranational legitimizability. To the contrary it is often erstwhile in exercising the communicative processes aimed at legitimation that the relevant publics are formed and consolidated *through deliberation* (see §IV for more).

3.3. Presuppositions for the No-Demos Argument (and Their Evidential Impotence)

Failing all these vindications, the no-demos intuition needs support that is independent of prioritizing the romantic-ethnic notion of a culturally homogeneous *pouvoir constituant*. Or does the appeal of the no-demos intuition after all reveal an *ethnos* that determines itself as a *sui generis* necessary condition of statehood and democratic legitimation?

The worry seems this: Can there *be—exist—*such a thing as a legitimation-entitled and—conferring collective of citizens without an explicit intentional act of declaring itself a legally relevant group *sovereign*, like a nation bound together by a constitution? Given that such an intentional collective act has not taken place at the EU-level, a negative answer here would seem to debar the EU's associated populations *in principle* from being considered a proper *demos*. Such impossibility of a sovereign would *a priori* show the illegitimacy of non-national (either EU or similarly supranationally codified) regulations as constraints on national legal and judicial systems. In terms of our three dimensional conception of necessary conditions of pragmatic conditions of democratic legitimation, a negative answer here would amount to (and demand) proving a strong version of (DD 3), the necessary *non-existence of a public and an audience* suitably positioned to provide and consume democratic legitimations.

How non-trivial such a 'proof' is can already be gauged by some observations regarding the resources and logical structure of justifying a negative answer. What is contrasted with respect to legitimacy in no *demos* arguments is the unquestioned legitimacy of decision-making in democratic nation-states integrated by established legal, social, historical and cultural identity, with the legitimacy claim of recent supranational organizations. Evaluating the *general* force of the no-*demos* argument thus requires recalling the basics of such supranational organizations. They are organizations to the outcomes of whose multi-nation-dependent decisions in certain matters of common concern the individual member states oblige themselves to bind their own decision making and judicial activities *without thereby giving up their own national sovereignty*. Supranational rules enjoy in consequence a priority that accrues to them through a practice of application²² in which their uniform realization across all member states and towards each individual citizen is ensured by virtue of the full sovereign powers of each member state. In conflicts between the results of applying the supranational rule with national regulations, the national rule impeding the uniform realization of the supranational rule has to give by default. While institutional democracy-deficit-worries concern the representation-based, participation-governed flow of legitimation-relevant information upstream and the flow of information about implementation downstream to secure accountability and control by the popular sovereign(s), the *general* worry about legitimacy-deficits in supranational structures has it that rules made at this level are somehow in general (i.e. no matter what reforms falling short of declaring a nation-state are undertaken at the institutional level) afflicted by a (comparative) normative deficit when implemented at a lower (i.e. national) level of decision-making with assured democratic credentials. Therefore, supranational regulation can *never* be justified as a democratically legitimate constraint on national decision-making.

Any principled no-*demos* argument, given the comparative nature of its point, thus *has to* make reference to *pre-existing, underlying* or otherwise *given* social identities and integrations with permanence-conditions independent of the social integration taking place in the pragmatic processes involved in discursive legitimation (e.g. at the supranational level) if it is to be able to undermine the presupposed

legitimacy claims of supranational decisions. *Given* this presupposition, one can find that *such* identities are nowhere to be found for the supranational case and conclude that *therefore*, no democratically generated legitimation *can* take place

Instead of a substantive theory of information-flow (and its breakdown in complex supranational institutions like the EU), it is thus a state-theoretic principle that *stipulates* that possible democratic legitimation *requires* national institutions that is supposed to substantiate the more ambitious metaphysical and conceptual no demos argument. The content of this principle is, however, not merely definitional but metaphysical, as it provides a substantive connection between the existence of democracy and the pre-existence of a *demos* that is identifiable as the population of a nation state and constituted as a sovereign. As such a substantive claim, the state-theoretic principle needs defense. The various *actual* deficits and *practical* difficulties for efficient communication and flows of information within the EU exhibit that identifying, forming, expressing and making politically efficient a collective *will* and collective opinion about the equal preservation of everyone's fundamental interests (i.e. the legitimacy-conferring conditions in the first two dimensions) mark difficulties for the totality of EU-citizens. But they fail to show that either the EU-institutions or their constitutive regulations or the cultural and linguistic diversity of those affected by its rules could rationally compel accepting the needed kind of *impossibility claim*. The state-theoretic principle can only acquire the required force if it is supported by substantive conceptual reasons. These must not be confused with claiming the principle to be in fact a *definitional* (and in this innocuous sense perhaps 'conceptual') truth and *therefore* not to require further justification.

If this were the intended force of the principle, it would immediately trivialize rather than generalize the no-demos-'argument' in the EU-context. To be proved is that the EU-level regulations have less legitimacy than the national ones. The relevant pre-existing identities required for 'proper legitimacy' are, correctly, the sovereign nation states under international law that existed in Europe before the EU. Among these, the EU was absent. As *being a nation state before the creation of the EU* is assumed necessary for legitimation by definition, the nation states organized in the EU are the only source of legitimation.²³ Far from substantiating the skepticism regarding supranational legitimacy, this question-begging circle betrays a general, *a priori* traditionalist metaphysical position (not: argument) vis-à-vis the normatively substantive question of the conditions of possible democratic legitimacy beyond the demos. The no-demos position is that the latter do not and cannot exist. Period.

4. Defeating the No-Demos Ploy—More on the Three Dimensions of the Pragmatics of Legitimation

Given the failure of empirical and culture-theoretic reasons to sufficiently warrant the no demos intuition, I now turn to substantive conceptual considerations that might, if successful, indicate systematic obstacles in any one of the three

1
2
3 dimensions of democratic credentials for supranational decisions. Recall that the
4 last section concerning democratic legitimation identified a general functional re-
5 quirement of socially stable mutual commitment stronger than possible discursive
6 agreements in individual regulatory discussions as a substantive indispensable
7 condition of legitimation-practices in communities where persistent disagreement
8 and majority decisions would otherwise be equivalent to the social disintegration
9 of the group governing itself into temporary interest-groups. This is a substantive
10 conceptual assumption about pragmatic requirements of legitimation addressing
11 the cognitive and social consequences of disagreement. One part of the appeal of
12 the no demos intuition is created by giving this functional requirement an essen-
13 tialist reading, viz. that the existence of a determinate pre-politically integrated
14 social whole is a pre-condition of disagreement-allowing processes of normative
15 deliberation.

16 However, as pragmatists have shown, the mentioned *functional* requirement
17 only allows justifying a weaker necessary condition for democratic legitimation.
18 Suppose the demos were either co-constituted or even only anticipated by or pro-
19 duced as a function of the practical legitimation processes at which end a regula-
20 tion stands that forms a binding rule for said demos. Then there would be, for
21 every rationally and reflectively self-regulating process of cooperative decision-
22 making, some 'demos'. Let's call this variable legitimation-providing set of people
23 a '*deflated demos*', in contrast to the nationalistically inflated '*demos*'. Sure, the
24 problem of social stability under serious disagreement remains, or else we would
25 have a series of distinct associative groupings instead of a community forged by
26 a series of shared projects. Providing institutional solutions to this problem has
27 been a major motivation for institutional and social evolution. But it is important
28 to realize the *logical fallacy* to move from the fact that, *for every* case of majority-de-
29 cided conflict-resolution (and the problem of motivating the dissenting minority
30 rationally to follow the decision), there needs to be *some* social bond *or other*
31 beyond the capacity to agree in the case, to the non-fact that there must be *some*
32 *one* substantive social bond beyond agreement *for all* cases of disagreement (i.e.
33 *the* 'primordial' underlying unit of social integration, the 'inflated demos'). A rela-
34 tively vague shared commitment (without much of an invariant content), a shared
35 history of being affected by decisions elsewhere, or a shared social project, need or
36 plan (like overcoming war and divisive competitive relationships) might suffice.

37 This functionalist analysis of the locus operandi of a stably integrated group in
38 legitimation processes can even be fleshed out to portray the group also as a polit-
39 ically committed community by appeal to commonsense features of social evolu-
40 tion. Human beings simply tend to find and create communities of concern
41 wherever they are affected by changes in their livelihood. Such communities of
42 concern's cooperative regulation of their own affairs will in principle put each of
43 their members in a position suitable to participate in legitimation-processes
44 exhibiting whether the regulation is one everyone wants (or is prepared to cooper-
45 atively follow), one believed by everyone considering it to be compatible with
46 everyone's most fundamental interests, and one the group is in a position to make,
47 enforce and follow. When they grow, groups develop more and more complex
48

instruments for the cognitive and social organization and administration of more complex self-regulating needs, such as a hierarchical system of laws and carefully crafted systematic connections of the system of regulations and administrative decision-making to procedures that subject the creation, maintenance and application of these decisions to constraints of accountability, representation of the will and understanding of all those regulated by this system, embedding all this in protected public and private spheres that enable the participation in deliberative functions of such processes. The point of this over-simplified naïve sketch is that the characterization of a legitimation-apt and fully politically capable self-governing body with sufficiently strong agreement-transcending social bonds of trust, shared commitment and history at no point requires reference to nation-states. The classical model of democratically constituted nation-states looks rather like a contingent historical paradigm of social integration than as a conceptual constraint, a paradigm that does not exclude supranational organizations with legitimacy-conferring features.

Against this nation-state-indifferent pragmatic presumption of the possibility of supranational legitimizability, no demos proponents mount their principled case by suggesting selective skepticism about the mentioned three necessary conditions of democratic legitimacy which are, according to the no-demos ploy, naturally given in sovereign nation states in the way of the presumption but unavailable at the supranational level. These skeptical attempts help identify the three jointly sufficient legitimation-dimensions along which attempted legitimations of decisions or government can be successfully criticized: as being either against the manifest will of those entitled to decide (the 'subjective will' dimension (DD 1)), or as being not believed to be legitimate by those entitled to be represented (the 'social acceptance' dimension (DD 2)), or as not being in a position to be expected to coordinate, apply to and being understood to apply to a given group of people for that group's lack of cooperative integration (the 'objective' dimension of the existence of a group as a social fact (DD 3)).

I will now argue that the no demos ploy fails in each of those dimensions. The guiding idea of the argument is simple. I will first recruit three theoretical approaches to the pragmatics of different sorts of non-national democratic legitimacy that offer for each of the dimensions a defense of the availability of democratic legitimation in the sense of this dimension while remaining neutral with respect to the nation-state principle in the no demos ploy. Moreover, the three sets of resources are consistent with one another. Therefore, there is a consistent set of resources of legitimation that is, covering the jointly sufficient three dimensions, sufficient for supranational legitimacy. This already makes the negative case against the impossibility-claim of the metaphysical no demos argument, but also yields a stronger result. If nation-state-neutral conceptions give a satisfactory account of the flow of legitimation-relevant information from the affected associated citizens to the decision-making institutional functions and back in the case of supra- or infranational institutions, they supply a *prima facie* reason against the conceptual priority of the nation-state as the basic unit of democratic legitimation. Given that empirical and practical difficulties of legitimation-procedures

cannot establish the impossibility proof required for the justification of this priority, and given that it is shown not to be alternativeless, the state-philosophical principle at the heart of the no demos argument thus rests on a stipulation without support from an analysis of the jointly sufficient pragmatic conditions of legitimation.

The three pragmatic approaches to the functional features or normative dimensions of democratic legitimation that I will discuss are those of Möllers, Habermas and Dewey. The approach of Möllers focuses on the connection between one's citizenship in a nation state and the attributability of a legitimation-competent *will* or a participation-entitling social identity, the approach of Habermas focuses on the connection between the constitution of an association of legal subjects and the normative constraints on the content of the legal or regulatory system forthcoming from the formation of a consent-conferring collective opinion about whether it equally respects everyone's rights, and the approach of Dewey focuses on the connection between coordinated decisions with consequences in the lives of certain groups but not others and the identification of the 'public' that is properly situated to confer legitimacy or delegitimation to such decisions. We could say that the first dimension focused on by Möllers indicates *autonomy-realizing intentional*, the second elaborated in Habermas' work *social-cognitive*, and the third investigated by Dewey *causal-mechanism dependent existential* tasks that institutions need to fulfill on pain of being criticizeable as not legitimate by those living under them, the 'democratic sovereign'. All of the approaches share with the no demos ploy the view that regulations that fail to find support in any of these three dimensions are immediately identifiable as lacking democratic credentials and therefore legitimacy. What the three pragmatic conceptions do not share with the metaphysical no demos ploy is the view that such legitimacy-deficiencies are inevitable for regulations that institutionalize cooperative social relations beyond the nation state. Working from the inside of the 'will' of the sovereign outwards to the 'existence' of the sovereign, I will start with Möllers' demonstration of the availability of an attitude- or identity-dependent supranational collective-will-condition, then move to Habermas' reconstruction of the EU-treatises as providing adequate structures for the articulation of a supranational public-opinion-and-consent condition, and finally to Dewey's explanation of the nation-state-independence of the existence-of-inevitably-affected community conditions.

4.1. Möllers

That legitimation processes at which end a regulation stands as an enforceable, binding rule co-constitute deflated 'demoi' of those who anticipate being potentially bound is the basic thrust of Christoph Möllers' indeterminist conception of the subject of political will formation. Legitimation-processes therefore often not merely exploit but often erstwhile create social integration. Against the traditional conception of acts of democratic sovereignty as representing an antecedently determinate autonomous will of a pre-integrated population much like the action of an individual may be said to represent her intentions, Möllers answers the question

for the 'subject of public autonomy' or self-rule deflationistically with reference to the equal legal status of all individual persons associated by the discursive practices with the possible outcome of finding a proposed norm equally acceptable to all those affected. These individuals and their perspective on the matter at hand constitute the deliberatively reflective decision-making agency *responsible* for the normative acceptance of a proposed coercive norm, and therefore the proper source of democratic legitimacy. From the perspective of individual participants who are socialized or embedded in complex multicultural and pluralistic societies with multiple allegiances, sympathies, interests and evaluative attitudes that deserve to be considered in judgments of the correctness and acceptability of norms as coercive rules on everyone's behavior, identifying the adequate perspective from where to take one's evaluative stand is a complex task with many indeterminacies and trade-offs that make a result *a priori* indeterminate. As Möllers states, 'From the perspective of a citizen, it is impossible to prescribe which membership, which political identity is of most significance to him or her (...) It may (...) be the case that a citizen wishes one particular level to play a dominant institutional role.'²⁴ The latter is significant, since in a procedural setting with majority principle, a citizen may find herself systematically outvoted at one level of association, but not at another. A citizen in such a position would have good reason not to find any act of the whole legitimate before having had a say as, e.g., a member of a protected minority in a vote about the 'official position' of the latter. By parallel reasoning, it follows that 'there is no imperative priority for the preference not to be outvoted by other Europeans over the preference to be represented as a Scot or Catalanian above the level of the state'.²⁵ By still more parallel reasoning, there is also no imperative priority to declare as second rate procedures in which one participates *represented as a EU-citizen* over those in which one is represented as a national citizen. Similar to Sunstein,²⁶ Möllers reminds us that the legitimatorily relevant political identity one has as individual citizen is as much a matter of concern and perspective taking in the process of deliberation over the justice of a norm as it is a matter of available levels of representation and decision making. In this interactive co-constructive process, 'procedures define subjects of legitimacy that adopt and modify these procedures—or not.'²⁷

In a multilevel system, there is therefore no way to exclude that citizens affected by certain questions claim with good reasons to 'have a say'²⁸ or get a fair hearing (with options for interpellation) in the decision-making processes at the supranational level, where the quality of these reasons for claiming a say is sustained by their conscious partaking in a community of concern. But then the limits of the 'demos' of those associated by the applicability of the law to them—regardless whether directly or through nation states—are not *a priori* bound to any level of a multi-level system of decision making. In sum, a EU-people in the sense relevant to legitimation of EU-wide norms, such as it is assumed and acknowledged in the institution of a EU-parliament as a 'forum of European political contest'²⁹ and other EU-level institutions, as well as by the fact that the treaties address their claim to the 'citizens and peoples' of the EU, is already in place wherever EU-citizens deliberate, decide, demand accountability from their officials on the strength

of interests common to EU-inhabitants at large in an institutional environment that allows to give the *will and intentions* resulting from such deliberations adequate expression by representation at the EU-level legitimacy.³⁰ That the 'people' in question is, in other sociological and socio-psychological respects, very much unlike a traditionally integrated historical ethnicity does not unmask speaking of a collective subject capable of legitimizing political activity with reference to the EU as a compromise or persuasive redefinition.³¹ It rather shows that the formula 'by the people' in the democratic ideal of self-determination has nothing essential to do with traits characteristic of shared ethnicity, tribal traditions or national identities. Möllers' somewhat voluntarist approach to the conscious and reflective formation of social identities and intentions thus offsets the no demos skepticism about the availability of a *will* for the popular sovereign. But it is not sufficient to address the worry that, even if individual citizens throughout the territory of supranational institutions might have to be attributed a legitimation-apt *will*, it is impossible for them to actually bring their wills and opinions as individuals and associated collectives (like nations, unions, parties) to interact in public deliberation at a supranational level so that it becomes a universally accessible *communicatively rationalized collective cognitive state of the deliberating public*. Undermining such worries regarding the second dimension of the existence and availability of a rationally formed public opinion about the legitimacy of norms and policies that constrains the decision-making stands at the center of Habermas' conception of democratic legitimacy in multi-level systems of government to which I now turn.

4.2. Habermas

Like Möllers and unlike the no-demos proponents, Habermas identifies in the intricate system of accountabilities and traces of civic participation opened in the European institutions (with the egregious exception of intergovernmental decision-procedures) a highly innovative notion of possibilities of organizing genuinely supranational legitimation practices democratically beyond the familiar structures of federal states or international agreements among sovereign nation states. Unlike Möllers, Habermas concentrates less on the fact that political identity always depends on individual-voluntary factors than on the consequences of creating a *social* structure for legitimation processes by the EU-treaties.

Habermas construes the relationship between member-states and the totality of EU-citizens as that of two participants in a legitimating discourse with symmetrical entitlements and a common commitment to ensuring the legitimacy of *all* regulations affecting each of them. The supranational level organizes the compound interests, concerns and will of the totality of all EU-citizens and in this sense forms a democratic sovereign on its own which is, however, not superordinate to the nation-states but merely coordinate with them. At the national level viewed aggregately, the same set of persons is represented as citizens of their respective democratic national states with all the rights, entitlements and acquired statuses that their respective national state grants them in virtue of its legal system. Thus, when the question of the legitimacy arises, the coordinated individual EU-citizens can

judge the proposal from the perspective of associated individuals to whom the corresponding norm would apply and would produce effects across the board equally. As citizens of their respective nation states, the same persons examine also whether the implementation of the norm would result in a loss of democratically achieved and thus legitimate status relative to their statuses before implementation. In this way, legitimate nationally articulated interests constrain the exercise of EU-wide accepted norms while conversely legitimate EU-wide norms can legitimately constrain national legislative and judicial activity as long as this is not perceived by the citizens of that state as an unfair impairment on their statuses.

With this construal, Habermas successfully subsumes the relationship between the claims coming from the EU-level and its institutions and those coming from the national level under the interaction-model of communicatively associated free and equal participants in a legitimation discourse that is familiar from national legitimation. Given that the claims coming from the EU-level are thus in principle subject to deliberative consideration and negotiation among the legally constituted affected perspectives, the acknowledgment of EU-wide regulations claiming uniform application throughout all national governments associated in the EU is no more than the exercise of the same competent civic deliberative competences as the acknowledgment of national legislation.³² Thus, there is no principled sense in which EU-citizens or member states and their internally democratic structures are not in the position of the democratic sovereign vis-à-vis coercive norms stemming from EU-institutions. The status of a community capable of granting or revoking legitimacy to proposed decisions depends on *functional* places in the legal network constituting the two-layer structure of the EU, not on the contingent reference to pre-political identities.³³ As Habermas expresses it, the innovative interlocking of legitimation flows can be construed as a 'shared sovereignty'³⁴ between EU-citizens and nation-states. But precisely because of this, it is incorrect in light of the flows of legitimation instituted in the treaties that the supranational level *as such* lacks the legitimation-relevant relationship to the deliberatively assessing audience addressed by its regulatory acts. In this way, the interests of the individuals and of the collectives forming nation-states in the EU can be safeguarded in the same way that interests of individual citizens and incorporated social actors are safeguarded by the democratic procedures in national legitimation practices.³⁵ Habermas' model thus refutes the normatively relevant claim aimed at the wholesale discrediting of the democratic legitimacy of the supranational level of the EU and its priority in application: supranational communities that are as properly situated and equipped for democratic consent and deliberative justification as national 'demoi' are not impossible.³⁶

The pragmatist models of Möllers and Habermas equip us already with the necessary components of *collective cognitive agency* involved in legitimation-procedures—the availability of the *intentional* and the *public opinion that everyone's interests are safeguarded*—for the supranational level, against the no demos skepticism regarding the first two dimensions in the pragmatics of legitimation. The last type of skepticism concerns the question whether the *existence* of a legitimation-entitled people is rather *dependent on a constituting act or pertinence to a traditional*

grouping or rather like a position *objectively* occupied with norm-responsive social agents.³⁷ If the latter possibility can be made plausible, this enables saying positively that, even though the public sphere for communicative purposes may be defective, accepting and legitimizing supranational norms can reckon on the same relevant structures as on the national level. I will now draw on Dewey's functionalist conception of the social and natural process of the constitution of legitimation-competent 'publics' to disarm this remaining source of skepticism.

4.3. Dewey

Fitting for this task, Dewey's naturalist conception allows the identification of *pragmatic* structures of association that lead to the constitution of a public capable and entitled of legitimizing rules affecting it. Dewey thus covers the same ground as the no-demos intuitions about pre-existing or underlying political identities but entirely deflates the conception of *statehood* underlying the notion of a political community as the subject of popular sovereignty. According to Dewey, identifying chains of secondary effects of cooperative agreements somewhere else individuates the legitimation-competent groups functionally by the fact of being affected. No regard to any previously existing political boundaries, borders or jurisdictions needs to come into play. The existence of a legitimation-relevant 'demos' as the association of those affected by cooperation-agreements somewhere else in a social space that comprehends both agreement-makers and those affected by its implementation thus comes cheaply enough to be filled for any moderately lasting habitual cooperation. If, according to a democracy-principle, legitimation for an enforceable rule is owed to all those affected by it such that, were they to decide, they would author the same rule for everyone including themselves, then by the very fact of being in a position to be affected, there is an associated group to which legitimation is owed and that can enter into legitimizing activity. The normative questions of entitlement and pertinence to the legitimation-apt group are thus settled by relations of co-responsibility not *prepolitically* but as features of the emergence of the political from cooperations and their effects. National or other official boundaries might matter for the identification of agencies with jurisdiction that could be called upon by those unfairly affected for the purpose of compensatory policies, but *not* for the *normative* question of legitimizability. For someone or a group to be in the position to democratically legitimize, or to be entitled to receive legitimation for a rule is, according to Dewey's general particularistic-pragmatic strategy, at least in part a matter of the *objective contextual circumstances* of decision-making and producing consequences of application with the institution of a rule. It thus is not entirely and not primarily, but at most coordinately *epistemic* or *doxastic* and thus adds a pragmatist elaboration of the third dimension of the pragmatics of legitimation, the *existence* of a legitimation-entitled association of people, to the constructivist-leaning approaches of Möllers and Habermas.³⁸

Importantly, Dewey's analysis is built up from an explanation of the normatively decisive feature of such an association, the existence as a bearer of common interests. According to it, something like common interests are formed as a result

of the desire to co-ordinate differential responses to the situation created by the appearance of secondary effects from agreements of some with each other to cooperate somewhere. Whereas the primary cooperators are trivially interested in the results of their agreement, now previously unaffected people face unexpected obstacles in the performance of their lives, needing collective action plans for the solution of problems to be formed in a rational way. In this sense, the public of associated stakeholders is created by the factual scope of problematic situations produced by a certain type of coordinate action decided somewhere and the changes it induces. In this sense it 'precedes' the communicative and reflective formation of intelligent collective epistemic responses to the problematic situations caused by the intervention of the initial coordinate action.

Dewey's 'public' is the human and intentional substrate that can become, if everything goes well, an articulate *Öffentlichkeit* but is already at its inarticulate inception in the functional position and in the normative competence to constitute those with respect to whose intelligent and informed assessments the normative evaluation of practical proposals for the solution of conflicts and problems needs to be justified. While, as Dewey puts it, 'the greatest challenge for a public is to recognize itself'³⁹ (against internal obstacles like nationalistic propaganda, and external ones like differential benefits conceded to parts of the group by savvy policies of producing apparent competitive interests between equally affected groups), the point is that even before forming something like a reflective consciousness of themselves and their position ('opinion') towards the problematic situation, everyone involved acquires a collective *normative identity* as a group glued together by being exposed to the causes and effects of a certain type of coordinate activity. The public exists and enjoys the *normative place* of being the relevant audience for justification of the implicit and explicit rules underlying the cooperation by the mere fact of *being in the right position* to judge and 'have a say'⁴⁰ and deserve a fair hearing.

For the purposes of the possibility of legitimation of the rules underlying the cooperation the how of articulation matters less than the *who* underlying it. Of course, there are many normatively *irrelevant* 'involuntary associations'⁴¹ like the group associated by being 1.90 m tall. To avoid this trivialization, Dewey consistently ties the way in which the relevant groups are in fact associated to assignable effects of agreed co-ordinations elsewhere, i.e. in contexts of secondary effects of intent modifications of the social cooperative structure that the individuals who come to be associated are part of (whether voluntary or not).

This conception of 'the public' illuminatingly explains in what sense the scope, impact and causal networks of objective problems that people are exposed to is one important factor in resolving the 'most urgent problem of the public, to find itself'. Another important factor is the extent and impact of the primarily non-political cooperative relationships with secondary effects that do have a political dimension. This can be in the form that they require redistributive policies or compensation, protections of human rights, etc. for those exposed to these effects, even though they were not part of the deal that constituted the agreement to cooperate. Both of these elements together constitute as a matter of fact forces of association and social integration into the group of all those who have a legitimate stake in

the question and thus complement the constructivist approaches with a material basis of association.

We could call these 'elements of involuntary political association by the effects of non-political cooperative agreements somewhere else'.⁴² According to Dewey's elaborate externalist conception of value, these elements of involuntary association can suffice to form a group with a common evaluative commitment ('interest'), hence with normative competence regardless of the degree to which the evaluative perspective and the objectives of self-regulation on the heed of these values are *known* to the group as a whole or to each individual in it. What matters for the *existence* of a legitimation-entitled and—capable group is *epistemic position*, not (as stressed in Habermas) articulate self-knowledge or (as stressed in Möllers) conscious decision to make a concern one's own. According to Deweyan legitimation-externalism, mere epistemic position and competence for self-regulation is what matters for the possibility of democratic legitimacy and the claim to being the relevant audience of legitimation.⁴³ Of course, such groups' 'finding themselves' as *doxastically articulate* publics that 'speak in one voice' (or as many as there are relevant opinions on a question) requires additional communicative labor. But this fact should not persuade us to overlook that the components that are required to *exist* in the right relations for democratic legitimation to be possible are in place already at this stage. States and the things constituted by nation states, like Grimm's 'Staatsvölker', come out on the means side, not on the ends or on the foundations side.

To conclude: the no demos argument gets things upside-down. What pre-exists is the normative impact of cooperation somewhere on the corresponding public, and what comes after as a contingent historical differentiation achievement is the structure of the nation state. It is simply another contingent differentiation achievement. Since, given a legally constituted state or system of supranational cooperation and a political infrastructure for participation, the corresponding laws are among other things also means of social co-ordination, there can be no principled legitimation deficit when there are cooperative associations on the supranational level. The hunt after the demos, expressed in making its absence responsible for alleged lack of legitimizability, is futile for the explanation of the democratic legitimacy conditions of supranational regulations. In none of the three dimensions—the intentional one of attributing a reasonable collective will, the cognitive-communicative one of the reason-dependent formation of a collective opinion about the correctness and justice of norms, or the natural one of the existence of a legitimation-apt group of coordinate human beings—is the skepticism of the no demos ploy justifiable that national legal and cooperative institutions can enjoy democratic legitimacy but not supranational ones like the EU, for lack of a *demos*. For all we know from the foregoing conceptual considerations, *it is not impossible* for supranationally associated groups of citizens to fulfill the jointly sufficient intentional, cognitive and natural-existential requirements for democratic legitimation. Therefore, the state-philosophical principle tying democratic legitimation and nation-state to one another receives no support from conceptual considerations. It is a completely separate *political* (not metaphysical) question what institutional

arrangements are necessary and capable to *realize* this potential and what their relationships to actually existing nation-states have to be. But difficulties and misguided experiments here cannot support *principled* skepticism against the possibility of supranational democratic legitimation.

5. Analytic Overview of the Argument-Structures

The semi-formal analysis of the structures of the arguments we have discussed so far could be summarized in application to the EU as follows (the no-demos argument proceeds in the numbered steps, with the non-explicit or variable assumptions moving the inference in boxes):

- (1) No demos = no nation-state \rightarrow state-philosophical principle⁴⁴ \rightarrow no democracy.
- (2) No democracy \rightarrow normative legitimation principle \rightarrow no legitimation.
- (3) EU \neq nation-state.

Therefore:

- (4) On the strength of (3)&(1)&(2)&logical principle \neq EU \rightarrow no legitimation.

Neither (2) (the democracy principle), nor (4) (logical principles governing deductive inference), nor the factual premise (3) are under dispute. The definitional first part of (1) cannot reasonably be under dispute because it is a definition. Thus, it is (and can be, no matter the rhetorical smoke-screens) only the second part of (1), a principle connecting the pre-existence of a demos that is identifiable as the population of a nation state with the existence of democracy that is disputed. This allows the following further analysis.

The no-demos argument assumes as obvious or unproblematic that democracy requires a nation-state as legal infrastructure, i.e.

- (a) Democracy \rightarrow nation state.

Against this, the objection is that a weaker principle is required for the constitutive conditions of democracy, which is given by the sort of normative structures that guarantee uniformity of behavior, i.e. legal structure⁴⁵:

- (a') Democracy \rightarrow legal system.

Now it is true as a matter of standard legal theory that

- (b) Legal system \rightarrow nation-state.

This is trivial with regard to incorporated groups of people organized by legal provisions generally—such as unions, trade-regimes, sports-associations, and

importantly: religious organizations with their own jurisdiction etc.—but it is only slightly less trivially obvious even when we focus on legal structures that constitute groups of people as subjects with rights that equip them with basic traits of civic existence. Examples for legal systems fulfilling this substantive function that do not constitutively require nation-statehood are international law, human rights law, etc.

Given that there is no entailment-relation between legal system constituting citizen-like traits and nationhood, the challenge is then to motivate why—as opposed to the mentioned and other salient examples—specifically the EU supranational legal system should not count. If it does, then the question is why it excludes democratic legitimacy where neither international, nor human rights, nor national law necessarily do so. Non-circular, non-question-begging reasons for the selective skepticism of the no-demos ploy are thus required.

Pushing in this direction, one might try if the no-demos ploy makes a tacit non-question begging assumption that, if spelled out, makes the question-begging at least shared with the defenders of the legitimacy of EU-supranationality. So, for example, another agreed principle is:

(c) democracy → *constitutionalizable* legal system.

If this is accepted, as is reasonable for many reasons amply known to the community of political philosophers of democracy, it would explain the preference for nation-states, since constitutions have mainly been used to establish nation states with their constituency—the national *demos*—as legal systems. Insofar as such constitutions contained democratic principles, they present the familiar type of constitutional democracies. However, again, a weaker assumption that does the same work without the national-state bias reveals that even inserting this tacit assumption does not make the no-demos ploy more compelling, for:

(d) Constitutionalizable legal system ↗ national state.

Some scholars in the Kantian tradition would count the institutionalized part of international law as constitutionalizable or even as already partly constitutionalized, but not all. An excellent example for a legal system considered by standard legal scholars and certified by the competent courts as a constitutionalized system—such that this status is one *de facto*, not *de faciendo*—is precisely the EU supranational legal system presented in the treaties and relevant accompanying documents (protocols, etc.). Thus it seems that there is no good argument that would serve to independently support the no-demos ploy against the possibility of EU-supranational legitimacy.

Contrariwise, there is indeed very good support for view that the EU as constituted in the treaties (etc.) can be in the right position for legitimizing EU-wide constraints on the national legal structures of the member states. This is straightforward. Beyond dispute, in spite of (3), are the following two points:

- (5) EU = supranational legal system.
 (6) EU-constitution \supset democratic principle(s).

It is important not to confuse (6) and the much stronger and unfortunately still false assumption that *all* mechanisms of decision-making in the EU are undisputedly conforming to ambitious democratic standards, as we saw in the discussion of the relatively feeble (albeit not entirely *inexistent*) democratic credentials of intergovernmental decision-making. But undermining the no-demos ploy only requires showing that EU-supranational legitimacy is *possible*, not that it is guaranteed (or that the EU would be already a 'perfect union').

Now, if we put (5), (6) and (c) together, they entail that the EU has, with regard to the question of legitimation-requirements, the requisite features of a constitutionalized legal system with democratic principle. Applying the undisputed democratic principle of legitimacy (2), this means that it cannot be excluded that correctly formed and decided parts of the EU supranational legal system are legitimate. This non-excludability of legitimacy obviously encompasses the specific class of regulations that the no-demos argument is geared against, viz. those with *effects on the national legal systems*. The most one can avert is that these effects need to be monitored as to their intra-national legitimation when they affect democratically justified legal norms that are constitutive for the internal democratic structure of the affected nation-states. Such a monitoring requirement (a living practice of the subsidiarity-principle, so to speak) would be an innovation required by supranational legal structures vis-à-vis both national states and international agreements on universal matters (like human rights) among nation states.⁴⁶

6. Conclusion: Forget No Demos

None of the versions of the no-demos argument are compelling. They express an unhelpful traditionalism in analyzing innovative features of multi-level governance such as the one realized in the EU institutions.

The alternative is an open-ended investigation of the legitimacy of an additional and partly autonomous layer of supranational regulation that also binds the national legislative, seen from their standpoint, 'from without', but without forming an 'external regime'. Part of this political experiment is a permanent critical attention to institutional democracy deficits in the Union's decision procedures. But any such criticism can be understood as upholding normative demands accruing from the perspective of legitimation-requirements only when it is assumed that there is, in Europe, already right now a supranational public, and that it is in the right position to democratically legitimize or challenge regulations at this level.⁴⁷

Axel Mueller
 Northwestern University
 USA
 muell@northwestern.edu

NOTES

¹ Habermas 2012: 42.

² For a detailed discussion on the constitution-analogue status of the corresponding documents, cf. Brunkhorst 2012b: 307–21. The standard opinion in European legal science is that the EU possesses, with the treaties and protocols as well as its institutions, the formal equipment of a constitutional democracy (with flaws). E.g. Chalmers et al. 2010: chs 1, 5, 6.

³ Enzensberger: 2011.

⁴ Scholz 2008: 197–206; Herzog and Gerken: 2007.

⁵ So would, as more recent research has emphasized, the extra-parliamentary bargaining procedure of a ‘Trilogue’ between all EU-branches of government that removes all main contentious material before controversial topics are discussed in the EU-parliament (Brunkhorst 2015: 8, on the basis of research by von Achenbach: 2015), and the proactive routine jurisprudence of the European Court of Justice that treats, in a collusion of Commission-decisions and judicial power, directives and regulatory decisions made by the Council in the same way as foundational principles to administratively push through their EU-wide application as an administrative matter of treaties-obligations by the member-states without any control from either EU-legislative or national legislative organs (Grimm 2015: 465–468).

⁶ For an examination of national-values-centered views of social integration, see Münch 2001: 177–203.

⁷ Grimm 1992: 59 (translation AM). Grimm 2001 is more elaborate. An excellent discussion of Grimm’s position is given in Thiel 2008.

⁸ In the context of answering the question what contribution a EU-constitution could be expected to play for social integration, Grimm reiterates the view of the unique constitutional and legitimacy relevance of nation-states and their populations in ‘Integration durch Verfassung’, *FORUM CONSTITUTIONIS EUROPAE* 6/04, Vortrag an der Humboldt-Universität zu Berlin 2004 (esp.p. 15), where he also systematically denies the possibility that the group ‘Europeans’ be justifiably considered as sociologically equivalent to the groups formed by each of the member-‘Staatsvölker’.

⁹ Strohmeier 2007: 24–30.

¹⁰ For discussion of the idea that the EU irreparably undermines ‘democratic self-determination’ (or ‘Input-legitimacy’)—taken to be *the* prerogative of ‘national’ populations—and only delivers ‘output-legitimation’ (without control by the people) for EU-decisions, see Scharpf 1999: ch.1.2. and *passim*.

¹¹ Already 1993, constitutional theorists identified such qualms—in an aside to Grimm—as rooted in an ungrounded nationalistic ‘picture’ in the background of legal reasoning (von Simson and Schwarze 1993: 77).

¹² Streeck 2013. A sharp-edged statement of the book’s crux is Streeck 2011.

¹³ Cf. parallel arguments in Crouch 2011, and the analysis of the interaction of marketization and irreversible depoliticization in Crouch 2004: chs.2 and 5. For a less catastrophic assessment, cf. the review of Streeck 2013 by Habermas 2013.

¹⁴ Streeck 2009: 270, referring to the idea of a ‘market-society’ in Polanyi 1977.

¹⁵ Sharp profiles of this transformation, discussing differences between Ordoliberalism and neo-liberalism are given by Crouch 2011: 165; Strohmeier, 2007; and Brunkhorst, 2012a, 2012b, 2012c, 2012d: 22. Polanyi’s technical term is already used in Offe 2003: 443–7.

¹⁶ Streeck’s arguments can be construed as the latest development within a long tradition (originating in Rousseauian and Anti-Federalists) in modern democratic theory that takes usually vaguely ‘medium sized’ national or ethnic, pre-existing integrated

communities as the standard size of communities in which democratic control can be meaningfully exercised by the people, while the state and government is big enough to possess the right extent of power to regulate and solve large-scale social problems. This tradition takes a skeptical stance regarding the expansion of the model of democratic governance beyond these primordial states. It declares international organizations like the EU (or, in the past, the US) categorically as not possibly democratic because of their size. The complementary upshot could then be taken to amount to a sort of inverse no demos argument to the effect that only on the national scale is meaningful democratic control of government policies possible. The classic point of reference here is Dahl 1999 (as well as Dahl, 1989's classical treatment of the problem of membership under the heading 'who is the demos', and his misgivings about extending the scale of 'polyarchy' beyond national limits in ch 22; further elaborations are referenced in note 8 of Dahl 1999). His master argument in Dahl 1999 is: 'a [large scale international, AM] government might be created in order to deal with problems of universal scope, such as poverty, hunger, health, education, and the environment. But the opportunities available to the ordinary citizen to participate effectively in the decisions of a world government would diminish to the vanishing point. To speak in this case of 'delegating authority' would simply be a misleading fiction useful only to the rulers.' (22) Dahl concludes from this, anticipating some of Streeck's views (and most of the Brexit-intuitions), that the EU ought not to be misunderstood as political but rather be seen as a bargaining mechanism among nations the decisions of which systematically *compete* with the sovereign political decisions of the member states. In contrast with Streeck's conceptual no demos argument, Dahl's merely relies on size (and complexity). It predicts that the degree of effective democratic control is inversely proportional to the size of the governed society. Such arguments maximally support the view that polyarchy in Dahl's sense cannot be meaningfully identified in supranational governance. Which could indicate that the model of simply expanding the national-state model to the supranational case is inadequate, e.g. because it overlooks important institutional innovations created precisely under the pressure of removing democratic deficits in the decision-making process under conditions of persisting national sovereigns in cooperation within supranational institutions. Like Offe's type of scale-based doubts about the *feasibility* of democratic governance, Dahl's argument is not 'principled' in the sense of the present article because it does not establish *a priori* the *impossibility* of democratically legitimate decisions in trans- or supranational institutions. Focusing on principled arguments, I set such empirical considerations aside for the time being. I thank an anonymous referee for pointing out the possibility of extracting a no demos argument from Dahl's skeptical position and for indicating the need for discussion.

¹⁷ Möllers 2011: § III; Habermas 1992: 41-5; Habermas 1992a: 641-2.

¹⁸ A classic discussion of the continuous extendability of the structures (not merely the ideals!) of deliberative democracy to supranational decision-making processes, with essential reference to the EU, is Schmalz-Bruns 1999: 185-244.

¹⁹ An excellently argued expression of this view is Watkins 2014.

²⁰ India, Switzerland, Spain, or Jane Addams' USA (a multilingual immigrants' hodge-podge)?

²¹ For insight into the difficulties of rationally aligning the various reasonable motivations of the European stakeholders in light of the purpose of establishing European structures, cf. Offe 2001: 423-35. For the still more tangible and consequential complexities involved in 'harmonizing the EU economic, financial and fiscal systems', cf. Offe 2003. Another cautionary account of the latter problem-areas for the prospect of realizing a full-fledged EU-wide social democracy is Joerges 2009: 94-9.

22 For the relevant differentiations, cf. Franzius 2010: 42-49; Frenz 2010: ch.2; 35-63.
 23 The circularity of such reasoning in the global context is the topic of Fraser 2007: 7-30.

24 Möllers 2011: 250.

25 Möllers 2011: 253.

26 Sunstein 1999: chs.1 and 4.

27 Möllers 2011: 260.

28 E.g. Christiano 2010: 119-37, but with the opposite tendency in his conclusions.

29 Möllers 2011: 262. With regard to the need for the formation of an intraparlimentary, intra-institutional, non-anti-European opposition to normalize the EU-level decision making procedures, Nassehi 2013. This is only one example of traits of democratic will formation that are often mentioned as deficiencies in the EU-procedures on behalf of descriptive conceptions of democracy. But the normative status of a community, group or institutionalized organism to be *in the right position to legitimize* does not depend on the satisfaction of these 'symptoms of a functioning democracy'. The status underdetermines which of these traits will emerge from practicing the requisite legitimizing procedures (is 'multiply realizable').

³⁰ This counterweighs the view that the parliament elected in these conditions lacks legitimizing power because there is no demos to represent, a constant in Grimm's arguments, most recently reiterated in Grimm 2015:471-473.

³¹ For a collection of views of political scientists who emphasize the heterogeneity of national orientations and—illicitly—conclude to the illegitimizability of EU-wide decisions, see Checkel and Katzenstein 2009.

³² An excellent analysis of Habermas' cautious and wavering way to this now more stable position, and a clear account of the legitimacy drawbacks that forced this development forward is offered in Arato 2009: 263-72.

³³ EU-law scholar Schmitz remarks against the decision by the Verfassungsgericht regarding the Lisboa treaty: 'The court did not consider the possibility that citizens of member-states as union-citizens might form a proper community capable of issuing legitimation without being a *Staatsvolk*.' Schmitz 2010: §4.

³⁴ Habermas 2012: 69-74.

³⁵ Habermas' current approach to EU-legitimacy here aligns with lively recent discussions in political theory like those collected in Niesen 2012. Particularly Niesen's Introduction and Forst 2012 delineate the extent to which political theory has to reconstruct democratic categories beyond the nation-state.

³⁶ In a third step of his 'constructivist' construal, Habermas—drawing on earlier work on the place, structure and requirements of a public sphere (Habermas 1992: ch.7.2.; Habermas 2008a; Habermas 1996: 277-93)—even is able to indicate political ways in which the remaining task, the forming of an ever more integrated legitimation-capable public sphere of communicating citizens, could be solved (Habermas 2008: 138-91).

³⁷ For a historical-systematic account of the motivations for theories that seek to preserve the critical function of the public to perform this crucial change in perspective, cf. Fraser 2007.

³⁸ Contrary to the customary identification of Dewey's ethics and political philosophy as some form of consequentialism, Dewey's identification of normatively relevant contextual parameters of application is the expression of a decidedly *normativist* meta-ethical position. In this, I follow Pappas 2008. He concludes: 'Dewey's appeal to context is not a bald appeal to us humans, that is, our communication, consensus, tradition, discourse, or

beliefs. Instead, Dewey appeals to a faith in our transactions within (...) a situation that can guide our plans, purposes, and judgments.' (307)

³⁹ Dewey 1991: 185, 216.

⁴⁰ The term coined by Christiano 2003 fits Deweyan tasks perfectly.

⁴¹ I use this term in a different sense than Walzer 1998: 64–74.

⁴² Dewey's strategy contrasts with a similar 'affectedness first' strategy for the identification of legitimation-competence developed in Nullmeier and Pritzlaff 2011: 43–62. They focus their 'practice-based theory of legitimacy' (50) on the identification of micro-structurally articulated sources of implicit normativity that holistically distributes normative competence throughout a social body. I am stressing the *macro-level* identification of the *group* (regardless of how that group articulates its own will, whether communicatively à la Habermas, or via implicit normativity à la Nullmeier and Pritzlaff 2011, or Rouse 2007: 639–80, sec. 2.1.) that is owed a part in legitimation in virtue of the course of *effects* of policies *decided elsewhere*. Dewey and Nullmeier and Pritzlaff both replace a model of legally institutionalized one-string chains of legitimation by a more complex model of flows of legitimation entitlement resulting from complexities in voluntary and involuntary association by secondary effects. Schmalz-Bruns' response in the same collection also criticizes their micro-level focus, complementing it with considerations about the 'all affected principle' (70).

⁴³ The unjustly forgotten Dewey 1966 traces the emergence of evaluative properties from instinct through collective political project to normative political philosophy, thus explaining the conceptual connections between being affected, competence and political entitlements. This original feature of Dewey's moral and political philosophy is excellently exhibited in Anderson 2012.

⁴⁴ An enlightening debate about the deep reach of state-philosophical prejudice in German jurisprudence and legal scholarship can be found in Brunkhorst 2012b: 372–85.

⁴⁵ Cf. Habermas' 'democratic principle' and its relationship as a successive specialization on the moral principle (U) through the discourse-principle for the clarification of the method of justification for norms generally, (D), as laid out in Habermas 1992: 135–42.

⁴⁶ Recently, Habermas has been calling attention to this, developing lines of thought indicated by Offe and Streeck in a non-Euro-skeptic way in Habermas 2014.

⁴⁷ I would like to thank Profs. Lafont, Buchstein, Brunkhorst, Habermas and commenters and participants at conferences at the U of Flensburg and the Pontifica U (Rio de Janeiro) for helping to improve the ideas in this article.

REFERENCES

- Anderson, E. (2012), 'Dewey's Moral Philosophy', in E. N. Zalta (ed.) *The Stanford Encyclopedia of Philosophy*, Fall 2012 available at: <http://plato.stanford.edu/archives/fall2012/entries/dewey-moral/> (accessed 17/12/2013) edn. Q4
- Arato, A. (2009), 'Europa und Verfassung', in H. Brunkhorst, R. Kreide and C. Lafont (eds) *Habermas-Handbuch*. Stuttgart: Metzler: 263–72.
- Bergmann, J. (2012), 'Demokratiedefizit', in J. Bergmann (ed.) *Handlexikon der Europäischen Union*. Baden-Baden. Q5
Q6
- Brunkhorst, H. (2012a), *Legitimationskrisen. Verfassungsprobleme der Weltgesellschaft*. Baden-Baden: Nomos.
- (2012b), 'Mythos des existentiellen Staats', in Brunkhorst 2012a, 369–85.
- (2012c), 'Demokratie ohne Staat' in Brunkhorst 2012a, 307–21.

- (2012d), 'Europe at Crossroads: Between the Kantian mindset of democratic capitalism and the managerial mindset of capitalist democracy', Ms. of a presentation at the eponymous workshop at University of Flensburg, 2012.
- (2015), 'Democracy under siege', Ms of a talk at the Berlin Conference 'Critical Theory and Constitutionalism', 11.12.2015
- Chalmers, D. et al. (eds) (2010), *European Union Law: Cases and Materials*. Cambridge: Cambridge UP.
- Checkel, J. T. and Katzenstein, P. (eds) (2009), *European Identity*. Cambridge: Cambridge UP.
- Christiano, T. (2003), 'The Authority of Democracy', *The Journal of Political Philosophy*, 11: 266–290.
- (2010), 'Democratic Legitimacy and International Institutions', in S. Besson and J. Tasioulas (eds) *The Philosophy of International Law*. Oxford: Oxford UP: 119–37.
- Cohen, J. (2002), 'Deliberation and Democratic Legitimacy', in D. Estlund (ed.) *Democracy*. [Q7] Oxford: Blackwell.
- Crouch, C. (2004), *Post-democracy*. Cambridge: Polity Press.
- (2011), *The Strange Non-Death of Neo-Liberalism*. Cambridge: Polity Press.
- Dahl, R. A. (1989), *Democracy and its Critics*. New Haven/London: Yale UP.
- (1999), 'Can International Organizations Be Democratic? A Skeptic's View', in I. Shapiro and C. Hacker-Cordón (eds) *Democracy's Edges*, Vol. 19–36. Cambridge MA: Cambridge UP.
- Dewey, J. (1991), *The Public and its Problems*. Athens OH: Ohio UP.
- (1966), *Theory of Valuation*. Chicago: Chicago UP.
- Enzensberger, H. M. (2011), *Sanftes Monster Brüssel oder Die Entmündigung Europas*. Frankfurt: Suhrkamp.
- Eriksen, E. O. (2005), 'The Emergence of a European Public Sphere', *European Journal of Social Theory*, 8: 341–63. [Q8]
- ~~European Commission (2014), *Public Opinion Analysis*, available at: http://ec.europa.eu/public_opinion/index_en.htm (accessed 15/09/2016).~~ [Q9]
- Ferree Marx, M., Gamson, W. A., Gerhards, J. and Rucht, D. (2002), 'Four Models of the Public Sphere in Modern Democracies', *Theory and Society*, 31: 289–324. [Q10]
- Forst, R. (2012), 'Transnationale Gerechtigkeit und Demokratie: Zur Überwindung von drei Dogmen in der politischen Theorie', in P. Niesen (ed.) ~~Vol. 2012:~~ 29–48. [Q11]
- Franzius, C. (2010), *Europäisches Verfassungsrechtsdenken*. Tübingen: Mohr Siebeck.
- Fraser, N. (2007), 'Transnationalizing the Public Sphere. On the Legitimacy and Efficacy of Public Opinion in a Post-Westphalian World', *Theory, Culture & Society*, 24: 7–30.
- Frenz, W. (2010), *Handbuch Europarecht*. Berlin: Springer.
- Grimm, D. (1992), 'Europäisches Demokratiedefizit', *Der Spiegel*, 43: 57–59.
- (2001), 'Braucht Europa eine Verfassung?', in D. Grimm (ed.) *Die Verfassung und die Politik*. München: C.H.Beck: 215–54.
- (2004), 'Integration durch Verfassung', *FORUM CONSTITUTIONIS EUROPAE* 6/04, Vortrag an der Humboldt-Universität zu Berlin.
- (2015), 'The Democratic Costs of Constitutionalisation: The European Case', *European Law Journal*, 21: 460–473.
- Habermas, J. (1992), *Faktizität und Geltung*. Frankfurt: Suhrkamp.
- (1992a), 'Staatsbürgerschaft und nationale Identität' (Orig. 1990, repr. in Habermas (1992), 632–60.
- (1996), 'Drei normative Modelle der Demokratie', in J. Habermas (ed.) *Die Einbeziehung des Anderen*. Frankfurt: Suhrkamp: 277–93.

- (2008), 'Hat die Demokratie noch eine epistemische Dimension', in J. Habermas (ed.) *Ach, Europa!*. Frankfurt: Suhrkamp: 138–91.
- (2008a), 'Ist die Herausbildung einer europäischen Identität nötig, und ist sie möglich?', in J. Habermas (ed.) *Der gespaltene Westen*. Frankfurt: Suhrkamp: 86–82.
- (2012), 'Die Krise der Europäischen Union im Lichte einer Konstitutionalisierung des Völkerrechts', in J. Habermas (ed.) *Zur Verfassung Europas. Ein Essay*, Vol. 2012. Frankfurt: Suhrkamp: 39–95.
- (2013), 'Demokratie oder Kapitalismus', *Blätter für deutsche und internationale Politik*, 5: 59–70.
- (2014), *Der technokratische Sog*. Frankfurt: Suhrkamp.
- Herzog, R. and Gerken, L. (2007), 'Europa entmachtet uns und unsere Vertreter', *DIE WELT* 17/02/2007.

Q12

Q14 Joerges, C. (2009), 'Europäische Verfassung', in H. Brunkhorst, R. Kreide and C. Lafont (eds)

Habermas-Handbuch. Stuttgart: Metzler: 94–9.

Jörke, D. (2003), *Demokratie als Erfahrung: John Dewey und die politische Philosophie der Gegenwart*. Opladen: Westdeutscher Verlag. Q15

Möllers, C. (2011), 'Multi-Level Democracy', *Ratio Juris*, 24: 247–66.

Münch, R. (2001), 'Demokratie ohne Demos. Europäische Integration als Prozess des Institutionen- und Kulturwandels', in W. Loth and W. Wessels (eds) *Theorien europäischer Integration*, Grundlagen für Europa edn, Vol. 7. Opladen: Leske+Budrich: 177–203.

Nassehi, A. (2013), 'Europa braucht eine echte Opposition', *ZEIT* 15/05/2013.

Niesen, P. (2012), *Transnationale Gerechtigkeit und Demokratie*. Frankfurt: Campus.

Nullmeier, F. and Pritzlaff, T. (2011), 'The great chain of legitimacy. Justifying transnational democracy', in R. Forst and R. Schmalz-Bruns (eds) *Political Legitimacy and Democracy in Transnational Perspective*, Vol. 2011. Oslo: ARENA: 43–62.

Offe, C. (2001), 'Gibt es seine europäische Gesellschaft? Kann es sie geben?', *Blätter für deutsche und internationale Politik*, 4: 423–35.

— (2003), 'The European Model of 'Social' Capitalism: Can It Survive European Integration?', *Journal of Political Philosophy*, 11: 437–469.

— (2013), 'Europa in der Falle', *Blätter für deutsche und internationale Politik* 1/2013, reprinted in *Eurozine* Available at: <http://www.eurozine.com/pdf/2013-01-15-offe-de.pdf>, accessed 01/05/2014>.

Pappas, G. (2008), *John Dewey's Ethics: Democracy as Experience*. Bloomington: Indiana UP. Q19

Polanyi, K. (1977), *The Great Transformation*. Boston: Beacon Press (orig. 1944).

Rouse, J. (2007), 'Practice Theory', in S. P. Turner and M. W. Risjord (eds) *Handbook of the Philosophy of Science* 15. Amsterdam: Elsevier: 639–80.

Scharpf, F. (1999), *Regieren in Europa: effektiv und demokratisch?* Frankfurt: Campus.

- Schmalz-Bruns, R. (1999), 'Deliberativer Supranationalismus. Demokratisches Regieren jenseits des Nationalstaats', *Zeitschrift für Internationale Beziehungen*, 6: 185–244.
- (2011), 'Transnational democratic legitimation and the nature of political normativity. Comment on Frank Nullmeier and Tanja Pritzlaff', in R. Forst and R. Schmalz-Bruns (eds) *Political Legitimacy and Democracy in Transnational Perspective*. Oslo: ARENA: 63–71. Q20
- Schmitz, T. (2010), 'Dossier: Das Grundgesetz und die Europäische Integration', *bpb* 2010 <URL: <http://www.bpb.de/geschichte/deutsche-geschichte/grundgesetz-und-parlamentarischer-rat/39003/europaeische-integration?p=1>, retrieved 01-05-2014>
- (2010a), Rechtsprechung zur europäischen Integration, 2010 (Internet-compendium with comprehensive references), <URL: <http://lehrstuhl.jura.uni-goettingen.de/tschmitz/Lehre/Europa-Rechtsprechung.htm>, retrieved 01-05-2014> Q21
- Scholz, R. (2008), 'Demokratiedefizit in der EU?', in C. Fuest, M. Nettesheim and R. Scholz (eds) *Lissabon-Vertrag: Sind die Weichen richtig gestellt? Recht und Politik der Europäischen Union als Voraussetzung für wirtschaftliche Dynamik*. Köln: Hanns Martin Schleyer-Stiftung: 197–206.
- von Achenbach, J. (2015), *Trilogie: Struktureller Wandel des europäischen Gesetzgebungsverfahrens durch Selbstorganisation*, Ms, Giessen 2015.
- von Simson, W. and Schwarze, J. (1993), *Europäische Integration und Grundgesetz. Maastricht und die Folgen für das deutsche Verfassungsrecht*. Berlin: DeGruyter.
- Streeck, W. (2009), *Re-Forming Capitalism*. Oxford: Oxford University Press.
- (2011), 'The Crises of Democratic Capitalism', *New Left Review*, 71: 5–29.
- (2013), *Gekaufte Zeit. Die vertagte Krise des demokratischen Kapitalismus*. Suhrkamp: Frankfurt.
- Strohmeier, G. (2007), 'Die EU zwischen Legitimität und Effektivität', *Aus Politik und Zeitgeschichte*, 10: 24–30.
- Sunstein, C. (1999), *Free Markets and Social Justice*. Oxford: Oxford UP.
- Thiel, T. (2008), 'Braucht Europa eine Verfassung. Einige Anmerkungen zur Grimm-Habermas-Debatte', in M. Biegi et al. (eds) *Demokratie, Recht und Legitimität im 21. Jahrhundert*. Wiesbaden: VS Verlag: 163–81.
- Walzer, M. (1998), 'On Involuntary Association', in A. Gutmann (ed.) *Freedom of Association*. Princeton: Princeton UP: 64–74.