

DEMOCRACY IN THE EUROPEAN UNION

INTEGRATION THROUGH DELIBERATION?

EDITED BY ERIK ODDVAR ERIKSEN
AND JOHN ERIK FOSSUM



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Democracy in the European Union

It is widely believed that the European Union (EU) suffers from a democratic deficit. This raises a fundamental question: can democracy ever be applied to decision-making bodies beyond the nation-state? Today, the EU is a highly complex entity undergoing profound changes. This book asks how the type of co-operation upon which the EU is based can be best explained, what the integrative forces in the EU are and how integration at a supranational level can come about.

The book is premised on the notion that precisely how we conceive of democracy is essential to how we understand the nature of the democratic deficit. Furthermore, the question of the democratic deficit cannot be considered as separate from the question of what type of entity the EU is. To address these issues, this book revisits the field of political theory and adopts a theoretical approach to democracy that allows us to assess the prospects for democracy at a supranational level.

The key thinkers represented in this volume stress that in order to understand integration beyond the nation-state, we need new explanatory categories associated with deliberation because a supranational entity such as the EU possesses far weaker and less well-developed means of coercion—bargaining resources—than do states. The most appropriate term to denote this is the notion of ‘deliberative supranationalism’. This pioneering work, headed by major writers such as Bellamy, Habermas, Joerges and Schlesinger, brings a new perspective to this key issue in contemporary politics and political theory.

The editors: Erik Oddvar Eriksen is Professor at ARENA, University of Oslo, and Senior Researcher at LOS Centre, the University of Bergen, Norway. He has written in the fields of public policy and social and political theory. **John Erik Fossum** is Associate Professor in the Department of Administration and Organisation Theory, the University of Bergen, Norway. He has written in the fields of comparative public policy, political theory and international relations.

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Contributors

Richard Bellamy is Professor of Politics and International Relations at the University of Reading. Recent publications include *Liberalism and Modern Society* (1992) and (with Darrow Schecter) *Gramsci and the Italian State* (1993). He is the editor of *Constitutionalism, Democracy and Sovereignty* and (with Dario Castiglione) *Constitutionalism in Transformation* (1996). He has most recently published *Liberalism and Pluralism: Towards a Politics of Compromise* (1999), and is currently directing a project on European citizenship.

Lars Chr. Blichner is Associate Professor in the Department of Administration and Organisation Theory, University of Bergen, Norway. Relevant publications include *Spørsmål i Stortinget. Sikkerhetsventil i petroleumspolitikken* (with Johan P.Olsen), and (both with Linda Sangolt) 'Internasjonalisering av offentlig forvaltning' (1993) and 'The concept of subsidiarity and the debate on European operations: pitfalls and possibilities' (1994). His current work is on communication and the role of the state in promoting justice.

Else Grete Broderstad is a Research Fellow and Ph.D. candidate in Political Science at the University of Tromsø, Norway. During the period 1992–97 she was director of the Centre for Saami Studies, at the University of Tromsø. Recent publications include 'Samepolitikk i et deliberativt perspektiv' (1995), 'Saami identity in cultural and political communities' (1997) and 'Samepolitikk: selvbestemmelse og medbestemmelse' (1999). The focus of her current research is on indigenous politics in a new European context.

Dario Castiglione is Senior Lecturer in Political Theory at the University of Exeter. He has written on eighteenth-century political theory, and on the history of civil society and constitutionalism. He has edited (with R.Bellamy) the 1996 Political Studies special issue on *Constitutionalism in Transformation: European and Theoretical Perspectives*, and has written several articles on constitutionalism and Europe. He is currently working on a monograph on David Hume's political philosophy.

Erik Oddvar Eriksen is Professor at ARENA, the University of Oslo, and Adjunct Professor at the LOS Centre, University of Bergen, Norway. Recent publications include *Grenser for staten* (1993) and *Kommunikativ ledelse* (1999). He has edited *Den politiske orden* (1993), *Deliberativ politikk* (1995) and (with Jørn Loftager) *The Rationality of the Welfare State* (1996). He is the co-author, with Jarle Weigård, of *Kommunikativ handling og deliberativt demokrati* (1999). His research interest is in social and political theory, with particular emphasis on the EU.

Michelle Everson is Jean Monnet Fellow and Managing Editor of the European Law Journal at the European University Institute, Florence, Italy. Recent publications include 'Administering Europe?' (1998), 'Beyond the *Bundesverfassungsgericht*—on the necessary cunning of constitutional reasoning' (1998) and 'Constitutionalising European administrative law' (1999). Her major research interests lie in the fields of European economic regulation and an increasingly internationalized body of administrative law.

Andreas Føllesdal is Senior Researcher at ARENA, and Associate Professor in the Department of Philosophy, the University of Oslo. His work on the political theory of the EU includes articles on distributive justice, federalism, democracy, subsidiarity and European citizenship. Recent publications include 'Democracy, legitimacy and majority rule in the EU' (1998) and 'Subsidiarity' (1998). He is co-editor of *Democracy and the European Union* (1997) and *Restructuring the Welfare State* (1997), both with P.Koslowski.

John Erik Fossum is Associate Professor in the Department of Administration and Organisation Theory, University of Bergen, and is affiliated with ARENA. Recent publications include *Oil, the State, and Federalism* (1997), 'Citizenship, diversity and pluralism: the case of the European Union' (1999) and (with Stuart Robinson) 'A phoenix arises: the social reconstruction of Europe' (1999). His current research is on constitutionalism, citizenship and democratic legitimacy in the EU and Canada.

Roberto Gargarella is Associate Professor in the Department of Law and Political Science, at the Universidad di Tella, Buenos Aires, Argentina. He teaches constitutional law and political philosophy at the Universidad Torcuato Di Tella (Buenos Aires) and Pompeu Fabra (Barcelona). He is the author of *Public Discussion and Political Radicalism in the Origins of Constitutionalism* (forthcoming), as well as several articles, including 'Full representation, deliberation, and impartiality', and two other books on political philosophy.

Jürgen Habermas is Professor Emeritus of Philosophy and Sociology at the University of Frankfurt, Germany. A brief selection of some of his recent books includes *The Theory of Communicative Action* (2 vols) (1981), *Moral Consciousness and Communicative Action* (1983), *The Philosophical Discourse of Modernity—Twelve Lectures* (1985), *Postmetaphysical Thinking* (1988), *Justification*

and *Application* (1991); *Between Facts and Norms* (1996), *The Inclusion of the Other* (1998) and *Die postnationale Konstellation* (1998).

Christian Joerges is Professor of European Economic Law at the European University Institute in Florence. He is co-editor of *Critical Legal Thought: An American-German Debate* (1989), *Das Recht des Franchising: Konzeptionelle, Rechtsvergleichende und Europarechtliche Analysen* (1991), *Integrating Scientific Expertise into Regulatory Decision-Making: National Traditions and European Innovations* (1997), *Private Governance, Democratic Constitutionalism and Supranationalism* (1998) and *European Committees: Social Regulation, Law and Politics* (1999).

Deirdre Kevin (BA, MA) is Researcher at the European Institute for the Media, Duesseldorf, Germany. She previously worked as a researcher at the Stirling Media Research Institute at the University of Stirling, Scotland, on the project 'Political Communication and Democracy' funded by the UK Economic and Social Research Council. She is currently managing the eight-country 'Building Bridges between Cultures' project, which is researching news media and collective identities in the EU.

Philip Schlesinger is Professor of Film and Media Studies at the University of Stirling, Director of Stirling Media Research Institute, and Adjunct Professor at the University of Oslo. His publications on European questions include the co-edited volumes *European Transformations* (1994) and *Exploring the Limits: Europe's Changing Communication Environment* (1997). The author of *Media, State and Nation* (1991) and co-editor of *Media, Culture and Society* journal, he recently completed research on 'Political Communication and Democracy' and is concluding a study of 'The Scottish Parliament and Political Communication'.

Preface

The collapse of the Berlin Wall—an event which Archibugi, Held and Köhler find ‘now rivals the storming of the Bastille as a symbol of historical change’—marked the end of the Cold War and reinvigorated people’s faith in the merits of democracy. It also underlined the need for democracy and democratization across the world. It had repercussions of a more theoretical character, as well. It sparked renewed interest in the very concept of democracy and in how different kinds of decision-making processes can be organized democratically. An important contribution to theorizing has been labelled *deliberative democracy*, a mode of thinking which seeks to reconstruct democracy as governance based upon the public use of reason.

The optimism that was sparked in 1989 was not borne out in practice, in particular in the new democracies in Eastern Europe and the former Soviet Union, which have faced numerous setbacks and hardships since then. Further, the process of economic globalization has led many to seriously question the room for and the role of democratic politics. National control is undermined, as international movements of capital have greatly increased. Many people have become disillusioned, as a widened range of factors of vital importance to citizens and their well being, are no longer subject to democratic control.

Is democracy possible at all in this situation? If so, how can it be applied to decision-making bodies beyond the nation-state? It is in this regard that the establishment and widening of co-operation in Europe is of particular interest, both because it may be seen as an order particularly suited for handling globalization and also because it represents a form of voluntary but committing co-operation among *democratic* states.

Democracy, when considered from the vantage point of the deliberative perspective that is presented in this book, functions through the public discussion of important issues. Much of the literature on the EU portrays it as marked by technocracy, expert dominance and lack of transparency; bargaining and pork-barrelling between sectarian interests; and in general, as marked by lack of openness and political accountability. The European Union is also widely held to be a challenger, if not to the state, then at least to the nation. However, the EU is a dynamic entity and has increasingly taken on a set of supranational

deliberative features. To a surprising degree it has shown itself capable of carrying out collective action. It has acquired competence to act in a wide range of policy fields and has established a set of institutions—however weak when compared to those of states—that are unprecedented and have revealed a remarkable ability to weather storms and handle crises.

The EU is a complex system of governance, and one that is hard to grasp in analytical terms. In particular we are faced with the question of how the process of integration in the EU can be explained. What are the integrative forces in the EU, and how can integration at a supranational level come about? Analytically speaking, integration may occur through *strategic bargaining* between the Member States or through *functional adaptation*, i.e. due to the performance and delivery of the system. These are the two conventional perspectives on integration in Europe and which have been developed by intergovernmentalists and neo-functionalists, respectively. Neither of these takes the question of democracy as an explanatory variable into consideration, however. These modes of thought are, then, not particularly well suited to address the question of democratic accountability and legitimacy which has become particularly pressing in the last decade. For instance, Pascal Lamy (Delors' *Chef de Cabinet*) said after the initial Danish no to the Maastricht Treaty, that: 'Europe was built in a St. Simonian way from the beginning, this was Monnet's approach. The people weren't ready to agree to integration, so you had to get on without telling them too much about what was happening. Now St. Simonianism is finished. It can't work when you have to face democratic opinion.' The important questions then, are: How can public opinion and will formation influence European politics? How can democracy at all be applied to the transnational system of governance?

This forms the backdrop for the assertion that this book is intended to clarify, namely that communicative processes in Europe must be taken properly into consideration if we are to account for post-national integration. Hence, our assertion is that integration also occurs through deliberation, or what is commonly referred to as *arguing*. This type of integration is very important, as stability depends on learning and alteration of preferences. Deliberation, when properly conducted, ensures communicative processes where the force of the better argument will sway people to harmonize their action plans and transfer agreements into binding contracts, with the aid of the legal structure in place. To understand integration beyond the nation-state, explanatory categories associated with deliberation are required, also because supranational entities possess far weaker and less well-developed means of coercion—bargaining resources—than do states. This is the main problem we are grappling with in this book, and which has encouraged the contributors to address topics such as constitution-making and democracy in the EU; deliberative supranationalism and the challenge of technocratic governance; the principle of subsidiarity; the role of interparliamentary discourse; the deliberative quality of the Council of the Union; the role of the public sphere; and the treatment of minority rights. These topics are the themes that inform the book. However, globalization forms the general background to the book and it was therefore necessary to devote an independent chapter to it.

To achieve the best possible exploration of these topics we arranged a conference on 'Democracy in Europe' in Bergen, Norway in February 1998. We invited people from different academic disciplines, different research milieus, and different countries. The contributors (with the exception of Jürgen Habermas whose contribution was originally delivered at the University of Oslo—as the Vilhelm Aubert lecture on 19 September 1997) presented papers and outlines, in response to a preliminary outline provided by the editors. Since then the chapters have gone through several major revisions in order to ensure the coherence we want readers to expect from a book, be it monograph or edited piece.

For comments on the various portions of the book that the editors have written together, as well as individually, we have incurred numerous debts. In addition to the comments from the contributors to this volume, and all those who have contributed to their chapters in various ways, we would in particular like to thank Svein S.Andersen, Jeffrey T.Checkel, Dag Harald Claes, Lars Fjell Hansson, Per Læg Reid, Knut Midgaard, Johan P.Olsen, Stuart Robinson, Linda Sangolt, Anne Julie Semb, Helene Sjursen, Ulf Sverdrup, and Marianne Takle.

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Erik Oddvar Eriksen and John Erik Fossum

1 Post-national integration¹

Erik Oddvar Eriksen and John Erik Fossum

Introduction: post-national integration—a deliberative perspective

Reflecting on the revolutions in Eastern Europe in 1989, the late François Mitterrand in his 1990 New Year's speech to the French people stated that 'Europe is returning home to its history and geography'. However, the revolutions in Eastern Europe should not be construed simply as an occasion to look back, to try to resurrect the past. They also represent a unique opportunity for Europe to try to recapture the aspects of the past that will produce a better future. Now that Europe is no longer divided, it can proceed with the *civilizational project* that was first initiated during the Enlightenment era, but which has since then faced a number of grave setbacks. European integration is rooted in the past, and ultimately draws its legitimating force from the humanistic developments that have been so important to the Western world. European integration has its foundations in the strongest institutional manifestations of this development, namely the successful establishment of national systems of democratic governance in all of Western Europe, but is also a response to their defects. European integration promises to expand the system of *democratic governance* to the international level, through the establishment of supranational institutions. Such institutions, it should be noted, are no doubt also efforts to remedy the particular contemporary challenges associated with globalization. Globalization alerts us to the fact that in important respects the state is too small to address some of the most pressing challenges we are faced with today. Globalization—proceeding along legal, cultural, economical and political dimensions—brings forth new and magnifies old challenges to legitimate governance. The state is not able to control international capital flows or technological developments. Nor can it stem the negative social and environmental effects of an increasingly global capitalism. It has become increasingly evident that many problems such as nuclear waste, carbon dioxide emissions, refugees, cross-border financial flows, criminal law problems, and technology transfer require solutions at the international level. In addition, in such a situation, it has become increasingly difficult for the state to uphold the socio-economic compromise, which has long sustained the welfare-state. This

compromise consisted of measures to sustain economic growth, on the one hand, and measures to ensure social protection, on the other. In Chapter 2, Jürgen Habermas discusses the consequences of economic globalization and the need for a global welfare regime.

This particular project to develop democracy at the international level, from the vantage point of a system of democratic states, has no historical or contemporary precedents. In particular, the EU attaches citizens to a supranational entity in such a manner as to potentially undermine the nation-state. As such, Europe is facing a unique moment of institutional innovation which attests to what Robert A. Dahl (1994) has called the third transformation in the history of democracy. The first phase concerned the transformation of the undemocratic city-state and began in the fifth century B.C.; the second phase concerned the democratization of the nation-state and began in the wake of the French and American revolutions. There is a parallel between these two phases: as the city-state then became too small to cope with its problems, the nation-state today is too small to cope with its problems, as it has to grapple with the challenge of globalization. Decision-making authority is transferred to the international level, but here democratic structures are rather weak. International bodies of governance are, as a rule, not democratic. The EU, however, is not an ordinary international organization, neither is it a state. It is a unique type of entity. It is unique not only because it has developed a unique set of institutions, but also because there is such a great concern with democracy in the EU. This sets it apart from ordinary international organizations, which are rarely subject to democratic concern or public scrutiny. The democratic quality of the EU is assessed not only in terms of the outcomes that the EU produces, or in terms of its institutional and decisional make-up, but also in terms of its democratic accountability. Democratic accountability is directly linked to popular legitimacy. It is widely held that the EU suffers from a democratic 'deficit' and this is often attributed to weak popular legitimacy (Wallace 1993; Weiler 1996a). In Chapters 3 and 4, the notion of democratic 'deficit' will be critically scrutinized.

In this book, our point of departure is that innovations at such a scale require not simply attention to the empirical nature of the novel governance arrangements. They also require serious re-examination of the concepts available to depict these developments, and thereby theoretical frameworks and attendant standards that we can use to assess the democratic quality of this nascent system of governance. In this introductory chapter, our purpose is to clarify this assertion. We address the most common conceptual approaches that are used to analyse the EU and spell out how—and the extent to which—they assess the democratic quality of the EU. Conventional analyses of international integration are still informed by realist and neo-functional conceptions of political interaction. Realists are not really concerned with the prospects for democratic governance in contemporary Europe and neo-functionalists are prone to take the legitimacy of the EU-based institutions for granted. The *deliberative perspective*, which is only now gaining adherents among students of the EU, represents the most explicit departure from the dominant frameworks and standards that have

thus far been employed. The deliberative perspective alerts us to achievements as well as shortcomings and enables us to assess critically the democratic quality of the EU without recourse to the often misleading standards associated with the nation-state.

The question is how the process of integration in the European Union (EU) can be explained. What are the integrative forces in the EU and how can integration at a supranational level come about? Integration may occur through strategic bargaining or through functional adaptation. However, it may also occur through deliberation or what is commonly referred to as arguing. This latter type of integration is very important, as stability depends on learning and alteration of preferences. Deliberation, when properly conducted, ensures communicative processes where the force of the better argument will sway people to harmonize their action plans. To understand post-national integration, or integration beyond the nation-state, explanatory categories associated with deliberation are required, as supranational entities possess far weaker and less well-developed means of coercion—bargaining resources—than do states.

We start with some observations on the limitations of the nation-state as ontological reality and on the limitations of the vocabulary of the nation-state as tool for the assessment of democratic governance in contemporary Europe.

Beyond the nation-state

The contemporary nation-state is facing many challenges, as manifest in increased interdependence and incorporation into an emerging global economy, and through the establishment of international, transnational and supranational organizations and structures of governance. The pressure on the state is heightened by important changes in the public sphere, such as the internationalization of social movements, transnational epistemic communities, and the emergence of some semblance of a 'global public opinion'. These developments have raised questions as to the continued relevance of core state attributes such as territorial boundaries and formal and *de facto* state sovereignty.

The state is 'Janus-faced'. One face of the state is oriented inwards, to the domestic arena, and the other is oriented outwards, to the international community or society of states. That the state has two 'faces' has had important implications for democratic accountability. The state has been seen as accountable to *its citizens*, whereas its obligations to non-citizens have been seen as weak, at best. This is the most widely held conception of democracy in both its liberal and republican trappings. It is from this notion of the state as a geographically confined and sovereign entity with a clearly defined *demos* that most standards of democratic governance have been derived. The doctrine of national sovereignty ensured that the interstate arena was seen as marked by anarchy, not in the sense of disorder, but in the sense of absence of an authoritative system of governance. This notion of accountability was wholly compatible with protection of borders and nationally based difference.

After the Second World War, in particular, the international arena has changed so as to heighten the salience of individual autonomy through universal human rights (Held 1993; Driscoll 1989).² The entrenchment in a body of treaty law of a set of individual and group-based rights at the UN and European levels has led to increased attention and heightened respect for individual and group-based rights other than those explicitly upheld by states. In the contemporary world the two faces of the state can not be kept separate, a development which might have profound consequences for established notions of accountability and democratic governance. The EU seems to reinforce this process of merging the state's two faces and the attendant sets of accountability.

In the EU, a set of institutions have been established over and above the Member States, which citizens of Member States, as well as aliens and denizens,³ have recourse to, as additional outlets for settling their grievances. The EU is a complex entity without a clearly defined core and, compared to a state, with a far less hierarchical system of governance (Schmitter 1996a). It is a mixture of supranational, transnational, transgovernmental, and intergovernmental structures. Institutions such as the European Commission, the European Parliament and the European Court of Justice are 'supranational'. *Supranationality* refers to a system of law-making which exists and operates (partly) independently of the Member States and which supports and is supported by an accommodating process or style of decision-making.⁴ The particular nature of supranationality in the EU (dynamic, non-hierarchical, and open to different kinds of co-operation and policy solutions) points us in the direction of the discourse theoretical perspective of deliberative democracy because those involved are compelled to sort out their disagreements and commonalities with reference to arguments. In order to reach an agreement and decisions that are binding, they can not simply rely on power or resort to procedures that terminate in voting or bargaining.

Institutions such as the European Council and the Council of the European Union (formerly known as Council of Ministers, and subsequently only referred to as the 'Council' here) are generally referred to as '*intergovernmental*' in the literature, since they are composed of the executive officials of the states. The former is composed of the heads of government, including foreign ministers, and their supportive staffs. The latter is composed of the ministers (including foreign ministers), organized along functional lines, so that one meeting will consist of the agricultural ministers and another of the energy ministers, and so forth. The Council, however, operates in close co-operation with organized interests which means that it operates within and promotes *transnational* relations, where transnational denotes 'transboundary relations that include at least one non-governmental actor' (Risse-Kappen 1996:57). The EU is often referred to as a *multi-level structure of governance* (Marks *et al.* 1996; Jachtenfuchs and Kohler-Koch 1996a). The Committee of the Regions promotes transgovernmental relations, where transgovernmental refers to 'cross-boundary relations among sub-units of national governments in the absence of centralized decisions by state executives' (Risse-Kappen 1996:58). The contemporary changes in the role of

the state have led to renewed interest in democracy and democratic governance. This is discussed in several of the following chapters. In Chapter 2, Jürgen Habermas sheds further light on the limitations of the nation-state. In Chapter 3, Erik O. Eriksen discusses the democratic deficit in the EU, with particular emphasis on clarifying the nature of the underlying evaluative scheme. In Chapter 4, Richard Bellamy and Dario Castiglione address the problems of legitimacy in a mixed polity. In Chapter 5, Andreas Føllesdal discusses the status and role of subsidiarity in the EU. In Chapter 6, John Erik Fossum addresses the question of how constitution-making in the EU is legitimated, in order to see if or the extent to which the EU is accorded an independent normative status. In Chapter 11, Else Grete Broderstad examines the question of indigenous rights, with particular emphasis on the limitations inherent in the nation-state and the potential for the EU to address such.

Democratic governance

Analysts and policy-makers are greatly concerned with the challenges facing the nation-state. Mainstream analysts who have assessed the democratic implications of the challenges, have done so by means of terminology and standards which are direct transpositions of those conceptions of democratic governance that are generally associated with the nation-state. This is particularly evident in the debate on the quality of democracy in the EU. There is consensus among analysts and policy-makers that the EU suffers from a '*democratic deficit*'. Analysts have identified this as a multifaceted problem, which includes deficiencies in representation and representativeness, accountability, transparency, and legitimacy. The most widely held view is that the EU represents the establishment of an additional layer of governance, which has revealed an often surprising ability to take on added tasks. This process, it is often contended, has been largely unchecked.⁵ The bounds between the EU and the Member States in terms of powers and competences are ill-defined and ambiguous.

That the standards of democratic governance used to assess the EU have been derived from the nation-state is perhaps not so surprising when it is recalled that the founders of the EU, such as Jean Monnet and Altiero Spinelli, agreed on the need to establish a new state-type structure on top of the established states (although they differed on how to proceed with integration) (Navari 1996; Holland 1996). Their view of the EU, as a 'United States of Europe in-the-making', is shared by many also today.⁶ But whether the EU evolves into a state or not, the critics assert, the EU will magnify already existing problems of representativeness and accountability in the states and will also generate new problems. Decisions are further removed from the citizens, due to the greatly increased size of the entity, the added layer of governance, the lengthened chain of representation, and so on. In general terms, internationalization entails extending further the powers and prerogatives of the executive, that is the national officials who are the main actors in international co-operation (Moravcsik 1993, 1994, 1998). The intergovernmental bodies of the EU, the

European Council and the Council, are not properly checked by other institutions, such as the popularly elected European Parliament, nor are they properly checked by a system of constitutional controls. It is observed that whereas EU citizens can elect 626 MEPs directly, the EP is not able to hold the executives properly accountable. The Council is the one institution of the EU that comes closest to being the 'legislature' of the EU and consists of nationally elected representatives—government ministers (and their supportive staffs)—from each Member State. Increasingly, decisions are reached by qualified majority voting⁷ and contribute to strengthening the supranational dimension of the EU. Also, the Commission, which is often considered to be the 'government' of the EU and 'the motor of integration', consists of twenty Commissioners and twenty-six Directorate Generals. The Commissioners are appointed by the Member States, but are required to act as EU officials and not as national spokespersons.⁸ The Commission is required to place the interest of the EU first.⁹ It operates on the majority principle, but when a decision is reached, all Commissioners are expected to give full support to all policies, which further reinforces the salience of the Commission as a supranational institution.

These institutions have a weaker popular basis than do ordinary states. There are no real European political parties that can act as vital intermediaries between the general populace and the central institutions at the EU level. Citizens of Member States are not able fully to control the actions taken by the executive officials that they have elected in national elections. The inter-institutional lines of accountability in the EU are hazy due to a byzantine legal structure—a legal structure made up of 'bits and pieces' (Curtin 1993)—and a multitude of complex voting procedures differentiated by policy content.¹⁰ The EU has established an EU-based citizenship. EU citizens have obtained civil rights, but the legal enforcement of these rights at the EU level is weaker than in nationally based constitutional systems. EU citizens have also been granted political rights, but are not able to act as the ultimate authors of the laws that emanate from the EU.

This brief presentation of the EU serves to underline that the EU is quite different from a state. Further, there is no assurance that these differences will disappear. Therefore, the analogy with the nation-state is misleading¹¹ (whether we speak of the nation-state as model or whether we speak of an actual nation-state). In real terms, states differ considerably. But this observation does not alter the fact that the EU is qualitatively different. The question, however, is how the recognition of the EU as different from the nation-state will affect the standards that we must use to assess its democratic quality. Before proceeding with outlining an alternative set of standards, let us try to be a bit more explicit with regard to the shortcomings of the conceptual tools and the analytical perspectives that have dominated mainstream research on the EU.

The tyranny of concepts

In order to address the problem of democratic deficit in the EU, it is necessary to question the widely held conception of democracy and democratic legitimacy as

intimately linked with and as dependent on the nation-state, and the vocabulary associated with the nation-state.¹² Hedley Bull has observed that 'one reason for the vitality of the states system is the tyranny of the concepts and normative principles associated with it' (Bull, cited in Linklater 1996:78). This applies especially to the most fundamental and taken-for-granted concepts of political analysis, such as state and constitutionalism. Ulrich Preuss has observed that 'statehood has been the underlying premise of the concept of constitutionalism' (Preuss 1996a:213), although 'constitutionalism as a doctrine and practice predated the development of the modern State and its scope is larger than the state' (Lane 1996:16). The 'tyranny' of the concepts and principles associated with the nation-state, relate to how sovereignty, identity, community, citizenship and democracy have all been tied to the notion of nation-state and made subject to the territorial logic of the state. The state is sovereign which means that it controls a specific territory and those that inhabit that territory. The state as organization shapes conceptions of community and identity in such a manner as to highlight *national* communities. Such 'imagined communities' are sustained by sovereign states, which promote the development of a sense of national allegiance and an exclusive notion of citizenship (Anderson 1983). This sense of national allegiance is intended to crowd out competing forms of allegiance, and this has been done by various means, such as assimilation, integration, exclusion or even extermination. The world is made up of nation-states, or territorially based communities, which are able to exclude those that they deem to be non-nationals. In a world of territorially delineated nation-states, communities that are not states aspire to become nation-states in order to obtain recognition as sovereign entities and to ensure their continued survival.

The 'tyranny' of the state form is reflected also in the normative hegemony of the nation-state as the sole legitimate institutional source of democratic governance. The institutions of the state are intended to foster a sense of national allegiance—patriotism—and forms of participation that are compatible with the nation-state. Some conceptions of democracy and democratic governance are more compatible with these constraints than are other ones. The adequacy of institutionalized forms is assessed foremost in terms of the degree of coherence with a particular state form and national community, normally the unitary nation-state, rather than coherence with fundamental principles of democratic governance. The universally held embrace of nation-state-based conceptions of democratic governance has made this into a powerful tradition. There are no doubt merits in the state form of governance which are conducive to democracy, such as social justice, coherence and accountability. The problem is when each of these merits, as well as their interdependence, are taken for granted and assumed rather than assessed through examination and careful research. There is a certain propensity among students of the EU to derive institutional features or arrangements from democratic states and apply these to the EU without properly examining the normative status of these arrangements in the model of democracy from which they have been derived. Further, there is a certain tendency to fail to examine what the actual democratic quality of such a

component is in current practice.¹³ The ‘tyranny’, then, can manifest itself in a certain tendency to graft governance arrangements onto the EU from the actual arrangements of nation-states, without proper attention to democratic principles and whether the arrangements conform with such at a supranational level. Or it can manifest itself in the conflation of different conceptions and criteria of democratic governance which are based on quite different requirements. For instance, models of representative democracy are based on less stringent popular requirements than are participatory and deliberative ones.

That this taken-for-grantedness of the concepts and principles associated with the nation-state has become problematic is evident also in how these standards have been applied in actual research. Keohane and Hoffmann observe that:

...(p)ortrayals of the state are often bedevilled by the image of an ideal-typical ‘state’ whose authority is unquestioned and whose institutions work smoothly. No such state has ever existed; viewed close-up, all modern states appear riddled with inefficiencies and contradictions.

(Keohane and Hoffmann 1990:279)

Therefore, when assessing the democratic deficit of the EU, we need to keep in mind that states often actually fail to adhere properly to the democratic standards associated with the nation-state model itself.

The taken-for-grantedness of the concepts and principles associated with the nation-state also manifests itself in a certain propensity to associate polity formation with state formation. Although the state form has become the dominant organizational form at present, there is no *a priori* assurance that this trend will continue.¹⁴

In recent years, some analysts have not only questioned the relevance of the nation-state, as the benchmark for the assessment of the democratic quality of the EU, but have also made efforts to think through which alternative standards can be applied. Clearly, the notion of democratic deficit (a term with a strong business-economic connotation: deficit/surplus) is more than a matter of definition, i.e. it entails something more than merely spelling out which aspects of the EU fail to adhere to conventional conceptions of democracy. The question of democratic deficit has direct bearings on what type of polity the EU is, what the EU aspires to be, and what we want the EU to be. It also means that we can not simply equate democracy at the national level with legitimacy. The precise relation between these two terms needs to be explored, because this set of questions relating to the democratic deficit has direct bearings on how the EU works. It also needs to be explored in terms of understanding the logic of integration, and in terms of the EU’s normative status.

The EU is neither a market, nor is it a state. Therefore, to address the question of democratic deficit we are compelled to think carefully about what kind of entity the EU is and what can reasonably be expected from it. In counterfactual terms, one might ask what a ‘democratic surplus’ is,¹⁵ or what a fully democratic order at the transnational level might look like. Once we start

thinking about this counterfactual notion, it becomes quite clear that the question of democratic deficit revolves around both what type of polity the EU is and what standards of assessment can be applied to assess its democratic quality. It is therefore ultimately a matter of which analytical perspective informs our conceptions of democracy and democratic legitimacy.

The question of the democratic deficit reminds us that it is not enough to describe the EU and the integration process. We also need to understand and account for the fact that the EU prevails despite its many deficiencies and problems. It is quite easy to depict the many shortcomings and obstacles that beset the European integration process. It is more difficult and far more urgent to try to explain what makes the system keep on going. This difficulty stems partly from the intellectual hegemony of power-based and strategic action-based approaches that dominate so much of the theoretical and empirical analysis of the EU. What are the integrative forces in the EU? To shed light on this it is necessary not simply to look at stability as something that prevails by virtue of its already being in place. Something is in place not simply because it has existed for a while but also because it appeals to something that people can relate to and can support. Therefore, to understand the stability and longevity of the EU, it is necessary to clarify what are the 'virtues' of the EU system that contribute to its stability. The contention that informs this position is that in a democratic setting there is *no stability without validity*.¹⁶ The normative visions, which have long been associated with the EU pertain to peace, freedom, democratic constitutionalism, and Europe as a common life world. Peace and prosperity were conceived of as common values that required co-ordinated and collective action in order to be brought about in the early post-war period.¹⁷ These may be depleted today (cf. Offe 1998a), but are examples of the kinds of factors that help explain the attraction of the EU project.¹⁸ Thus, it is necessary to let such values—which suggest that the EU has obvious merits—inform the discussion of the overarching question of what type of entity this is. What is the quality of the institutional make-up of the EU from the perspective of normative theory, and what are the prospects for its viability? There are, as mentioned, competing visions of the EU which emanate not only from uncertainty as to what kind of entity this is but which also relate to opposing views of the nature of politics.

Integration through what?

In order to understand the nature of the political system in the EU, in particular its democratic quality, it is necessary to supplement economic and realist perspectives in political science, because these perspectives consider democratic legitimacy as largely irrelevant. These perspectives consider the prospects for legitimate systems of democratic governance emerging at the international level as bleak indeed. State-centric, strategic perspectives—theories of international politics such as classical and structural realism—conceive of the international scene as marked by states seen metaphorically as 'billiard-balls' (Jönsson 1990:128). State behaviour is driven by self-interest, and interstate relations are

marked by 'balancing' behaviour (Morgenthau 1985; Waltz 1979). Standards of political behaviour do not exist independently of power. Even those theories that are concerned with the growth of interdependence and reject the billiard-ball conceptions of states such as (complex) interdependence and regime theory,¹⁹ do not reject the core power-based assumptions of political realism, but rather seek to modify these so as better to reflect the changes on the international scene.²⁰ Regime theory, for instance, focuses on binding international co-operation in narrow functional areas ('low politics'), with little potential for spillover to vital state concerns ('high politics') and almost always as subject to utilitarian calculus (Krasner 1982; Fossum and Robinson 1998). These theories of international politics have certain basic assumptions about human behaviour that are surprisingly similar.²¹

In principle, there is a distinction between integration that occurs through *functional adaptation*, and integration that occurs through *interest-accommodation*, or strategic group activity. But integration can also occur through *deliberation*, i.e. through the process of arguing. Communication through reason giving is oriented at convincing opponents of the best or right course of action. There are other versions of integration, as well. These three modes are chosen because they adhere to distinctly different logics of explanation and can be seen as idealtypes (consistent with Max Weber's use of such). In the following pages, we will provide a brief presentation of these three modes of integration and link them to the relevant theoretical perspectives.

Neo-functionalism

Most of the theoretically informed work on the EU has drawn on two alternative but distinct theoretical approaches, neo-functionalism and intergovernmentalism. Neo-functionalism conceives of integration as essentially self-sustaining, albeit not at a constant rate. William Wallace defines integration as:

the creation and maintenance of intense and diversified patterns of interaction among previously autonomous units. These patterns may be partly economic in character, partly social, partly political: definitions of *political* integration all imply accompanying high levels of economic and social interaction.

(Wallace 1990:9)

Wallace's definition is consistent with mainstream usage of the term.²² Integration is effected through two kinds of 'spillover', functional and political. Spillover is seen to occur when 'imbalances created by the functional interdependence or inherent linkages of tasks can press political actors to redefine their common tasks' (Nye, cited in Keohane and Hoffmann 1991:285). Functional spillover refers to the interconnection of various economic sectors or issue-areas, and how integration in one policy-area tends to spill over into others. Political spillover refers to how the existence of supranational organizations tends

to generate a self-reinforcing process of institution-building. The institutions of the EU, in particular the Commission, would provide a modicum of leadership over, as well as an arena for, a burgeoning transnational society (Caporaso 1998:9).

Supranational integration empties the state of policy content and normative salience, through an often mutually reinforcing process in which the actions by elites and interest groups reinforce the integrationist pull of a set of supranational institutional actors (Kirchner 1980; Caporaso 1998). The process is set in motion by some kind of imbalance and is carried forward by functional interdependence. The process of spillover-induced integration reinforces the salience of the supranational institutions at the EU level, to the detriment of the intergovernmental ones. The net effect is a set of institutions that are contingent on a wide network of substate actors but which themselves are relatively independent of the state actors for their operations and support. State power is therefore diffused onto a wide range of actors.

Neo-functionalism sees integration in process terms: polity-building is seen as the result of a wide range of converging processes. However, no conceptual link is established. Neo-functionalism has 'no theory to explain the transition from utility-maximizing self-interest to integration based on collective understandings about a common interest' (Risse-Kappen 1996:56). Neo-functionalism conceives of integration as the effect of behaviour oriented towards fulfilling systemic requirements. Basically, the actors' behaviour appears to be driven by instrumental self-interest, largely conceived of in economic terms. The actors are more concerned with utility functions and expertise than with power (Caporaso 1998). The theory which neo-functionalism lacks, would have to account for at least two vital conversions. First, how instrumental self-interest can be converted into stable patterns of behaviour, and hence a sense of identity and allegiance. Second, how this conversion will enable a shift of allegiance from one level of governance to another, i.e. from the state level to the supranational level.

Neo-functionalism assumes that the process of integration will proceed from co-operation in the realm of 'low' politics (economic policies) to 'high' politics (foreign and defence policies) because the former is less contentious than the latter. But that is of little value to understand how identities and senses of allegiance are formed, sustained, and altered—common identities that are required to sustain co-operative patterns of behaviour. Without this vital information, neo-functionalism does not provide us with a good sense of how the two processes of spillover, functional and political, are related. Nor can it explain why each type of spillover is seen as acceptable by those affected by it. The EU is seen to survive because it is a functional answer to the problems of globalization. The question of its value basis and why those affected by integration accept it, i.e. the validity dimension, is left unanswered. The theory lacks microfoundations, and hence the problem of identifying feedback loops, which accompanies all kinds of functional analysis, prevails (cf. Elster 1984:28ff.; Moravcsik 1998:16).

Intergovernmentalism

Intergovernmentalism posits that integration proceeds as far as states permit it. This theory is founded on the basic realist premise that political action is based on power and that politics is a struggle among contending interests. In its more recent EU trappings, intergovernmentalism basically represents an attempt to apply the core assumptions of rationalist instrumentalism—rational choice—as reflected in realist, neo-liberal and neo-liberal institutionalist work on the EU. The recognition that the EU is something more than a mere intergovernmental arrangement has sparked considerable debate and important refinements and modifications. Perhaps the clearest and most recent example of this is Andrew Moravcsik's rational choice inspired approach which he terms 'liberal intergovernmentalism' (Moravcsik 1998). Moravcsik seeks to refute the neo-functional notion that integration weakens the state through diffusion of power and argues that integration strengthens the state.²³ The executive officials of the state control access to the international arena and have a strong incentive to 'cut themselves some slack' in relation to the domestic actors, i.e. to remove domestic constraints on their actions. European integration facilitates this because the executive officials who negotiate agreements have unique agenda setting powers and privileged access to information and policy-making fora. The process of integration, to Moravcsik, therefore 'internationalizes domestic politics' in the sense that executive officials bring domestic issues and concerns to the intergovernmental bargaining table and settle these issues with little domestic input. The executives seek to legitimate their actions with reference to 'the realization of common abstract values rather than self-regarding material interests...' (Moravcsik 1994:14). This appeal to broader values, such as peace, prosperity, and cosmopolitanism provides executive officials with *added policy leverage*, since a wide range of policies can be justified with reference to such general values: 'The looser the links between broad ideals and concrete policies, the more flexibility the executive enjoys in framing domestic policy deliberations' (Moravcsik 1994:25). The propensity for executives to seek to cut themselves domestic slack means that the democratic deficit of the EU is a characteristic feature of the integration process, rather than a recent phenomenon associated with the Single European Act (SEA), the Treaty on European Union (TEU) and the Amsterdam Treaty. The democratic deficit is a choice and a dilemma, between representativeness and effectiveness.

In empirical terms, intergovernmentalists—including Moravcsik—are hard put to account for the magnitude of integration that has occurred, in particular since the mid 1980s, when the ability of individual states to veto decisions has been greatly curtailed in a wide range of policy areas. What intergovernmentalism fails to properly acknowledge is that acts of integration are cumulative and foreclose states retaking their autonomy and sovereignty (Sandholtz 1996).

Intergovernmentalists conceive of states as actors who pursue their self-interests. This view of the state as unitary actor is incomplete. It attributes preferences and purposes to a collectivity—the state—without a proper

explanation of where the preferences have been derived from and what their quality is.²⁴ Intergovernmentalists also conflate the notion of state as actor with the notion of state as structure.²⁵ Therefore, they fail to examine how the complex institutional and structural make-up of the state affects the role conceptions and preferences of state officials. This is part of the wider problem of preference formation and justification facing both intergovernmentalists and neo-functionalists.

A new agenda

The perspectives briefly presented above, neo-functionalism and liberal intergovernmentalism are analytical perspectives, which differ profoundly in how they conceive of the nature and effects of the integration process, but which share two important features. First, they are both based on a common underlying conception of action motivation, and a means-end notion of rationality (*Zweckrationalität*, in Weber's terminology). Neo-functionalism is based foremost on the technical instrumental version, whose conception of action is derived from an observational perspective, whereas intergovernmentalism is based on the strategic version of means-end rationality. The latter is intentional and surpasses the former in the sense that actors' choices are seen not only as driven by expectations about the future, '[...] but also *on the basis of their expectations about the expectations of others*' (Elster 1984:19). This basic similarity in behavioural assumptions places important constraints on the extent to which these can be seen as truly alternative conceptions. Second, both perspectives operate with a weakly developed and inadequate conception of democracy and democratic accountability. They therefore also understate the normative potential inherent in the European integration project. Neo-functionalism conceives of democracy in narrow terms and as ultimately contingent on a particular end product of the European integration process, i.e. a European federal state or a 'United States of Europe'. Neo-functionalism does not provide a convincing theory to explain how the EU might get to that end result.

The two perspectives listed above do not consider values and arguments to have any real or direct effect on behaviour. Moravcsik, for instance, sees appeals to values in instrumental terms, in particular as instruments for elites to augment their power and influence by 'cutting themselves slack' in relation to domestic interests. Moravcsik sees elites as able to appeal to general values, and the populace is only able to hold the elites accountable if the appeals refer to a specific set of policy measures which people can hold up against the values to see if they match. The executive officials are only accountable, it appears, when it is possible to match a specific policy with a specific value. The values and arguments are conceived of merely as aspects of a self-serving conception of justice. However, such an interpretation both underestimates the civilizing force of hypocrisy (Elster 1995),²⁶ and the potential force of the better argument. Another example of Moravcsik's narrow conception of accountability—typical of intergovernmentalism—relates to his view of domestic constraints. To him, each

state's domestic arena is quite autonomous. State elites are only truly constrained by the domestic arena in their own country (cf. Marks *et al.* 1996: 345; Caporaso 1998:12). Intergovernmentalism's shortcomings with regard to the notion of democracy are similar to those of the liberal, aggregative model, which we will return to.

Neither perspective places any emphasis on public discourse and the binding force of words in communicative practice, e.g. appeals to values can spark a public discourse on what the relationship between policy and value is and should be. Appeals to values raise normative expectations, a point which Moravcsik clearly fails to consider, and thereby also neglects how appeals to values have contributed to generate and sustain the supranational traits of the EU.²⁷ Preferences can not be taken as given, they are shaped, tested and reshaped in the many discursive and legal settings that the complex European integration process provides.

Recent research, in their efforts to conceptualize the EU, have gone beyond the simple supranationalism embedded in neo-functionalism and the state-centric view of intergovernmentalism, to conceive of the EU as *a system of multi-level governance* which consists of multi-tiered, geographically overlapping structures of governmental and non-governmental elites.²⁸ Some analysts term this the 'new governance agenda' (cf. Hix 1998). This term should not be construed as an expression of a uniform and coherent alternative theoretical position. The 'new governance agenda' is unified in its rejection of the nation-state bias and in its conception of the EU as a polity *sui generis*, but not in the conception of what the entity—the EU—really is. It draws on widely different theoretical perspectives in rejecting the nation-state analogy. However, striking findings are the EU's lack of accountability and the lack of popular influence on the EU. In the EU, it is the voice of the expert, rather than that of the people, that dominates. It is *steering without democracy* and governance without government (cf. Rosenau and Czempiel 1992).²⁹ These structures are then hard to validate in normative terms. The neo-liberal and postmodernist vision of post-national networks, as replacements for political government, can not make up for the lack of steering capacity and legitimacy that ensues at the national level. Functional efficiency and governance capacity do not justify outcomes, they are themselves in need of legitimation (cf. Habermas 1998a:124).

These assessments by some of the adherents of the new governance agenda draw quite heavily on functional and instrumental outlooks: 'Proponents of multi-level governance, while adding a new and important institutional layer to neo-functionalist and intergovernmentalist arguments, do not challenge the rationalist microfoundations of either school' (Checkel 1998:7). Multi-level governance, then, also presents us with an incomplete theoretical basis for addressing the fundamental questions: What keeps the Union together? What are the integrative forces? Why does the EU evoke popular support at all, and how can it undertake the following tasks:

In addition to redistribution, through the regulation of social, environmental and health risk, EU citizenship, and competences over food safety, culture,

tourism, immigration, combating racism and xenophobia, and police and judicial co-operation, the EU is increasingly involved in the allocation of social and political values throughout Europe.

(Hix 1998:42)

These undertakings, in addition to enlargement to the East and the establishment of the EMU, require explanations that go beyond the ones provided by functionalism and interest calculus—because they pertain to collective action and norms of solidarity and fairness. These should not be reduced to the pursuit of self-interest or to the requirements of functional adaptation.³⁰ This is so because extra-material elements—norms or values—are required to motivate collective action, because interests generate unstable outcomes. Interests make parties friends one day and enemies the next (Durkheim 1893/1964:204). Some must contribute more than they receive, and some have to pay for the misfortune of others, in order to realize collective goods, i.e. goods that can not be reserved for the ones who produce them. In principle, compliance with deontological norms, which tell what is a right and just course of action is required to resolve collective action problems (cf. Olson 1965; Elster 1989). In addition, articulations about identities, commitments and the common good are often needed, however shifting they may be (cf. March and Olsen 1995:35ff., 1998; Olsen 1998). Generally speaking, established theoretical frames of reference appear incomplete to explain integration because the force of shared norms is left out. Functional interdependence and interest accommodation are inherently unstable, as the moral point of view—or the normative procedural element that is needed to bring about integration to override national interests—is lacking.³¹ This is, briefly stated, the general background which warrants the quest for another theoretical frame of reference for research into European integration. To highlight the particular features of this perspective, we will briefly contrast it with the liberal and republican conceptions of democracy.

Deliberative democracy

The governmental structure of the EU contains processes that cannot be captured or explained by realism and realism-derived perspectives. These features are also based on something more and different from spillover-induced integration. Basically, this contention stems from the fact that the EU, initially, is based on *voluntary co-operation*: co-operation is not dependent on prevailing patterns and distributions of power or on functional interdependence. The EU, then, may be seen also as marked by actors who strive to solve problems and realize common goals and whose behaviour is constrained by established programmes and entrenched rules. The ‘government’ of the EU contains a legal structure for collective decision-making—rules for the exercise of executive, legislative and judicial powers. For quite a while now an *acquis communautaire* has been in operation in the Community, i.e. a set of shared rules, norms and

procedures (Wiener 1998:65ff.). According to this perspective, the EU already possesses a constitution (Weiler 1991, 1995). This claim is substantiated by several judgments of the European Court of Justice and it is a claim that thus far has not been explicitly rebutted by national constitutional courts in their rulings. The founding treaties are based on the rule of law. The most recent Treaty of Amsterdam defines the common objectives of the Union more clearly and introduces the prospect of sanctions if the fundamental principles of the Union are breached or violated. In Chapter 6, John Erik Fossum discusses the question of the legitimacy of constitution-making in the EU by drawing explicitly on the deliberations during the Intergovernmental Conference, which produced the Amsterdam Treaty (IGC-96).

Basically, constitution means that the parties' common affairs are conducted within a set of norms and objectives, which are not up for grabs, as they constitute the very rules of the game. They provide a set of procedures that make problem solving and conflict resolution possible, i.e. 'rules that can be contested within the game, but only insofar as one first accepts to abide by them and play the game at all' (Benhabib 1994:39, cf. Kratochwil 1991:205ff.). Procedural arrangements bring people together to solve problems and conflicts, and encourage willing adherence to common rules. They are structures that constrain but which also enable action in so far as they create arenas for people to meet and to foster binding agreements. It is the legal medium that provides the binding force of words in a political context. This may explain the connection between the broad political ideas—of peace, freedom, and solidarity—to which politicians in the EU pay tribute and the rather prosaic and nitty-gritty manner in which—including bargaining and log-rolling—concrete decisions are made. Further, integration, in the true meaning of the term, depends on the alteration, not the aggregation of, preferences. *Integration is premised on learning and the alteration of preferences*: at least one of the contending parties must change his/her opinion in order to reach an agreement. Participation in co-operative processes is supposed to contribute to such a shift as actors have to frame arguments with reference to common standards in order to achieve agreement, a process that serves to override egoistic or national interests. This we may refer to as *normative learning* as it is not solely based on experience, but on arguments of a certain moral or ethical quality. It is this that forms the basis for the assumption that integration takes place through deliberation.

On the basis of this, there is a need for a conceptual framework which is not solely based on power and self-interest, but which complements such by acknowledging the role of deliberation and arguing in the establishment and validation of rules and by recognizing the potential for consensus formation among parties with conflicting interests and values. What are the prospects for reasonable action and rational argumentation within the EU structure? Does the EU embody institutional arrangements that can sway actors to adopt disinterested or third-party perspectives, or that, at least, enable working agreements and intermediate forms of consensus based on the force of the better argument? These questions are addressed in several chapters in this book. There

are institutional dynamics that are based on egocentric behaviour as well as dynamics based on other-regarding behaviour. There are procedures that encourage strategic interaction—bargaining—and there are procedures that encourage participants to adopt a deliberative orientation, i.e. communicative action. In Chapter 7, Lars Chr. Blichner examines what the potential is of opinion formation in interparliamentary discourses, where deliberation is freed from the immediate requirements of action and decision-making. In Chapter 9, Roberto Gargarella explores whether or rather the extent to which the Council can be said to comply with the requirements inherent in the notion of deliberative democracy.

We need, however, to clarify what is meant by deliberative democracy and what the particular contribution of deliberative democracy is to international democracy. Political theory has long been concerned with *democracy as a method*, and as a means of aggregating preferences (cf. Schumpeter 1942; Downs 1957). One particularly important means of aggregating preferences has been through the establishment of voting procedures. In the liberal and pluralist tradition, democratic legitimacy is seen to emanate from the aggregation of votes cast by secret ballot. A voting procedure is seen to be just when the procedure treats people as equals by assigning their preferences equal weight in the collective decision-making process (Riker 1982). Voting procedures have generally been less relevant at the international level than at the domestic level. The establishment of institutions at the EU level that serve to aggregate preferences through voting procedures has therefore been conceived of as a major democratic improvement and much of the debate on the democratic quality of the EU has revolved around the nature and quality of these particular arrangements. The establishment of voting procedures at the international level is most likely a democratic improvement, but voting is not the only means to improve the democratic quality of the EU. The EU consists of approximately 350 million people and it is difficult by way of voting to secure that people are not subjected to laws they themselves have not consented to.

The problem with majority voting is that it permits the violation of freedom (Rawls 1971:356). A majority vote is merely the reflection of the view of a particular majority at a particular point in time. It is, however, a general observation among analysts that a voting outcome, to stand over time, must be supported by substantive arguments—*reasons* (Dewey 1927:207). A voting result can not claim to reflect the common will, but only the will of the winners. It therefore requires non-majoritarian sources or additional arguing in order to be held to be legitimate (Chambers 1997). The question which informs much of the present debate among political theorists is whether it is the act of voting or whether it is the antecedent debate that is the characteristic feature which lends legitimacy to outcomes. In an open debate decision-makers are forced to give reasons, and this enhances transparency and public accountability. Public debate is the single most important clue to the assessment of *democratic quality*, because the legitimacy of power holders can be tested in relation to affected interests.³² In Chapter 8, Christian Joerges and Michelle Everson address the technocratic

aspect of the EU. Here they ask whether comitology may be more of a remedy than a defect, i.e. more of a testimony to deliberative supranationalism than nascent bureaucratic governance. In Chapter 10, Philip Schlesinger and Deirdre Kevin address the question as to whether there is a European public sphere in the making.

Deliberative democracy does not preclude voting or bargaining, but it places the emphasis on obtaining a shared sense of meaning and a common will, both of which are the product of a communicative process. This is seen both as a normative requirement, and as an empirical fact. It takes a lot of arguing to get voting mechanisms to work, and a modicum of consensus is needed in order to establish alliances and voting alternatives. Without some kind of agreement and mutual understanding, a representative system such as a parliamentary one will be severely hampered in its ability to produce decisions, and those reached will be challenged on legitimacy grounds. In open societies political solutions have to be defended *vis-à-vis* the citizens in public debate. Outcomes will not be accepted unless they can be backed up by good reasons, as citizens require, and are expected to require, reasons of a certain quality. Constitutional democracy has, in fact, built in various types of safeguards that transform values and the perception of interests, so that citizens decide on 'who they are, what their values are, and what those values require. What "they" want must be supported by reasons' (Sunstein 1991:13). The deliberative process of arguing and counter-arguing is a process 'that shapes *the identity and interests* of citizens in ways that contribute to the formation of a public conception of the common good' (Cohen 1991:19). While aggregation may reflect only base preferences, and bargaining may only reflect actual resources and may yield suboptimal solutions, deliberation transforms preferences and compels actors to give reasons for why they seek a particular outcome, regardless of their resources. Deliberation is based on arguing which rests on reason giving and is considered superior to bargaining and voting. Among other things, deliberation improves decision-making while it pays attention to side effects, reveals private information, legitimizes the ultimate choice, contributes to Pareto-superior decisions, makes for a larger agreement, fosters mutual respect and is seen as good unto itself (Elster 1998b; Estlund 1997; Fearon 1998; Cohen 1991).

In such a perspective, *democratic legitimacy* does not stem from the aggregation of the preferences of all, but from 'the deliberation of all' (Manin 1987:357). This perspective may be applied to international democracy at it does not base democratic accountability solely on the existence of formal aggregative procedures. The discourse theoretical variant of deliberative democracy associated with Jürgen Habermas also disconnects collective will formation in modern politics from the notion of a pre-existing system of common values and affiliations. In this perspective, there is a separation of politics and culture, of citizenship and nationality. Discourse theory departs from a substantive, or ethical conception of citizen autonomy, which emanates from the convergence of traditions and family-type bonds on the basis of which it is possible to reach an agreement. The republican or communitarian tradition of political theory