

The Transnational Public Sphere:

Building a Model for a European Context

Major Research Paper

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Abstract

With globalization, the state has become a less cohesive political unit. Even the democratic process itself has begun to stretch across national boundaries. The public sphere, however, has been historically conceived in the context of a contained, national space where it is much easier to understand who is directly affected by political decisions. Thus, to remain an essential part of democratic theory, the public sphere needs a new model for a transnational context. If one looks to test the viability of this model with a real world case study, the European Union (EU) is the most obvious choice. With an explicit overarching political structure, the EU has a more clear-cut obligation to cultivate a legitimating public sphere beyond the national level. This paper looks to explore the concept of the public sphere within the context of the globalized world and whether the EU has been successful in establishing a transnational public sphere capable of legitimizing its unprecedented form of democracy. I will ultimately argue that the transnational public sphere necessitates increased participation from non-state actors, especially civil society, and that it is this requirement that the EU has in particular failed to meet. The deficiency in the EU's democratic legitimacy can be attributed to a European political structure that favours intergovernmental decision-making while granting supranational centralization of power.

Introduction

With globalization, the state has become a less cohesive political unit. Even the democratic process itself has begun to stretch across national boundaries. The public sphere, however, has been historically conceived in the context of a contained, national space where it is much easier to understand who is directly affected by political decisions. With the profound and far-reaching changes of globalization, the concept of the public sphere is in need of considerable reworking if it is to remain as an essential part of democratic theory. While the independence of governments regarding their decision-making processes has eroded, there is still a need for such power to be held to account. To this end, it may be that the public sphere must be separated from its Westphalian foundations in order to reflect an emerging form of multinational governance.¹

The new model required for the public sphere is one that is not national or supranational, but transnational. A cosmopolitan world government has not yet emerged and possibility it ever could is not certain. This means that the model will not be created with an expanded national-type government in mind. Instead, the model of the transnational public sphere is one that acknowledges the diminishing autonomy of nation-states while recognizing that sovereignty is still relevant. There is a need to better understand how democratic legitimacy can be achieved in this transnational world. While international organizations and structures of governance exist, they do not have the democratic institutions and mechanisms of legitimation prevalent at the national level.² The transnational public sphere then is crucial if global governance is to be responsive to the public interest.

¹ Nancy Fraser, "Transnationalizing the Public Sphere: On the Legitimacy and Efficacy of Public Opinion in a Post-Westphalian World," *Theory, Culture & Society* 24:4 (2007): 11.

² "Public Sphere," Oxford Bibliographies, accessed May 8th, 2014, <http://www.oxfordbibliographies.com/view/document/obo-9780199756841/obo-9780199756841-0030.xml#obo-9780199756841-0030-div2-0002>

If one looks to apply this reworked model of the public sphere to a real world case, the European Union (EU) is the most obvious choice. Transnational networks of governance are emerging throughout the world, but the EU is unique in that it has an explicit overarching political structure linking member states together. The EU then has a more clear-cut obligation to cultivate a legitimating public sphere beyond the national level. Granted, on the surface the EU enforces a supranational rather than transnational order, but its structure is also highly intergovernmental. Member states are not subject to unilateral action from EU institutions as commonly as one might expect and the terms ‘supranational’ and ‘transnational’ have become almost interchangeable in the European context.³ As a result, the EU is not a wholly unified and cohesive actor, making it conducive to a comparison to a transnational model of the public sphere.

This paper looks to explore the concept of the public sphere within the context of the globalized world and whether the EU has been successful in establishing a transnational public sphere capable of legitimizing its unprecedented form of democracy. I will ultimately argue that the transnational public sphere necessitates increased participation from non-state actors, especially civil society, and that it is this requirement that the EU has in particular failed to meet. The deficiency in the EU’s democratic legitimacy can be attributed to a European political structure that favours intergovernmental decision-making while granting supranational centralization of power. This paper is organized into three parts. The first part will outline the traditional conception of the public sphere. The second part will look to reconceptualise the public sphere by constructing a transnational model adaptable to a globalized political landscape.

³ Achim Hurrelmann and Joan DeBardeleben, “Introduction,” in *Transnational Europe: Promise, Paradox, Limits*, ed. Joan DeBardeleben and Achim Hurrelmann (New York: Pargrave Macmillan, 2011), 1-2.

Third, the paper will evaluate the EU and its public sphere in comparison to this newly constructed model and will propose options to resolve any shortcomings.

PART I: Theoretical Framework of the Public Sphere

The public sphere is an artificially constructed social space in which citizens can express differing opinions, concerns and solutions on a public level. It is in a sense the social space where all citizens can engage in political participation and form public opinion, and has become an integral part of democratic theory. The public sphere enables citizens to hold state powers to account and influence political action through speech. While non-democratic societies may have public spaces as well as opportunities for citizens to express opinions and ideas, the concept of the public sphere has a distinct political aspect; democracy is a necessary condition. Put another way, a public sphere can only truly be a public sphere if it grants an opportunity for citizens to influence or even participate in the governance of society.

While the public sphere, as defined at this highest level, is reasonably consistent across the literature, its structure and purpose differs in varying and important ways. There is a consensus that a legitimate democratic process needs a public sphere but there is less agreement as to who is to be involved, what form of participation is allowed or what kinds of discussion should take place. This section will explore the various theoretical frameworks available for understanding the public sphere. First, it will place the public sphere within the context of various systems of political thought. Second, it will outline more pragmatic but normative models, borrowing from these theoretical ideals.

The Public Sphere in Political Thought

John Dewey's 1927 work *The Public and Its Problems* was one of the first and most important works to substantively engage with the modern idea of the public sphere. It outlines a public sphere much narrower in scope than many of its successors. Dewey differentiates society between the elected officials, who make up the state, and the body of citizens who participate in the electoral process, making up the public. However, the public is not always a cohesive whole. Instead, it is formed by citizens affected by the actions of others beyond their control, such as a government or market actors. These citizens, through their shared experience of the negative externalities of others, come to an understanding of their interdependence and form what Dewey calls a "great community" capable of publicizing and addressing their needs.⁴

The public, then, consists of "all those who are affected by the indirect consequences of transactions to such an extent that it is deemed necessary to have those consequences systematically cared for."⁵ Dewey argues that the public sphere functions as a means of influencing lawmakers and resolving specific issues through legislation. This conception of the public sphere is narrow in the sense that the public sphere only comes into being when citizens are faced with negative consequences outside of their control. Here, the public sphere does not serve a wider purpose of influencing the government or others as a means of actively structuring the world. Nevertheless, Dewey's system of thought demonstrated that citizens should be conceived of as separate from those that govern society while still being capable of participating in governance.

The framework of the public sphere in relation to the democratic process overall is more explicitly explored by Jürgen Habermas. His 1962 work *The Structural Transformation of the*

⁴ John Dewey, *The Public and Its Problems* (Athens: Swallow, 1927), 119.

⁵ Dewey, *The Public and Its Problems*, 15-16.

Public Sphere has become highly influential not only in terms of understanding the public sphere but also in democratic theory at large.⁶ Habermas delineates his conception of the public sphere through its historical development. While many of his normative ideas are correspondingly based on specific periods of time, nations and cultures, they also have external validity and can be applied to other contexts. Initially, there was no distinction between the public and private that is so prevalent today. State and society were conceived as a whole, organized around a symbolic representation. Habermas gives the example of the palace of Versailles, which came to represent the state and its values.⁷ Public opinion did not form the values of or influence the actions of the state. Rather, the state and its symbolic meaning were projected to the people through representation. From the Middle Ages until this point in history, the reigning monarch or lord was essentially the only public person, with all others being spectators without a proper public forum. Their existence as citizens meant that they were a part of the state as a whole and subject to the will of its ruler.⁸

Beginning in the late 17th century, there was a transition from these monarchical and feudal societies to one Habermas characterizes as a bourgeois liberal constitutional order, one which distinguished the private and the public.⁹ The emergence of capitalism and the development of the free market were the major catalysts in this transformation. This progress had an important effect on the growth of the literary sphere, which Habermas points to as the precursor to the public sphere. Technological improvements enabled communication not only at a long distance, but also with greater speed. This exchange of letters and documents created the foundation of the rational-critical debates that would define Habermas' conception of the public

⁶ Seyla Benhabib, "Models of Public Space," in *Habermas and the Public Sphere*, ed. Craig J. Calhoun (Cambridge: MIT Press, 1992), 73.

⁷ Jürgen Habermas, *The Structural Transformation of the Public Sphere*, Cambridge: MIT Press, 1989, 10.

⁸ Habermas, *The Structural Transformation*, 10-12.

⁹ Habermas, *The Structural Transformation*, 20-21.

sphere. Citizens were now able to put forth ideas and have others critically analyze them, forcing the rejection of some and the triumph of others. Ultimately, the literary sphere showed how discourse and argumentation could lead to a better reflection of society upon itself and form new, stronger and more legitimate perceptions of the world.¹⁰

The increases in social stature and power for ordinary citizens made possible by global free market forces fostered a growing movement towards increases in personal freedom. The literary discourse contained within printed texts soon began to spill over into more physical spaces where individuals of the burgeoning bourgeois social class began to meet and discuss political ideas. Consequently, a distinct public opinion began to form and, with the growing democratization of governance in full swing by the beginning of the 18th century, it was now capable of being used to influence the behaviours and decisions of political actors.¹¹ Thus, conversation and discourse, as opposed to a purposeful construction of an institution, formed the public sphere.

For Habermas, the value of the public sphere came to be its function as a balance against the power of the state. With democratization, the public sphere became a pivotal institution that could prevent oppression by the government due to its ability to facilitate a strong national consensus. The power of the state was now checked against its accountability to the public. The government could face consequences outside of the electoral process if its policies and actions were not representative of the will of the people. In this way, Habermas' framework is much less narrow than that of Dewey. In lieu of organizing itself around a particular issue only when citizens at large are impacted, the public sphere as outlined by Habermas plays an integral role in legitimizing a democratic government.

¹⁰ Habermas, *The Structural Transformation*, 57.

¹¹ Habermas, *The Structural Transformation*, 59.

More expansively, the public sphere can also be conceived as an important part of the human condition, as argued by Hannah Arendt. Arendt separates the active human life, the *vita activa* as she terms it, into three general categories. Labour is the lowest of these and encompasses all activities that correspond to physiological sustainment. Work is characterized as those activities in which humans produce artefacts and tools that are separate from nature. Action is the highest human activity and concerns itself with humanity's engagement with the plurality of society and the political life.¹²

Action can take many forms, including art and politics, and Arendt argues that it demonstrates human beings to be “unique, unexchangeable, unrepeatable entities.”¹³ Action's most important aspect is that it is never possible in isolation and must be viewed and understood by those within the plurality of society. Arendt argues that public life has been artificially created for the purpose of facilitating this aspect of human nature, where politics is the primary way to lead a “good” life.

The need for observation in relation to action is what founds the importance of the public sphere in Arendt's thought. It is the public sphere where action must take place, being the enduring space where humanity can transcend the cycle of nature.¹⁴ It is also the necessary aspect of the human condition that allows for a separation between the private and the public, where the private is meant for sustenance and physical needs and the public being where freedom can be attained.¹⁵ For Arendt, the public sphere has two principal dimensions. The first dimension is a common world where shared institutions and artefacts exist, whose permanency enables humanity to achieve a kind of immortal recognition for their action through moral and

¹² Hannah Arendt, *The Human Condition* (Chicago: University of Chicago Press, 1958), 7-8.

¹³ Arendt, *The Human Condition*, 97.

¹⁴ Arendt, *The Human Condition*, 38.

¹⁵ Arendt, *The Human Condition*, 38-40.

political greatness, creativity and pre-eminence.¹⁶ This dimension of the public sphere emphasizes the artificially constructed nature of the concept, where humanity has collectively created a common world that allows individuals to engage with the plurality of society and fulfill their highest human activities.

The second dimension of the public sphere for Arendt is a space of appearance where individuals voice their opinions and persuade others.¹⁷ It is this dimension of the public sphere that is most relevant to the discussion of its democratic function. Arendt argues that the public sphere is where opinions representative of a population can emerge as individuals confront one another and examine issues from a variety of perspectives. Along these lines, in an argumentative and discursive context, political opinions can be formed, modified and incorporated into others. By acting and engaging with the plurality, humanity is able to recognize truths that are more objective than those found within a subjective individual experience. Ideas and perspectives that are at first thought to be entirely created by the individual can be confirmed as something more universal by sharing it in a public realm.

For Arendt, there is no specific forum where this kind of debate must take place, occurring anywhere “men act together in concert.”¹⁸ As a result, the public sphere is not precisely tied to any geographical area or institution but is formed at any point where the objective of a gathering is to participate in the highest human activity of action. The public sphere in the Arendtian sense can be formed when an interest group publicly demonstrates or when dissidents protest the actions of a government. Furthermore, an area such as a town hall or a city square cannot be considered as spaces for the emergence of a public sphere unless there is

¹⁶ Benhabib, “Models of Public Space,” 78.

¹⁷ Maurizio Passerin d'Entreves, “Hannah Arendt,” *Stanford Encyclopedia of Philosophy*, ed. Edward Zalta, accessed June 13th, 2014, <http://plato.stanford.edu/entries/arendt>

¹⁸ Arendt, *The Human Condition*, 56.

a group of individuals acting in concert.¹⁹ The construction of the public sphere is as boundless, and possibly as volatile, as the action for which it was created.

While John Dewey, Jürgen Habermas and Hannah Arendt differ in many ways in their writings on the public sphere, their advocacy for its existence is rooted in similar perspectives on governance and society. Dewey distinguished the state from its public and viewed the latter as being capable of rationally participating in governance. More expansively, Habermas sees the public sphere as an essential part of a properly functioning democracy as it best protects against the will of state actors from oppressing citizens. For Arendt, her focus on the public sphere stems from its capability to fulfill humanity's inherent desire to transcend the world of nature and achieve recognition for the highest human activity of action. The most important idea to take from this discussion of prominent thinkers is that the public sphere is not necessarily an institution meant to fulfill technocratic or practical ends of government such as efficiency and order. Instead, the public sphere is an indispensable part of society that ensures the state can better promote more human goals.

Models of the Public Sphere

Each conception of the public sphere detailed in the previous section can be seen as theoretical ideals. Hence, it should not come as a surprise that none of them have been fully realized to their author's satisfaction. For instance, John Dewey states that the "increase in the number, variety and cheapness of amusements represents a powerful diversion from political concern,"²⁰ and that the public is more interested in discussing "the movie, radio, cheap reading

¹⁹ Benhabib, "Models of Public Space," 78.

²⁰ Dewey, *The Public and Its Problems*, 138.

material and motor car”²¹ as opposed to politics. Habermas argues that commercialization and consumer culture have blurred the distinction between the private and public, leading to a mass society functioning not as a space of critical discourse but as a space for affirmative publicity.²² Similarly, Hannah Arendt is also critical of modern society for mixing the private and public spheres, arguing that the diffusion of economic concerns in political discourse has bestowed unwarranted importance on the activities of work and labour.²³

Notwithstanding the lack of perfect realization, these theoretical foundations serve as the basis for more pragmatic models of the public sphere. These models are still normative but more so in terms of process and structure rather than results. What this means is that the models make claims about who should be participating in the public sphere and how they communicate, but do not make value judgements on the outcomes that arise from the process. In this way, one can view the operation of a public sphere as democratically legitimate even if it inconsistent with a more comprehensive philosophical ideal, such as the need to separate economic concerns from politics or the private from the public.

While there are many more variations, the associated literature focuses on three normative models. The models do overlap somewhat, as they tend to borrow from more than one system of thought, and are not mutually exclusive but they demonstrate how the theoretical frameworks can be applied in different ways. It can be said that the models of the public sphere are not only the proposed ideal of how it *should* be constructed but can also be seen as a feasible way of describing how it *has* been constructed.

The first model is characterized as the deliberative tradition and it is founded on Habermasian ideas. Here, there is a great amount of value placed in the argumentation and

²¹ Dewey, *The Public and Its Problems*, 139.

²² Jürgen Habermas, *The Structural Transformation*, 177.

²³ Arendt, *The Human Condition*, 38-40.

debate within the public sphere as there is a kind of defined goal or outcome for which the public sphere will be used. This process is thought to have a positive effect on the quality of politics within the society as well as increase social cohesion.²⁴ In this model, citizens decide upon a more objective idea of how best to approach an issue. The public does not reach a mere agreement but a rational consensus that legitimately advances the interests of all participants.

The way in which this consensus can be reached is through the principle of ideal speech, where participants and their assertions are evaluated on the basis of reason and not whether they align with certain biases or identities. The public is expected to “leave aside [their] particular interests in order to coincide with [their] universal rational self.”²⁵ Proponents of this model are entirely aware that such a complete separation would be impossible and the ideal speech principle is viewed more as a regulative idea that governs the forms of communication within the public sphere. By striving for this ideal, which seeks to reduce coercion by championing equality, impartiality and inclusion, public discussion can better support reasonable outcomes that can be accepted by all participants.²⁶

The second model is the liberal tradition, which has two main dimensions. The first is a free marketplace of ideas where differing opinions and the like are expected to compete for influence. The second dimension is how this public sphere is meant to reflect the range of opinions and actors contained within it. While there is debate, there is no expectation of a specific outcome similar to a rational consensus as in the deliberative tradition. Correspondingly, the public sphere is theorized to be more about societal self-observation than a functional

²⁴ Benhabib, “Models of Public Space,” 73.

²⁵ Chantal Mouffe, “Deliberative Democracy or Agonistic Pluralism?,” in *The Idea of the Public Sphere*, ed. Jostein Gripsrud et al. (Plymouth: Lexington Books, 2010), 272.

²⁶ Mouffe, “Deliberative Democracy...,” 274.

political purpose.²⁷ The public sphere reflects the opinions and ideas of its participants without necessarily expecting that such discourse will directly impact the actions of government officials or legislators.

To a certain extent, the liberal model is less ambitious than its counterparts. It prioritizes “freedom of expression and fair representation of interests and concerns”²⁸ while limiting the functional democratic purpose the public sphere can have. Public discourse is the means of securing mutual coexistence when groups or individuals are at odds concerning their conceptions of the good. Discussions about deep moral divides are better left to private contexts as opposed to dominating the agenda of the state. Public conversation is reserved for identifying solutions to issues that are reasonably consistent with all conceptions of the good.²⁹ The liberal model is based on the perception that these kinds of conversational restraints restrict more powerful groups from imposing an order reflective of a certain worldview, to the detriment of others, without requiring legitimate reason.³⁰ Alternatively, some proponents of the liberal model, such as Walter Lippmann, are skeptical of the public’s capacity to comprehend policy debates and come to reasoned decisions as a whole.³¹ This is in part due to the media not being able to cover these kinds of issues in a sophisticated manner.

The final normative model of the public sphere is known as the agonistic tradition. In this model, the public sphere does not function as a means of forming a rational-critical consensus but as a space composed of citizens and groups who can have opposing stances to one another, and possibly to the policies and structures of their governments. Therefore, there is no definite common good that the public sphere is moving towards but a set of competing ideas of what the

²⁷ Benhabib, “Models of Public Space,” 84-85.

²⁸ “Public Sphere,” Oxford Bibliographies.

²⁹ Bruce Ackerman, “Why Dialogue?,” *Journal of Philosophy* 86 (1989), 16-17

³⁰ Benhabib, “Models of Public Space,” 85.

³¹ “Public Sphere,” Oxford Bibliographies.

common good is. Furthermore, the agonistic model does not discriminate against less formal aspects of communicative exchange, such as protests and rhetoric, as other models tend to do.³²

This is premised on the notion that marginalized groups may need to utilize said avenues in order to gain entry into the more mainstream public discourse.

The agonistic model is based on the idea that there is a dimension of antagonism inherent in all human societies that can be seen in their diverse social relations. Unlike the deliberative model, where politics is meant to achieve a rational consensus without exclusion, the agonistic model views politics as a means of “domesticating hostility.”³³ Politics helps establish a certain order through practices, discourses and institutions without completely resolving underlying differences between groups. Compromises similar to a rational consensus are possible but “should be seen as temporary respites in an ongoing confrontation”³⁴ and not evidence that the public has been rationally persuaded to adopt a single position. This conflict of values and ideas is argued to be not counterproductive for society but necessary to ensure that citizens are able to express all viewpoints.

Each of these normative models has strengths and weaknesses, with some favouring inclusivity at the expense of being politically effective while others perhaps place a needless level of importance on obtaining a single consensus. All the same, the more pressing issue here is whether they can be adequately applied to a transnational context. These models, as well as their theoretical underpinnings, are grounded in a system of thought centred on states that are generally Westphalian. As will be shown in the next section, globalization has fundamentally altered the political landscape in which the public sphere finds itself and whatever flaws inherent

³² Benhabib, “Models of Public Space,” 81.

³³ Mouffe, “Deliberative Democracy or Agonistic Pluralism?,” 276.

³⁴ Mouffe, “Deliberative Democracy...,” 276.

to these models that existed before are amplified when strict territorial boundaries are expanded and removed.

PART II: Building a Transnational Model

In many ways, globalization has altered basic political structures to reflect a world where time and space have been figuratively compressed. For the public sphere, this means its traditional conception now requires certain qualifications. There are now differing ideas as to what constitutes a “public” and there is also growing uncertainty as to whom opinion should be targeted. With the ongoing transformation in economic systems and inter-state relations, the public sphere is becoming increasingly less self-contained.

Consequently, global governance is now more transnational and the decision-making processes of states are becoming increasingly connected and interdependent. International agreements, treaties and organizations commonly address issues more comprehensive than simply trade and security. However, it would be misleading to suggest that this political landscape is simply a direct reflection of national structures but on a larger scale. There is no supranational body with the same control over a given region as a national government. As such, while the public sphere remains an integral part of democratic legitimacy, the traditional, state-oriented models explored in the previous section may not be entirely applicable to a transnational context. In this way, if one is to make an attempt at evaluating the European Union’s public sphere, it may be necessary to construct a new theoretical framework to which it can be compared.

This section will explore the relationship between globalization, transnationalization and the historical conception of the public sphere. Firstly, it will outline the dramatic changes to

world politics that have come about, and are continuing to emerge, due to the process of globalization. Secondly, it will show how the conception of the public sphere, as established in Part I, is no longer applicable with the decline of the nation state as a political unit. Third, this section will establish a model of a transnational public sphere as a means of measuring the democratic legitimacy of a real-world example.

Heterogenization and Transnationalization

The concept of globalization is exceptionally broad and incapable of being characterized with a rigid definition. Instead, it can be thought of as a “growing and evolving process of the (so far uneven) interaction of actors and groups stretching across national boundaries and state borders.”³⁵ There is not *a* globalization but *many* globalizations that are multi-faceted and intertwined. Accordingly, one cannot analyze the globalized world without understanding that its economic, social and political aspects are fundamentally inseparable.

Politically, globalization is not an entirely homogenizing and converging process but one that is paradoxically fragmentary as well. Holders of different national and ethnic identities are now better able to establish their competing interests in political spaces previously unavailable to them. Borders between countries have become permeable to the extent that states can no longer neglect the concerns of minorities and immigrants within their populations.³⁶ Economically, competition and comparative advantage have led to significant specialization and interdependence among countries. Although there are norms being spread throughout the world, namely democratization and neoliberalism, globalization should be considered a process creating

³⁵ Phillip G. Cerny, *Rethinking World Politics* (New York: Oxford University Press, 2010), 7.

³⁶ Slavko Splichal, *Transnationalization of the Public Sphere and the Fate of the Public* (New York: Hampton Press, 2012), 148.

and sustaining differences between jurisdictions rather than one that only converges and conforms.³⁷

Complicating this diversification of interests is the expanding number of transnational, non-state actors participating in the political process. Philip Cerny argues that this is not pluralism in the purest sense as the impact of globalization has been considerably uneven. There are no legal restrictions to any one actor or group gaining political influence on the world stage, though certain actors, chiefly nations, interest groups and multinational organizations, may be more effective at shaping politics and policy outcomes. Cerny invokes George Orwell's *Animal Farm* in stating that while theoretically all such actors can be considered equal, some are more equal than others due to their access to mobilize transnational resources, whether they are monetary, power or human.³⁸ While actors emerging from the private sector are gaining political influence, it should be noted that nations alone have binding power. As such, the world is not yet and may not ever be at a point where state-centric theory, particularly in international relations, can be entirely discounted.³⁹

Intertwined with this idea of transnational actors is the matter of increasingly transnational problems requiring multinational solutions. These types of issues generally fall into two categories. The first are issues that actors or populations argue should be universal, regardless of national culture or structure.⁴⁰ This includes concerns such as recognized standards of human rights. The transnational issues which fall into the second category are those which are either not resolvable by or are not caused by the actions of a specific nation.⁴¹ The most

³⁷ Cerny, *Rethinking World Politics*, 26.

³⁸ Cerny, *Rethinking World Politics*, 106.

³⁹ David Lake, "The State and International Relations," in *The Oxford Handbook of International Relations*, ed. C. Reus-Smit and D. Snidal (Oxford: Oxford Press, 2008), 42-43.

⁴⁰ Peter Marden, *The Decline of Politics: Governance, Globalization and the Public Sphere* (Burlington, VT: Ashgate Publishing, 2003), 5.

⁴¹ Marden, *The Decline of Politics*, 6.

prominent example of this type of problem is climate change. Public deliberation and decision-making in relation to these two issue areas has expanded beyond self-contained, national public spheres to what Cerny calls “pluralistic quasi democracy by proxy.”⁴² In lieu of each national jurisdiction having separate public discussions on the same subject, public spheres are moving towards being centred on specific niches without regard to physical borders. National public spheres have not withered away but they coexist with others that function with a broader purpose than looking to influence a single government.

Reassessing the Public Sphere

Based on this changing political landscape, what elements of the public sphere, as established in a national context, are not workable in a transnational context? While it remains the communicative space where the public order can be openly debated, the transnational public sphere will not be simply an enlarged version of its national counterpart just as international relations are not simply an enlarged version of those at the domestic level. Whatever form the transnational public sphere takes, it must account for the lack of a bounded ethnos and demos, the expanded interdependence among states and the growing influence and importance of non-state actors. Even features fundamental enough to be essential to any such space will likely need some sort of reconfiguration.

The first element of the public sphere set aside for its transnational application is the divide between the private and public so prevalent in the Habermasian and Arendtian systems of thought. For Habermas, the division between the public and the private was necessary to fulfill the principle of ideal speech, where citizens could deliberate rationally about the public benefits of government policies and actions without swaying to their personal interests or biases. Arendt,

⁴² Cerny, *Rethinking World Politics*, 192.

on the other hand, argued that separating the public sphere from the private is crucial for the fulfillment of action, the highest human activity. By allowing economic issues to pervade political discourse, the activities of work and labour are given improper value. This leads to citizens being unable to actively structure the world around them.⁴³

Despite the normative appeal, the distinction between the private and public has been blurring for quite some time. Social issues traditionally thought to be best kept within the confines of the home are commonly part of public discourse. Economic issues are frequently the prevailing talking points of modern election campaigns. Globalization, primarily driven by economic factors and encouraging the movement of people across and within borders, has exacerbated the difficulty in maintaining a separation between the public and private lives of individual citizens. This intertwining of the private and public has become a fixture of political discourse for the citizens of many states.⁴⁴ Personal beliefs and economic concerns informing public debate are no longer seen as inconsistent with the purpose of governance. Addressing such concerns is now considered an essential responsibility of the democratic process and, consequently, the public sphere.⁴⁵

As Seyla Benhabib argues, attempting to “[define] the agenda of public conversation is futile.”⁴⁶ Whatever the reasons for this shift in public preference, it looks to be permanent or at least exceedingly difficult to reverse. One should not perceive the argument that the transnational public sphere should do away with the private/public divide as a normative endorsement of the divide itself. It is instead a recognition that more pragmatic concerns may need to take precedence if the public sphere is to work in this context. Advocating for such a divide is

⁴³ Kostas Lavdas, “Republican Europe and Multicultural Citizenship,” *Politics* 21:1 (2001): 3.

⁴⁴ Benhabib, “Models of Public Space,” 79-80.

⁴⁵ Fraser, “Transnationalizing the Public Sphere, 12.

⁴⁶ Benhabib, “Models of Public Space,” 80.

certainly not unreasonable, but the doubtfulness that it could be realized means that the rise of the social, as Arendt terms it, is a constraint that should be worked with and not against.

The second element of the public sphere in need of reconsideration is that of direct participation. In its purest form, democracy involves citizens deliberating and collectively deciding a course of action for every issue. Obviously, with increasing complexity in policy-making and growing populations, representative democracy has come to be the preferred model for states. Although these practical concerns do play a part for establishing this structure, there are normative interests involved as well. Interest aggregation and the allowance of a select number of people to develop expertise in a given field are argued to lead to better policy decisions. This idea has been further bolstered with the emergence of the welfare state, where governments provide services affecting virtually all aspects of citizens' lives. As such, government policies are often quite technical and complicated. It would be unreasonable to expect ordinary citizens to be capable of discussing the minutiae of each of these issues and to then reach a rational consensus.

The concerns underlying the move away from direct citizen participation in the political process at the national level would be amplified in a transnational context. If it has become more difficult for citizens to understand complicated issues within a national public sphere, it is likely to be less feasible when other states are added into the mix.⁴⁷ Additionally, when dealing with multiple nations, a variety of languages can also be expected. Translation is obviously possible, but it will be difficult to establish a transnational public sphere modeled after its national counterparts when unconstrained public debate becomes more tedious.⁴⁸ It is partly for these reasons that Robert Dahl argues that it is impossible for international organizations to establish a

⁴⁷ Splichal, *Transnationalization*, 181.

⁴⁸ Splichal, *Transnationalization*, 179-180.

legitimate democracy.⁴⁹ Dahl contends that the democratic deficits rooted in these participation difficulties will worsen at the transnational level.

Nevertheless, others are less sceptical about the democratic possibilities of a transnational world. Habermas argues that the “democratic procedure no longer draws its legitimizing force only... from political participation and the expression of political will, but rather from the general accessibility of a deliberative process...”⁵⁰ Thus, as long as the process of democracy is legitimate and its outcomes are not irrational, citizens are less apt to question whether or not the government is acting with the public interest in mind. A cosmopolitan world government may not be plausible but a transnational public sphere that can hold governments accountable is still feasible as long as one is willing to continue democratic legitimacy’s move away from its historic origins.

With the private/public divide and the ideal of direct participation set aside, what basic features of the public sphere survive its evolution to a transnational conception? One of the most important aspects of the public sphere’s construction is its size. To determine who the “public” is, John Dewey’s definition remains the strongest way of limiting its proportions. Beyond the nation state, the public still consists of those affected by the indirect consequences of government and market transactions. Be that as it may, Dewey’s definition is also indicative of a time when a public was also a political community bounded by a territory. With the effects of globalization, one cannot argue that those affected by government transactions are limited to a specific area or citizenship.

Under these circumstances, theoretical frameworks of the public sphere must redefine the way in which one characterizes all those who are affected. For Nancy Fraser, this means the all-

⁴⁹ Robert Dahl, “Can international organizations be democratic?,” in *Democracy’s Edges*, ed. Ian Shapiro and Casiano Hacker-Cordon (Cambridge: Cambridge University Press, 1999), 19.

⁵⁰ Jürgen Habermas, *The Postnational Constellation*, trans. Max Pensky (Cambridge: MIT Press, 2001): 110.

affected principle should no longer consider the citizenship of the affected populations.⁵¹ In lieu of public spheres being oriented around national concerns and state interests, there could be separate public spheres centered on specific subjects. This would be in line with Cerny's "pluralistic quasi democracy by proxy" mentioned earlier, as the size and focus of the public sphere would be dictated by issue and not geography. Multiple, overlapping public spheres, as opposed to a unitary one covering all discussions, would develop. The transnational public sphere can thus be described as a sphere of publics instead of a homogenous, self-contained space.⁵²

Secondly, a transnational public sphere must ensure that it is properly inclusive of those who wish to access it. It must be open to all those who are affected or have an interest in the issue or concern at stake. Furthermore, there must be parity in its participation, meaning that any actors within the sphere must have, in principle, an equal opportunity to express their views, put forth problems or argue against a particular perspective.⁵³ This requirement is not inconsistent with the views of Cerny and Fraser in relation to multiple public spheres or the previous arguments concerning direct democracy. There is no expectation that the entire public participates for all issues, only that individuals or groups are able to provide input without restriction. It should be noted that while legal barriers would not exist, certain actors will be more effective due to a myriad of reasons, not least of which is access to resources.

This feature of the public sphere remains relatively consistent when transferred to a transnational context. One important wrinkle is that the transnational public sphere, if it is to be democratically legitimate, will need to place more emphasis on including transnational actors,

⁵¹ Fraser, "Transnationalizing the Public Sphere," 21-22.

⁵² Philip Schlesinger and Deirdre Kevin, "Can the European Union Become a Sphere of Publics?," in *Democracy in the European Union: Integration through Deliberation?*, ed. Erik O. Eriksen and John E. Fossum (London: Routledge, 2000), 206.

⁵³ Fraser, "Transnationalizing the Public Sphere," 20.

such as interest groups, NGOs and companies. Joseph Nye and Robert Keohane argue that with states no longer being the sole actors in world politics, a “good deal of intersocietal intercourse, with significant political importance, takes place without governmental control.”⁵⁴ While state actors are required, in most cases, to represent national interests due to democratic responsibility, non-state actors are free to act on the basis of interests that are free from such constraints. Non-state actors can advocate for resolutions to transnational problems while being less limited by zero-sum thinking.⁵⁵ Moreover, the value of non-state actors’ input has increased with governments shifting from “rowing” to “steering” services.⁵⁶ It is entirely possible that the traditional participants in world politics can set aside their national interests and act on the behalf of a greater whole. However, the importance that civil society now has in terms of shaping public opinion and providing services necessary to governance necessitates their inclusion in any discussion of the transnational public sphere.

Thirdly, the usefulness of a public sphere to those within it greatly depends on how well it can be used to mobilize public opinion. Essentially, a transnational public sphere must have normative legitimacy, in that it is capable of representing public opinion, as well as political effectiveness, wherein the perspectives and ideas arising from the sphere are capable of affecting actual change.⁵⁷ As Slavko Splichal argues, this means that a public sphere must be able to ensure that a sovereign power is held accountable for its actions and that even with transnationality this aspect remains unchallenged.⁵⁸ Though globalization has brought about a post-Westphalian world, a transnational public sphere must in some way be correlated with a

⁵⁴ Joseph Nye and Robert Keohane, “Transnational Relations and World Politics: An Introduction,” *International Organization* 25:3 (1971): 330.

⁵⁵ Sabine Lang, *NGOs, Civil Society, and the Public Sphere* (New York: Cambridge University Press, 2013), 35.

⁵⁶ Lang, *NGOs, Civil Society, and the Public Sphere*, 112.

⁵⁷ Fraser, “Transnationalizing the Public Sphere,” 20.

⁵⁸ Splichal, *Transnationalization*, 179.

democratic state. While there is a newfound plurality of political actors, there has not necessarily been an increase in the number of actors whose actions are required to express the will of the citizenry. As a result, the democratic state or federation, bounded and all, is still an essential aspect of a legitimate democracy on a larger scale.

Reassessing the Models of the Public Sphere

Each of the models of the public sphere previously explored is in line with the basic features of the transnational public sphere. The deliberative, liberal and agonistic traditions are all able to define a size for the public sphere, to include all concerned and to be connected to a democratic power. Even so, the purposes the purposes and processes of the public sphere dictated by these models do not equally make the transition to a transnational context. When expanded to a larger scale, the problems inherent in each of these models become amplified and their possible solutions become more unwieldy. With this in mind, which normative model of the public sphere is most adaptable to the challenges of the globalized political landscape?

For the deliberative model, its primary issue has always been the achievability of a rational consensus in the Habermasian sense. This can be partly traced to the historical construction of the public sphere in *The Structural Transformation of the Public Sphere*. There are claims that the bourgeois liberal constitution that Habermas describes never really existed in the first place or that its legitimacy in influencing political action has been overstated.⁵⁹ Conversely, there are other claims that the model of the public sphere in Habermas' work is utopic in that it could have only truly existed during a precise time period and is no longer valid

⁵⁹ Nancy Fraser, "Rethinking the Public Sphere: A Contribution to the Critique of Actually Existing Democracy," *Social Text* 25:26 (1990): 58.

for the 21st century.⁶⁰ Put another way, people were able to achieve rational consensus in large part because the participants of public deliberation were of a similar demographic, namely the upper class of society.

These historical criticisms are amplified when one considers the application of the deliberative public sphere to the globalized world. If Habermas' model did not genuinely exist in the period he described, one could expect even greater problems in applying it to a time where the public sphere is not as self-contained. With actors from multiple countries participating, bringing varying worldviews and perspectives on public policy, achieving a rational consensus becomes unlikely. One could go even further and argue there is no single, objective best practice for international government. Citizens of diverse nations could have varying but equally valid ideals concerning public policy and the purpose of the state.⁶¹ Consensus may not be viable.

Additionally, practical concerns accompany these normative issues. The process of deliberation on the scale needed for transnational governance may also prove to be difficult as the exchange of ideas would need to be filtered through national media and communicative spaces. There is no single media outlet that can currently aggregate the perspectives of all concerned parties and disseminate them in all required languages. Therefore, there is no public space where opinions can be shared without the refraction of national perspectives.⁶² In relaying news to citizens, national media outlets may tailor their reports to only the most relevant elements for a specific region. As a result, a rational consensus would require a considerable amount of back and forth between communicative spaces, a process potentially too lengthy and tedious for governments to use effectively. In essence, the concerns relating to a deliberative transnational public sphere, rooted in its expectations of public discussion and the mobilization

⁶⁰ Fraser, "Rethinking the Public Sphere," 59.

⁶¹ Mouffe, "Deliberative Democracy...", 275.

⁶² Fraser, "Transnationalizing the Public Sphere," 10-11.

of public opinion, are simply too great. Its theoretical basis is arguably sound but it lacks practical applicability.

The liberal model of the public sphere faces similar challenges in its expectation for the content of political conversation. Proponents of the liberal model are not of the view that citizens are able to argue from a purely rational standpoint within a neutral framework similar to the concept of ideal speech. Instead, the liberal model acknowledges that there may be differences in worldviews and values between groups that are not bridgeable. Despite these divisions, the model also contends that there are ways to agree on governance without affecting core concerns. In this way government can be seen as a means of advancing equality while allowing individuals to live their private lives without intervention.⁶³

Yet, there remains the practical problem that opposing groups are supposed to anticipate their deepest disagreements without first having such a conversation. Groups may also disagree where the line is between private core concerns and public governance. As Seyla Benhabib argues, this is particularly problematic with the increase of social issues appearing in public policy, such as abortion, domestic violence and gay rights. Benhabib asks “What kind of issues are they? Are they questions of justice or of the good life?”⁶⁴ She goes on to argue that in order to define the nature and shape of such issues, unconstrained public dialogue is needed. Society is constantly renegotiating where the distinction between such issues is, founding “all struggles against oppression in the modern world.”⁶⁵ Giving excessive credence to the accommodation of all groups may limit the possible well-being of individuals and society overall. It could restrict the public’s ability to scrutinize and reform ideas based on reasonable criticism.

⁶³ Ackerman, “Why Dialogue?,” 16-17.

⁶⁴ Benhabib, “Models of Public Space,” 82.

⁶⁵ Benhabib, “Models of Public Space,” 84.

As with the deliberative model, the liberal model faces challenges at a national level that are likely to be magnified in a transnational system. In order for a liberal transnational public sphere to effectively influence government action, different groups and individuals must be familiar with each other, which may not be realistic. Fulfilling the principle of conversational restraint could prove difficult if participants are less aware of other groups' core concerns. Moreover, an issue of social justice for one jurisdiction may remain a private concern for another. If there is to be supranational governance in some form, it may be impossible to limit government action to policy areas commanding agreement.

In order for both the deliberative and liberal models to become more democratically effective and transferable to a transnational space, there would need to be convergence of public perspectives on personal interests and values. If governments highly value either rational consensus or conversational restraint, they would do well to limit the diversity of worldviews within their populations. However, purposefully affecting such cultural change has proven immensely difficult for governments in the past, especially in democratic societies founded on the ideals of free expression and plurality. Citizens may heavily resist such efforts even if their ends, namely a public sphere that is better able to hold the government to account, are reasonably sound.⁶⁶

The agonistic model also faces challenges when one considers its application to a transnational context. But, its associated solutions are more realistic than those of its counterparts, making it the most feasible model. The primary difficulty with regard to the agonistic model is channelling the inherent antagonism and conflict between groups into something politically productive. The model does not hold the expectation that public deliberation will resolve the discord amongst participating citizens. This means that in place of

⁶⁶ Mouffe, "Deliberative Democracy or Agonistic Pluralism?," 276.

the public agreeing on a course of action, there is an understanding that certain groups will likely remain opposed. Government decision-making is more of a temporary respite in an ongoing conflict.⁶⁷ This can lead to a significant amount of political inertia; any policy movement will face hostility. It is possible to be sceptical of the agonistic model for this reason, as without the ability to facilitate the mobilization and convergence of public opinion the public sphere would serve the airing of grievances rather than ensuring the accountability of a sovereign power.

To be an effective means of grounding democratic legitimacy, the agonistic model necessitates strong political institutions that allow for the expression of all views without sacrificing the ability of officials to make decisions. Such institutions must be able to provide the public with assurance that the government is taking the public sphere into account even when a significant portion of the population vehemently disagrees with a government action. Although a sort of consensus may be reached, decisions will inevitably exclude certain groups. The process of democracy must be perceived as legitimate without having resolved conflicting perspectives. Whichever groups are excluded must perceive the government as having made a decision between real alternatives, as opposed to having suppressed dissenters for the benefit of few.⁶⁸

Despite these potential issues the associated solutions are not unfeasible, making the agonistic model the strongest candidate for a transnational context. The difficulty in establishing an agonistic transnational public sphere is that there are no existing rules or indicators as to what a democratically legitimate transnational political structure should resemble. There has been reasonable success at the national level forming democratically effective public spheres but this does not entail guaranteed success transnationally. Due to a number of factors, among them language, compatibility of governments and population size, it is unlikely that democratic

⁶⁷ Splichal, *Transnationalization*, 5.

⁶⁸ Mouffe, "Deliberative Democracy...", 277.

mechanisms identical to those at the national level will allow governments to successfully facilitate a public sphere on a larger scale.

Nevertheless, the case for the agonistic model is strengthened by its receptiveness to ingrained differences between groups. The model acknowledges that participants in the public sphere do not view themselves as collaborators working to achieve a rational consensus. Instead, participants are embedded in an adversarial relationship, where the other is perceived as “a legitimate enemy...with whom we have in common a shared adhesion to the ethico-political principles of democracy.”⁶⁹ Thus, while there is a dimension of antagonism inherent in society due to differences in political views, there is also a prevailing understanding that the political process can order this existing hostility and institute a peaceful coexistence.

The compression of time and space brought about by globalization has, in some respects, fundamentally changed the way in which democratic legitimacy can be evaluated. With the traditional, self-contained versions of the public sphere no longer workable for this political landscape, this section has explored a transnational model for the public sphere. This model is less demanding than a number of its counterparts as it does not hold the expectation that participants will be able to reach a rational consensus or that participants will be able to agree upon what are available for public deliberation. Instead, there is a greater onus placed on governments to establish institutions capable of domesticating and ordering conflict, allowing for the expression of dissent while maintaining decision-making ability. Within this framework, the next section will examine a real-world transnational public sphere, namely that of the European Union. The established model will be used to evaluate whether a Europeanized public sphere capable of democratically legitimizing supranational power has emerged.

⁶⁹ Mouffe, “Deliberative Democracy..”, 276.

PART III: Evaluating the Public Sphere of the EU

If one is to compare a normative model of the transnational public sphere to a concrete, real-world example, the European Union is the best and virtually only option. Other regions of the world are highly interdependent and in close geographic proximity, but the EU is unique in that it has a political structure that explicitly links states together. The overarching structure of the EU is ostensibly supranational, but its power is not so centralized that a unified supranational public sphere can be observed. In a way, the EU is an international organization that has codified a transnational network of governance, making a comparison to the transnational model of the public sphere viable and potentially more useful. Unlike other regions where transnational networks have emerged, the EU has committed to shared sovereignty to the extent that it has more of an obligation to live up to the model's ideals.

What began as the six-nation European Coal and Steel Community has expanded to an economic and political union of 28 member states intertwined by a systems of institutions, a number of international treaties and a common currency. Be that as it may, the progress of European integration has not been without significant challenges and setbacks. Broadly, the EU and its history can be characterized by the tension between its supranational and intergovernmental elements. Integration was first conceived as a means of advancing interdependence to ensure that a devastating conflict like World War II could not be repeated. However, underlying the emergence of the EU is a more expansive normative idea of "Europe" as a cohesive collective actor. Each incremental movement towards this ideal has been accompanied by resistance from state governments unwilling to cede their sovereign rights and from national populations weary of shifting towards a European identity. This ongoing struggle

has fed into the view that that integration has been driven by elites, with the perceived remoteness of the EU's decision-making leaving European society largely unaware of such progress.⁷⁰ The EU may be facing a democratic deficit attributable to its lack of success in establishing a transnational public sphere.

This section examines whether there is any truth to this assertion by evaluating the public sphere of the EU in comparison to the model established in Part II. This will be done by responding to three successive questions. First, has the EU created institutions capable of domesticating hostility and facilitating governmental action to address transnational issues in a democratically legitimate manner? Second, has the creation of these institutions led to European-level issues being part of the public discourse? And third, are the participants of this discourse consistent with the ideals of the transnational model of the public sphere? Based on these responses, I propose a possible way forward for the EU, one that looks to ensure the legitimacy of the union in the eyes of the public without dictating its specific form or direction.

A notable exclusion from this evaluation is examining the transnationality of outcomes resulting from the EU's decision-making process. Accordingly, this paper will not look at whether actions taken by the EU have advanced the interests of Europe as a whole relative to the interests of individual member states. There are a number of reasons for this omission, most obvious being an analysis of the EU's specific policies being well beyond the scope of this paper. More importantly, the transnational model of the public sphere, as based on the agonistic tradition, is relatively unconcerned with the specifics of what kind of public consensus is reached. There is an understanding that there is no objective common good for governance, only that there are broad ideals relating to structure and practice. Therefore, while the two are

⁷⁰ Neil Filgstein, *Euro-Clash: The EU, European Identity and the Future of Europe* (Oxford: Oxford University Press, 2008), 2.

certainly linked, the outputs of the democratic process in this particular evaluation are not as relevant as its inputs.

Evaluating the Public Sphere of the EU

Institutions and Political Structure

If the European Union is to live up to the ideals of the transnational public sphere as constructed in Part II, it requires an integrative political structure responsive to the desires of the European population. The institutions that give form to this political structure are also needed to define the basic elements of any public sphere, namely its size, its inclusivity and its accountability. These institutions do not guarantee that a public sphere will be formed or that it will be effective but they allow for a population to feel as if there is a purpose to public discourse. For many, a responsible and legitimate government is one whose actions are reflective of the public interest.

There are four main institutions of the EU that are able to dictate the size of its public sphere. The European Commission is the most explicitly supranational of these, although it too has intergovernmental elements. It can be characterized as both the executive body of the EU as well as its central administrator.⁷¹ The Commission has the right of initiative in EU policy formation and is also in charge of monitoring policy implementation. This authority does not extend to an agenda setting role in areas such as the armed forces, nominations of judges or foreign policy.⁷² While its Commissioners originate from member states, they are bound to act with the interest of Europe as a whole in mind. In this way, the Commission is able to assert a kind of European identity by being the most straightforwardly answerable to the transnational

⁷¹ Morten Egeberg, "The European Commission," in *European Union Politics*, ed. Michelle Cini and Nieves Pérez-Solorzano Borrigan (Oxford: Oxford University Press, 2010), 130.

⁷² Egeberg, "The European Commission," 131.

population of Europe. Still, in practice the Commission is partly intergovernmental as its policy proposals are not created in a vacuum and are heavily influenced by state governments and the EU's less supranational sub-institutions.

The Council of the European Union (also known as the Council of Ministers or simply the Council) is one of the two legislative bodies in the EU tasked with approving Commission policy proposals before they can become law. Similar to how the transnational public sphere is a misnomer implying unity, the Council is actually more of a series of councils with 10 configurations for various policy areas, such as agriculture, the environment and transportation. Each configuration is composed of the Ministers responsible for the respective policy area in the member states.⁷³

The European Parliament is the other of the EU's legislative bodies. While less influential than the Council, its powers have consistently expanded over time. The European Parliament's 751 members (MEPs) are directly elected by the citizens of EU member states, with most being part of seven transnational political parties. Along with being able to approve the appointments of various EU officials, MEPs can dismiss the Commission as a whole with a vote of no confidence. Nevertheless, the European Parliament cannot directly initiate any legislation and its powers regarding budgetary concerns cover spending only and not taxation.⁷⁴

Each of these three institutions remains partially subject to the will of the European Council, which is made up of the heads of EU member states and presided by a separate President. Along with nominating various high level officials, the European Council sets the major agenda for the EU as a whole and is also responsible for resolving issues where consensus

⁷³ Jeffrey Lewis, "The Council of the European Union and the European Council," in *European Union Politics*, ed. Michelle Cini and Nieves Pérez-Solorzano Borrigan (Oxford: Oxford University Press, 2010), 143-144.

⁷⁴ Charlotte Burns, "The European Parliament," in *European Union Politics*, ed. Michelle Cini and Nieves Pérez-Solorzano Borrigan (Oxford: Oxford University Press, 2010), 163-164.

cannot be reached in lower levels. In essence, the European Council fixes the framework within which the other EU institutions are to act.⁷⁵

Together, the four main institutions of the EU outlined here sufficiently define a size for a possible public sphere. In line with Dewey's definition of the public, those who are affected by the indirect consequences of transactions can be cared for as the citizens of all member states are represented in each governmental body, although some more directly than others. It is generally distinguished which countries have a say in policy formulation and what is the jurisdiction of the EU. Granted, there are some blurred lines when one considers countries such as Switzerland, Norway and Lichtenstein, but the EU largely meets at least the minimum conditions for this requirement of the public sphere.

Defining a size for the public sphere is arguably the easiest to accomplish of the detailed basic features. To evaluate the EU's inclusivity, the structure of the EU must be examined in more detail as opposed to delineating the reach of institutions. To the extent that the EU itself is in control of this element, it can be said that there has been reasonable success in allowing for civil society and the public writ large to participate in the political decision-making process. This can be attributed to the fact that while the institutional setup implies decision-making in the EU is carried out by self-contained units, in practice it is handled at lower levels.

For instance, the Commission is supported by approximately 1,200 expert committees composed of representatives from member states as well as representatives from various interest groups, NGOs and public and private lobbies.⁷⁶ These committees aid in policy formulation and in anticipating future reaction to proposals. Being the EU's supranational authority, transnational

⁷⁵ Lewis, "The Council of the European Union and the European Council," 155.

⁷⁶ Egeberg, "The European Commission," 138.

groups are especially encouraged to participate in this process.⁷⁷ The Commission is further aided by what it calls comitology committees and a network of national regulatory agencies that are well-versed in the technical measures required for policy implementation. While the Commission retains final authority on what proposals are submitted to the Council and Parliament, the details and function of policies are largely completed by a process involving the EU polity.

Similarly, supporting the Council is a series of sub-institutions with an eye on making EU policy-making process more inclusive. Directly assisting the work of the Council are the two Corepers composed of the heads or deputy heads of mission from EU member states in Brussels. Both Coreper I and Coreper II meet on a weekly basis and are some of the “most intense sites of negotiation in the EU.”⁷⁸ The Corepers have a defined role of maintaining the performance of the Council and are the preparatory body that set the agenda for Council meetings. Much of this is made possible by their oversight and coordination of approximately 250 sub-committees and working groups made up of civil servants who sort out policy issues of both a technical and sensitive nature.

It is not uncommon for governments to extensively consult with stakeholders during the policy-making process. Yet, the EU is rare in that it has established explicit structures to allow for a more inclusive process. These avenues for participation are also consistent with the ideals of the agonistic model as they are set up to convert the hostility between viewpoints into politically viable arguments for decision makers to consider. Whether or not the EU has successfully encouraged the participation of non-state actors to the standards of the transnational

⁷⁷ Egeberg, “The European Commission,” 139.

⁷⁸ Lewis, “The Council of the European Union and the European Council,” 147.

model of the public sphere will be explored later on in this paper. However, it can at least be said the governmental bodies as established could plausibly fulfill the inclusivity requirement.

In terms of accountability and responsiveness to the public sphere, the EU is more of a mixed bag. There are two primary reasons for this. Firstly, competences have been unevenly transferred to EU-level control. European integration has been characterized by the term “Variable-geometry Europe,” or “Multi-speed Europe,” which “acknowledges that there are irreconcilable differences within the integration structure, [therefore allowing] for a permanent separation between a group of Member States and a number of less developed integration units.”⁷⁹ Different parts of the EU integrate at a level and pace depending on the political climate in respective member states. Hence, while a competence may be at the EU level, not all state governments are bound to adhere to any decisions or regulations pertaining to the policy area.

Secondly, the EU’s answerability to its transnational population is hampered by its decision-making mechanisms. For many policy areas, the Council is able to use the process of Qualified Majority Voting (QMV) to reach a decision. With QMV, approval is based on a formula using benchmarks regarding the number of votes allotted to member state representatives and the population figures of respective nations. In this way, a measure can be implemented without wholesale approval of Europe. Even so, the decision-making practices have shifted towards consensus, even for those competences where QMV is available.⁸⁰ As such, when exerting its power the EU is often forced to do so in a way that advances the interests of all state jurisdictions, leading to lowest common denominator decisions. Criticisms have been raised that this approach undermines the purpose of the EU as an organization meant to facilitate more

⁷⁹ “Synthèses de la législation,” Europa, accessed June 13, 2014, http://europa.eu/legislation_summaries/glossary/variable_geometry_europe_en.htm

⁸⁰ Lewis, “The Council of the European Union and the European Council,” 151.

collective action. Instead of acting with a transnational goal, states push for the least invasive measures to ensure their national interests are protected.⁸¹

In order to overcome these concerns, the EU has introduced new modes of governance. These soft tools, meaning they are non-binding, produce not legislation but what are basically recommendations and guidelines. The most prominent of these is the Open Method of Coordination, or OMC. The OMC was a compromise solution that allowed the EU to be involved in policy areas over which member states did not want to lose control. It has been most expansively used in the field of labour and employment policy, where it is the primary mechanism of the European Employment Strategy. A voluntary form of cooperation, the OMC relies on the pressure of naming and shaming through the public monitoring and evaluation of specific indicators in relation to the policy area.

In examining the institutions of the EU, one cannot conclusively observe whether a successful transnational public sphere has emerged. However, this analysis shows that the EU has established a political structure that at least plausibly meets the requirements to facilitate a transnational public sphere consistent with its ideal basic features. The EU is unlike a central government akin to that of a national state. Still, its four primary institutions impose a size for the public sphere, the numerous sub-institutions give non-state actors the opportunity to participate and there are various policy areas where EU officials are ostensibly responsible. Therefore, based on its political structure, the idea that a European public sphere exists is not necessarily proven but cannot be discounted.

From the preceding analysis, there are two conceivable possibilities regarding the EU and how successfully it has engaged with the public sphere. On the one hand, the EU is a work in

⁸¹ Christopher Hill, "The Capability-Expectations Gap, or Conceptualizing Europe's International Role," *Journal of Common Market Studies* 31:3 (1993): 305.

progress and an experiment in international governance. European integration may only be advancing when it is publicly endorsed. For instance, one could take a neo-functional view and argue that integration in one sector inevitably spills-over to other unforeseen areas as the governments and citizens of Europe slowly begin to increase their support.⁸² One could also argue, as Berthold Rittberger has, that integration is dependent on states and their populations favouring integration through a cost/benefit analysis. Europe first looked to harmonize economic policies as this kind of benefit was easiest to quantify. Integrating other areas may provide a normative benefit that is less measurable, meaning citizens take longer to warm up to the idea.⁸³ Within these two modes of thought, one can see the EU as progressing towards integration only when it is within the interest of participants in the public sphere.

Conversely, one's breakdown of the EU's political structure and history could lead to a belief that, as previously mentioned, European integration has been overly elite-driven. For instance, the rejection of the *Treaty establishing a Constitution for Europe* was partly attributed to portions of the public feeling alienated from the EU.⁸⁴ Additionally, the low turnout levels in European Parliament elections may signify a dissatisfaction with or repudiation of the EU's power. In 2009, European voter turnout reached a low of 43%,⁸⁵ a level that was matched with the 2014 elections.⁸⁶ In this way, there may be evidence that Europe's uneven integration is due to continued resistance from citizens in the public sphere.

⁸² Carstan Stroy Jensen, "Neo-functionalism," in *European Union Politics*, ed. Michelle Cini and Nieves Pérez-Solorzano Borrigan (Oxford: Oxford University Press, 2010), 60.

⁸³ Berthold Rittberger, "Which Institutions for Post-War Europe? Explaining the Institutional Design of Europe's First Community," *Journal of European Public Policy* 8:5 (2001): 681.

⁸⁴ Clive Church and David Phinnemore, "From the Constitutional Treaty to the Treaty of Lisbon and Beyond," in *European Union Politics*, ed. Michelle Cini and Nieves Pérez-Solorzano Borrigan (Oxford: Oxford University Press, 2010), 46.

⁸⁵ Burns, "The European Parliament," 169.

⁸⁶ "Slightly higher election turnout averted a 'big disaster,'" EurActiv, accessed June 13th, 2014, <http://www.euractiv.com/sections/eu-elections-2014/slightly-higher-election-turnout-averted-big-disaster-302383>

There are considerable shades of grey between these two extremes. It is likely that the EU falls somewhere in the middle between being a facilitator of integration backed by the public interest and being a force of integration at the opposition of citizens. Simply analyzing the institutions of the EU is not sufficient to find where on this spectrum the truth lies. Hence, the next two questions and their responses will look to illuminate to what extent a transnational public sphere has formed within the EU.

Visibility of EU in European Public Discourse

Despite coming into existence with the coming into effect of the *Maastricht Treaty* in 1993, and being rooted in other forms going back to 1952, it is not a *prima facie* case that the EU is visible in the public discussion of its associated policy fields. The EU remains a union with intergovernmental and supranational elements and it is not obvious that issues are discussed as “European” and not simply framed within a national perspective. If the EU is to be evaluated on its transnational public sphere, the obvious question must be asked as to whether issues affecting its population are discussed as “European” issues or only framed within a national perspective.

Ruud Koopmans and Paul Statham authored studies in 2002 and 2010 examining communication flows in the European media to answer this very question. Koopmans and Statham used a large-scale, cross-national data set drawn largely from newspaper sources, covering the years 1990, 1995 and 2000-2002. They specifically studied instances of claim-making, which as stated by the authors:

...consists of a purposive and public articulation of political demands, including calls to action, proposals, and criticisms, which, actually or potentially, affect the interests or integrity of the claimants and/or other collective actors. For each claim, we coded the actor who makes it, the addressee to whom it is made, the

policy issues raised, and the ways in which these issues are framed, referring to specific normative, institutional, and spatial contexts.⁸⁷

Claims were separated into seven policy fields (monetary, agriculture, immigration, troop deployment, pensions, education and European integration) where the EU had various levels of control. With this data, Koopmans and Statham were able to empirically determine if the more than 20,000 individual claims analyzed showed a trend towards more visibility of the EU in communicative spaces. This trend could be shown in two ways, either vertically (where supranational-level speakers and actors appear in national discourses) or horizontally (where actors from different national polities appear in the discourse).

The research showed that within the European mass media, debates regarding policy fields where the EU had strong competences (such as monetary or agricultural policy) have become increasingly Europeanized. This is especially valid regarding vertical communication flows. Overall, from 1990 to 2002, the visibility of EU actors in media debates had increased from 9% to 15%, with higher increases in policy fields where the EU had stronger competences.⁸⁸ For example, the visibility of EU-level actors in monetary policy debates went from 9% to 25% over the same period.⁸⁹ Regarding horizontal communication flows, the picture is more blurred. While policy fields characterized by inter-governmental or supranational decision-making see a high share of EU-level actors and actors from other countries in debates, this has not trended upwards over time, remaining at around one fifth of all claims. Additionally,

⁸⁷ Paul Statham, "The Emergence of a Public Sphere for the European Union: What Prospects for Transnationalism?," in *Transnational Europe: Promise, Paradox, Limits*, ed. Joan DeBardeleben and Achim Hurrelmann (New York: Palgrave Macmillan, 2011), 81.

⁸⁸ Statham, "A Public Sphere for the EU," 82.

⁸⁹ Statham, "A Public Sphere for the EU," 82.

policy areas where competences remain national have much lower instances of Europeanized debate, such as pensions, with 7%, and education, 6%.⁹⁰

It is not surprising that an increase in supranational decision-making leads to an increasingly Europeanized debate in the mass media. However, when evaluating the public sphere of the EU, it is important to be able to demonstrate that its citizens have opportunities to understand and discuss issues from a transnational perspective. Although not all policy fields currently have high visibility, the relationship between the transfer of competences to the EU level and the shift away from public deliberation of a national nature indicates that the political structure of the EU has been successful in facilitating this crucial aspect of the transnational public sphere. Thus, one could reasonably project that if the EU were to gain competences in other areas, there could continue to be favourable outcomes in this respect.

There remains one further aspect of the EU's public sphere in need of investigation and it is crucial to measuring up to the transnational model. This section has shown that EU issues are debated publicly within a European context but not whether the participation of these debates extends to non-state actors essential for a legitimate transnational public sphere. In essence, the political discussion of the EU needs to be evaluated qualitatively as well as quantitatively, which the next section will look to accomplish.

Participation in the EU Public Sphere

In order for the transnational public sphere to contribute to the legitimacy of a democratic power, the agonistic tradition-based model suggests that non-state actors, notably those in civil society capable of representing transnational interests, are critical participants. Disagreement on substantial issues between such parties is not only expected but welcomed as democratically

⁹⁰ Statham, "A Public Sphere for the EU," 81-82.

productive. Therefore, it would be prudent to investigate whether civil society can sufficiently articulate their interests in the EU's multi-level decision-making processes.

Koopmans and Statham also looked to offer a response to this inquiry. Along with observing the visibility of the EU in mass media debates, they examined what kind of actor was making claims.⁹¹ Collective actors were separated into five categories: State Executive and Government, Judiciary, Legislative and Political Parties, Media, and Civil Society. The data was then organized to illustrate instances of three kinds of communication flows that could be demonstrative of Europeanization. First, a top-down vertical form of supranationalization of national public spheres can be implied with EU-level officials appearing in debates conveyed in national news media. Second, a bottom-up vertical form of supranationalization can be observed with domestic actors, in their national media, making claims referring to European-level institutions, issues or actors. Third, there can be instances of horizontal Europeanized communication, with domestic actors referring to national-level claims, institutions or actors from another country. With this methodology, it was possible to see the makeup of actors participating in European level public discourse.⁹²

There is no normative standard of distribution for categories of collective actors if a public sphere is to be legitimate. To this end, Koopmans and Statham also collected data regarding claims made by domestic actors referring to domestic issues. With this purely national set of data, a kind of control group or probable standard could be established. In order to measure this aspect of the EU's transnational public sphere, the representation of non-state actors, including civil society, is compared to their representation in national public spheres rather than a specific benchmark. If the idea that the transnational public sphere requires greater

⁹¹ Statham, "A Public Sphere for the EU," 83.

⁹² Statham, "A Public Sphere for the EU," 83-84.

participation from such actors holds, their representation should be higher in a European context than in a national context.

	National	Vertical top-down		Vertical bottom -up		Horizontal	
		All policy fields	European integration	All policy fields	European integration	All policy fields	European integration
State Executive and Government	36.5	80.3	72.0	41.6	42.6	67.6	68.3
Judiciary	2.4	0.7	1.2	0.6	0.4	0.6	0.3
Legislative and Political Parties	19.6	15.6	24.3	17.4	23.5	11.6	15.0
Media	6.2	0.2	0.3	19.1	20.9	7.9	8.4
Civil Society	35.3	3.1	2.2	21.2	12.7	12.2	8.1
Total %	100	100	100	100	100	100	100
<i>n</i>	4,446	4,223	2,129	5,316	2,628	4,722	2,360

Table 1: Participation of collective actors (by type) in forms of Europeanized public policy debates compared to national ones (column percentages)⁹³

As Table 1 shows, civil society actors have difficulty gaining traction in Europeanized debates relative to national level debates. This is markedly the case for the vertical top-down type of communication flow. To some extent, it should not be surprising that civil society does not appear as frequently in top-down forms of deliberation. Still, it is interesting how executive level officials have gained representation so strongly at the expense of every other type of collective actor. This is especially true when averaged over all policy fields, where executive government members outnumber legislative members by a factor of almost five.

For the vertical bottom-up form of communication flow, one could expect a reverse of the previous form, with non-state actors gaining a greater foothold in the mass media. Still, while the overrepresentation of executive actors is not as pronounced, civil society continues to have difficulty ensuring its voice is heard by the European public. The distribution is more even, but collective actors from civil society still see their representation drop relative to national levels.

⁹³ Statham, “A Public Sphere for the EU,” 85.

Also of note is that in top-down and bottom-up vertical forms of debate, actors from the legislative level and from political parties are better able to mobilize their demands in the context of European integration, suggesting that it is an important policy area for political campaigns.⁹⁴

Lastly, with horizontal communication flows, executive government actors see a high prominence in mass media, particularly with regard to European integration debates. Legislative actors and political parties see lower numbers compared to the other communication fields indicating that there may be significantly less transnational party activity, with collective actors of this type more concerned with supranational issues.⁹⁵ Similar to the results from the other two communication flows, civil society actors have a much weaker position relative to executive members of state and EU-level institutions.

Overall, the results from Koopmans and Statham's research demonstrate that state and EU executive government members, prominent at the national level, dominate mass media debates regarding European issues. Moreover, this high participation of executive actors seems to come at the expense of civil society and thus at the expense of reinforcing democratic legitimacy in a transnational context. From this set of data, it looks as though public policy debate of transnational issues in the European Union is lacking participation of non-state actors. In this way, the EU's public sphere largely fails to satisfy a crucial aspect of the transnational model.

The outcome of Koopmans and Statham's research is consistent with those of other similar studies. A 2005 study conducted by Stefanie Siffert et al. concluded that while there is opportunity for public scrutiny of European governance, a common European discourse has not yet emerged and the legitimacy of the EU's democratic process remains dependent on those of

⁹⁴ Statham, "A Public Sphere for the EU," 87.

⁹⁵ Statham, "A Public Sphere for the EU," 88.

its member states.⁹⁶ Sifft et al. further argued that this lack of ideal European discourse is not currently a dramatic problem due to the relative unimportance to the public of competences shifted to the EU but that additional centralization of power could pose challenges. A 2008 study led by Harmut Wessler also came to a similar conclusion, arguing that national newspapers have increased their coverage of the EU but not of other countries. Wessler contends that a pattern he calls “Segmented Europeanization”⁹⁷ has developed, where the level of European-level discourse is uneven depending on the policy area.

What are the reasons then for the apparently non-controversial claim that the inclusiveness of the EU’s public deliberation is lacking? One could point to media performance. Perhaps the European media is neglecting to cover civil society actors in favour of the more traditional political actors within governments. This line of thinking runs into a few problems though. Firstly, while the role of the media is to report most objectively and not necessarily most inclusively, journalists interviewed by Koopmans and Statham largely considered it as part of their profession to “take responsibility for addressing any perceived participation deficits.”⁹⁸ Journalists were also consistent in their complaints that the EU makes minimal effort to address citizens through national media, undermining the argument that journalists focused on government officials due to their accessibility.⁹⁹ Lastly, Koopmans and Statham’s data from the national-level debates shows a much higher representation of non-state actors. This indicates that the media is willing to include civil society actors in public debates and it would be difficult to argue that they would not be willing to extend this opportunity for European-level discourses.

⁹⁶ Stefanie Sifft et al., “Segmented Europeanization: Exploring the Legitimacy of the European Union from a Public Discourse Perspective,” *Journal of Common Market Studies* 45:1 (2007): 127.

⁹⁷ Harmut Wessler et al., *Transnationalization of Public Spheres* (New York: Palgrave Macmillan, 2008), 40.

⁹⁸ Statham, “A Public Sphere for the EU,” 90.

⁹⁹ Statham, “A Public Sphere for the EU,” 90.

Instead, what is more likely underlying the EU's participation deficit is its labyrinthine political structure. As discussed previously, the EU's institutions are able to meet the minimum requirements needed to facilitate a public sphere. The establishment of these basic features does not necessarily guarantee an effective or legitimating public sphere and it looks to be here where the EU falls short. For instance, while citizens elect members of the European Parliament, there is no direct link between the outcome of these elections and the composition of the EU executive body.¹⁰⁰ Furthermore, with proposals essentially requiring approval from four separate and often competing institutions, the EU's policy and decision-making processes are exceedingly complex, leading to policies or regulations that are technocratic and difficult for the public at large to understand. This interlocking system of checks and balances also makes it complicated for non-state actors to know which governmental body it would be most beneficial to lobby for changes. For this reason, the participation deficit in the EU may be exacerbated by civil society opting to lobby at the national level due to its relative straightforwardness.

A Way Forward for the European Union

In terms of fulfilling the ideal transnational public sphere, the EU's record of success is mixed. The EU's political structure allows for transnational action, at least in some cases. The European public sphere has reflected this centralization of power with coverage of European-level issues in mass media debates. However, in comparison to the transnational model, the participants of these debates are too often executives from state and EU governments. This lack of participation from non-state actors suggests that the EU has been unable to establish a public sphere capable of holding the supranational European power to account. Consequently, it may be that European integration has progressed without sufficient buy-in from the public at large.

¹⁰⁰ Burns, "The European Parliament," 162-163.

The perception of an elite-dominated EU has become increasingly prominent, demonstrated most forcefully by the rejection of the *Treaty establishing a Constitution for Europe* (Constitutional Treaty), signed in 2004. The Constitutional Treaty looked to create a more powerful EU in the form of a European federal state with a legal personality.¹⁰¹ Throughout its history, the EU and its citizens consistently struggled with reaching a consensus as to where on the intergovernmental/supranational spectrum the EU should fall. The Constitutional Treaty was meant to “strike a sweeping blow”¹⁰² in this regard, firmly establishing the normative ideal to which the EU aspires. Despite these efforts, the citizens of many nations were taken aback not only at how extensive the integration proposed by the new constitution would be but also at how far European integration had progressed seemingly without their knowledge.¹⁰³ This anti-European sentiment from some corners has not subsided, evidenced by the 2014 European Parliament elections. Of the 751 MEPs, almost 15% are now representatives of parties identified as anti-federalist or Eurosceptic.¹⁰⁴ Accordingly, it may be unlikely that a treaty as comprehensive as the Constitutional Treaty will be proposed anytime in the near future.

Previously, it was posited that the EU’s political structure as constructed leaves open the possibility that the EU has either a strong or weak public sphere. There are apparently ample opportunities for the public to take part in the political decision making process but this has not translated into a fully inclusive European discourse. In this way, European integration has been allowed to progress to a point where a Constitution was proposed without the awareness of non-state actors. Yet the rejection of the Constitution shows that the public sphere of the EU is not

¹⁰¹ Church and Phinnemore, “From the Constitutional Treaty to the Treaty of Lisbon and Beyond,” 45.

¹⁰² Claudia Schrag Sternberg, *The Struggle for EU Legitimacy: Public Contestation, 1950-2005* (New York: Palgrave Macmillan, 2013), 186.

¹⁰³ Sternberg, *The Struggle for EU Legitimacy*, 190-91.

¹⁰⁴ “European elections: results from across Europe,” *The Guardian*, accessed June 13, 2014, <http://www.theguardian.com/politics/ng-interactive/2014/may/25/european-elections-results-across-europe-eu-parliament>

entirely deficient and that decision-makers can be receptive to the mobilization of public opinion. With regards to integration being publicly-backed or elite driven, the EU likely finds itself somewhere in between but too close to the latter to not be a concern for democratic legitimacy.

Options for Resolution

There are two principal ways of conceiving of the EU as a system of international order. Each of these models of governance differs in significant respects than that for the nation-state and has varying demands regarding decision-making and democratic legitimacy. As such, the strength of the public sphere required for these models differs as well. The problem for the EU is that it straddles the line between the two models, which may be a primary issue underlying its democratic deficit concerns.

The first of these models conceives of the EU as more of a regulatory order. Here, the EU is constructed as “a functional type of organization whose purpose is to promote the material interests of the member states by means of transnational rather than supranational institutions.”¹⁰⁵ States are linked by issue-based transnational networks but are still relatively segmented. Legitimacy of the EU is then not necessarily based on democratic processes but performance, meaning that it is conditional. If the EU does not advance the interests of states in line with public expectations, support can be withdrawn.¹⁰⁶ In this way, the democratic legitimacy of the EU would be highly dependent on the democratic processes of member states and the EU itself would not afford political rights beyond the national level. A regulatory order EU would be a stronger version of how transnational governance currently occurs. International

¹⁰⁵ John Erik Fossum and Philip Schlesinger, “Introduction,” in *The European Union and the public sphere: A communicative space in the making?*, ed. John Erik Fossum and Philip Schlesinger (New York: Routledge, 2007), 12.

¹⁰⁶ Fossum and Schlesinger, “Introduction,” 13.

organizations and treaties act as a kind of regulatory order but public spheres are more restricted to domestic levels.

The second model conceives of the EU as a federal entity, constructed as “a rights-based federal Union, based on the core tenets of the democratic constitutional state.”¹⁰⁷ Unlike the regulatory model, citizens are afforded political rights and are aware of their entitlements and obligations. While the EU promotes a post-national identity, citizens are able to continue identifying themselves nationally.¹⁰⁸ The decisions made by EU officials are binding on all member states but, like any other constitutional democracy based on federalism, regional differences are protected. Cultures among nations integrate to an extent but are more linked politically with shared values of democracy and pluralism. The federal model is certainly more demanding than its regulatory counterpart and its centralization of power requires a stronger transnational public sphere. In place of weaker communicative spaces divided by issue, there would need to be overlapping public spheres varying in strength. Institutions, such as a parliament, would be the foundation for stronger publics that directly ensure accountability while external pressure from weaker publics, such as those based on civil society, could ensure wider public debate of issues.¹⁰⁹

One could make the argument, then, that the EU is being unfairly criticized for its perceived democratic deficit. Perhaps the EU should be viewed within the framework of the regulatory conception and one should be more forgiving when evaluating the European public sphere. The problem with this line of reasoning is that the EU, at least with respect to certain policy areas, is indeed a supranational institution with centralized power. A number of its regulations and policies are binding on member states and there are limited avenues for

¹⁰⁷ Fossum and Schlesinger, “Introduction,” 14.

¹⁰⁸ Fossum and Schlesinger, “Introduction,” 14.

¹⁰⁹ Fossum and Schlesinger, “Introduction,” 15-16.

withdrawal. Furthermore, the history of the EU shows a progression towards a structure that is more federal than regulatory, underlining the need for evaluation based on a stronger model of the public sphere.

In essence, the EU's democratic structure is comparable to that of a regulatory order while power is centralized more like a federal entity. If the EU is to legitimately issue decisions unilaterally, there would need to be greater powers awarded to the European Parliament and the Council acting as a kind of second chamber co-legislating.¹¹⁰ With such structural changes, the policy and decision-making processes of the EU could be greatly simplified. As a substitute to every directive essentially being negotiated by 28 member states, officials from European-level institutions would have greater capability to make decisions autonomously based on a mandate of democratic responsibility to Europe as a whole. Thus, the European polity, and civil society in particular, would be better able to understand where to place their lobbying efforts.

It would also be reasonably acceptable if the EU were to step back and structure itself as more of a regulatory body. The transnational model of the public sphere would then be less relevant to the EU, which would have a weaker obligation to fall in line with such theoretical ideals. The EU would be an organization that facilitates transnational governance without imposing the concept of Europe as a cohesive collective actor.

The important decision to be made is which of these two modes of governance Europe should strive towards. Either is acceptable on a normative level but there needs to be some sort of commitment in order for the EU to properly structure itself and define its powers. What the EU may need is a constitution. The process of going about implementing such a document would need to be considerably different than that for the Constitutional Treaty. The failure of the 2004/2005 attempt can primarily be attributed to the absence of a strategy for constitutional

¹¹⁰ Fossum and Schlesinger, "Introduction," 16.

ratification, a poorly managed presentation to the European public and the general unintelligibility of the document.¹¹¹ As such, it may not necessarily be that Europe is opposed to the idea of a constitution but if one is to be implemented better methods to encourage public buy-in are needed.

The specifics of this constitution are details that are well beyond the scope of this paper, which is simply to evaluate the public sphere of the EU. However, the basic foundation of the document would need to distinguish the EU as either a regulatory or federal body. As Habermas argues, whether one is a “sovereignist” or “federalist,” all can agree that “delimitation of the competences of federal, national and regional levels is the core political issue to be settled by any European constitution.”¹¹² To become an effective and democratically legitimate organization, the EU needs a stronger rule of law, where each level of governance has a comprehensive understanding of its powers. Citizens need opportunities to effectively influence decision makers, as opposed to the current system where every policy decision begins as a negotiation regarding whether the EU should have such competences. In this way, if the EU is to fulfill the requirements set out by the transnational model of the public sphere, and plans to persevere with the project of European integration, a constitutional document could be what determines the path forward.

Conclusion

For many, the 2009 Eurozone Monetary crisis cast into doubt the future existence of the EU. It looked as if the financial instability of member states would be the catalyst for reversing

¹¹¹ Robert Podolnjak, “Explaining the Failure of the European Constitution: A Constitution-Making Perspective,” *Collected Papers of Zagreb Law Faculty* 57:1 (2007): 1.

¹¹² Jürgen Habermas, “Why Europe Needs a Constitution,” *New Left Review* 11 (2001): 26.

decades of European integration. On the other hand, some never questioned the EU's survival. There the EU was always as much a political project as an economic one, if not more so. Facilitating economic interdependence was not simply meant to increase trade and wealth but to be part of the larger goal of advancing European integration. Regardless of poor economic performance, the EU would persist due to the often less tangible political benefits and its fulfillment of a normative ideal of supranational union. The citizens of more financially capable states would have to prop-up the less stable, but they would also be secure knowing that their interests would help shape the future of Europe as a whole.

Still, there is an argument that the claimed democratic legitimacy of the EU should be treated with suspicion, that the political benefits of “Europe” have been overstated. Unfortunately, what this paper has shown is that these fears are not entirely unfounded. There does seem to be a democratic deficit in the EU due to its overly intergovernmental and opaque decision-making structure. As a consequence, a transnational public sphere devoid of adequate non-state participation has emerged, leaving public debate of EU-level issues largely up to governmental actors. If the EU is to survive long-term, it would do well to reduce this deficit in order to bolster the counter-argument of being a political project, especially if there remain economic difficulties.

The EU essentially needs a more open and simplified process of political decision-making, one in which the European public is able to effectively voice their concerns and disagree on substantial issues.¹¹³ Currently, the system of institutions in the EU has not generated an inviting or inclusive process, despite sub-institutions evidently created to do so. Furthermore, with states and their populations wary of unilateral action that is to their detriment, EU decisions tend to be without teeth and are frequently constructed to be non-invasive rather than effective.

¹¹³ Sternberg, *The Struggle for EU Legitimacy*, 230.

The EU and its citizens need to come to an understanding that a more rigidly delimited structure is needed if the democratic deficit is to be reduced but that this does not necessarily imply that the legitimacy of the EU can no longer be contested. Pursuant to the agonistic model, the meaning of legitimacy is ever changing and can never be fully or permanently fixed.¹¹⁴ If the EU is to thrive in the coming future it requires avenues for fundamental contestation to ensure its actions remain within the interest of an evolving polity. The vision and direction of the EU can and should change over time but its foundational democratic principles need to carry on, with a sound transnational public sphere a necessary part.

¹¹⁴ Sternberg, *The Struggle for EU Legitimacy*, 230.

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