

Crossing the Borders of Order: Democracy beyond the Nation-State?

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As substantial areas of human activity are progressively organized on a regional or global level, the fate of democracy, and of the independent democratic nation-state in particular, is fraught with difficulty. (Held 1997, 251)

Is democracy in the national state, then, destined to meet the fate of democracy in the city-state? ... In the same way that the idea and practice of democracy were shifted away from the city-state to the larger scale of the national state, will democracy as an idea and a set of practices now shift to the grander scale of transnational governments? (Dahl 1994, 27)

As processes of democracy are spreading across national borders, justifying authority as the main political function of democracy has become increasingly difficult to organize (Walzer 1983). Representative democracy within a political entity and based on a system of constitutionally entrenched shared values has become less feasible as processes of policy shaping and implementation, production, financial markets, and communication are no longer exclusively based on either national constitutions or international treaties. It is now increasingly problematic to draw on the norms embedded in the institutions of the liberal nation-state that have provided a stable framework for a principled relationship between a collectivity and a polity.

Instead of asking what is the model of democracy, I propose to pursue the question of democratic legitimacy as an interplay between process and procedure that gives rise to an institutional setting. This setting in turn secures the balance between the collectivity (the people) and the polity (the state). The focus is thus on an interactive process-oriented approach to polity formation and, more specifically, on the norms that are constitutive for democratic polities. Democratic theories identify different approaches to democratic legitimacy such as “interest-based model of democracy” and “deliberative democracy” (Young 1996, 120). While the interest-based model has proliferated in most current liberal democracies, the deliberative model has received increasing attention among scholars who seek to address deviations from formal institutions such as the focus on accommodating differences on the one hand, or on new forms of policy negotiations on the other.

Currently, two types of change in global politics challenge core assumptions about democracy. The first change is the changing shape and pattern of polities. The modern nation-state appears to present medieval traits such as a pluralist conglomeration of polities, overlapping authority, and divided loyalties (Ferguson 1996a; Ferguson 1996b; Held 1997, 261). The second change refers to the shape and behavior of political actors. International relations scholars have found that global politics is increasingly shaped by nongovernment actors whose action has an impact beyond the limits of national borders. This pattern of acting across borders has an effect on the performance of both domestic and international politics (Clarke et al. 1998; Jacobson 1996; Soysal 1994; Tarrow 1998; Wapner 1995). These practices undermine the familiar perceptions of democracy as “an idea and a set of practices” (Dahl 1994, 27) established on the limited site of the nation-state and raise doubts as to whether or not “the nation-state itself can remain at the center of democratic thought” (Held 1997, 252). Both challenges move the theoretical debate over democratic political order beyond the nation-state. As this chapter argues, this does not just trigger a critical rethinking of modern concepts. The necessity of approaching the subject of democratic political order beyond bounded political communities (Held 1992) has led to a new interest in debating democracy—beyond the boundaries of political theory and comparative politics—in international relations (IR) theory.

This chapter attempts to do two things. First, it points to a conceptual problem that evolves from state-centric approaches to democracy at a time when the regulating and problem-solving capacities of territorialized political orders are gradually declining. Second, it suggests shifting focus from (state-centric) models of democracy toward practices and norms of democracy. While models are familiarly based on principles and procedures, practices and norms are assumed to be mutually constitutive of creating the *substance* of democracy.¹ Two approaches sustain the focus on substance. First, IR scholars, and the various strands of constructivists in particular, have begun to explore the impact of *norms* as the immaterial structures that are constitutive for agency behavior. Second, critical theorists have introduced the concept of deliberative democracy in an attempt to link the liberal principles of fair justice and equal rights to guide the relationship between citizen and state with the republican principle of participatory governance by means of deliberation (Benhabib 1996; Cohen 1996). Both facilitate a view on democracy that is based on *practices*. If it is true that practices are constitutive for changing norms and institutions (Koslowski 1994; Kratochwil 1989), then this opening is crucial. It facilitates a way of addressing the middle ground of institution building that has been found lacking in much of recent constructivist theory building (Checkel 1998, 335, 340).

In agreement with social constructivists, I point to the crucial impact of norms on politics notwithstanding borders of national polities. Yet, drawing on historical institutionalism, I argue that while socially constructed norms have a structuring aspect on political processes, political practices equally influence the construction of norms and institutions. I suggest that this dialectic between norm construction and structuring politics can be fruitfully assessed within the framework that is provided by the identities, borders, orders triangle (see the introduction to this volume by Lapid). In other words, while changes of identities, borders, and orders have been pointed out as crucial and dramatic challenges to politics, the changing constellation of the three corner points of the triangle is approached via the substantive practices at its core. They are taken as the basis of democratic rule. While this perspective ultimately aims to identify new institutional ties between the collectivity of citizens and changing types of polities, this chapter is limited to identifying conceptual

shortcomings of state-centric approaches and raising propositions for alternatives. The debate over the “democracy deficit” in the European Community, and now European Union, is taken to illuminate the point.

This chapter is organized into three sections. The first section points to the two major caveats of state-centric approaches to democracy and their application to postmodern polity patterns. The second section turns to the example of the democracy deficit debate in the European Union (EU) and singles out the two major strands in the debate. The third section suggests that postmodern democratic substance is based on contested access to participation in changing identity, borders, orders constellations. In conclusion, the chapter points out that while fading democratic legitimation presents a dilemma for state-centrally framed approaches to democracy, debates over access to participation in changing polities offer a theoretical access point for alternatives.

BEYOND MODERN BORDERS OF ORDER: CHANGING THE TRIANGLE

The growing tension between the classic democratic ideal and the actual circumstances of democratic practice has been characterized as developing between the rhetoric of “great cosmopolitan charm” and a practice that is “pretty thin on the ground” (Walker 1993, 141; cf. Dunn 1979, 2). This section advances a perspective on *practices* and *norms* as two mutually constitutive factors for modern democratic political order. Both are crucial for assessing the tension between theory and practice. It proceeds to discuss the mutually constitutive role of practice and norms in constructing the discourse of political order. I argue that if social practices and norms are interdependent, it follows that the prevailing constitutive norms that were influential for establishing modern democratic polities might be affected in an equal—yet different—way by postmodern practices. Studying these practices would subsequently facilitate an insight into the construction of postmodern democratic norms.

Both practices and norms are identified as the substance of democracy and hence deemed central factors for assessing changing democratic order. One crucial indicator of democracy, and its stability or deficit, is therefore the tension between ideal assumptions about and practices of democracy. A cursory review of day-to-day political discourse shows, indeed, that political actors usually resort to the

ideal in order to legitimize their actions. Thus, both international and national authorities refer to the principle of majoritarian rule in the attempt to legitimate their authority. Despite a growing distance between collectivity/ies (the people) and polity/ies (the state) on the ground, world leaders such as the former Secretary General of the United Nations (UN) Boutros Boutros-Ghali and the fifteen signatories of the Treaty of European Union (TEU) maintain that their style of governance is democratic because the treaties that frame their political practice have been signed by the people's representatives. The UN Secretary General's understanding of the category "people" as a bearer of democracy, as well as the EU's intention to bring "peoples" together, represent that phenomenon. He states, for example:

The word *democracy* does not appear in the United Nations Charter, but its opening words are "We the peoples of the United Nations." The notion of democracy—that political legitimacy derives from the people—is therefore central to the foundational document of the United Nations. (Boutros Boutros-Ghali 1995, 3)

Representatives of states are familiarly taken to speak on behalf of the people. This representative function is seen as a sufficient condition to legitimize political action within democratic contexts. However, while both the UN Charter and the Treaty of European Union have been signed by representatives of peoples, from the act of signing it is not possible to draw conclusions about democratic order. While the procedural aspects defined by the text of the treaty are evident, the practices and norms that are at the core of the substance of the particular democratic order are not. In other words, while, historically speaking, it remains hypothetical whether or not the people's consent to a particular text could actually be guaranteed, the democratic legitimization of politics is based on precisely that assumption. Perspectives on democracy—be they cast from the EU, the national, or the global level—are derived from experiences with and expectations of democratically organized states and the expectations they produce, while not paying much attention to the actual practice of democracy.² Indeed, as R. B. J. Walker writes, "to ask what democracy could possibly be in relation to 'the people' in general or to structures of global power is to engage with the great silences of contemporary political discourse" (1993, 146). To break the silence, we need to go beyond an assessment of what democracy

means in formal terms and address *how* democracy is practiced and *who* makes claims to *which* political institution.

In the following, the political consequences of changing norms and practices are sketched within the framework provided by the triangle of identities, borders, and orders. The basic assumption is that modern democracies have established a balance among the three corner points of the triangle (see Figure 1). Key to this stable balance was the institutionalization of central political authority resting on shared norms, routinized practices, and formalized procedures. As practices change and, inevitably, if more slowly, norms are redefined, the triangle loses its balance, and, in the process, the democratic political order is challenged. For remedies, it is suggested to take the middle ground of the triangle, i.e., the changing practices and norms, as the point of departure, not the corner points. This procedure rests on the assumption of territorialized conceptual caveats that are inherent in all three corner points, yet which appear to be more easily circumvented in the middle ground of practices and norms as the substance of democracy.

In modern times the framework of democracy has come to be characterized by the territorially bounded nation-state, a constitution and a *demos* as the *pouvoir constituant* that conferred legislative power to the government as the *pouvoir constitué* (Grimm 1995; Held 1992). The nation-state with its definition of belonging and rights—expressed by citizenship—as the central political institution with power and authority on the one hand, and formal election procedures as the practices that attributed legitimacy to it on the other, were constitutive of the liberal democratic norm of justice and equality. Together they provided sufficient means for building and maintaining democratic legitimacy. The understanding of citizenship as generating identity and offering rights sustained this normative framework (Brubaker 1992; Soysal 1994). The constructed belongingness attached to a myth of national identity provided the strong territorialized border for this democratic order (Anderson 1991).

In the second half of the twentieth century, the modern democratic context had changed. While the institutional settings of national states including constitutions remained largely unchanged, the citizenry and the borders of nation-states had undergone major changes. Most visibly two developments contributed to the perforation of borders of the collectivity and (national) polities respectively. First,

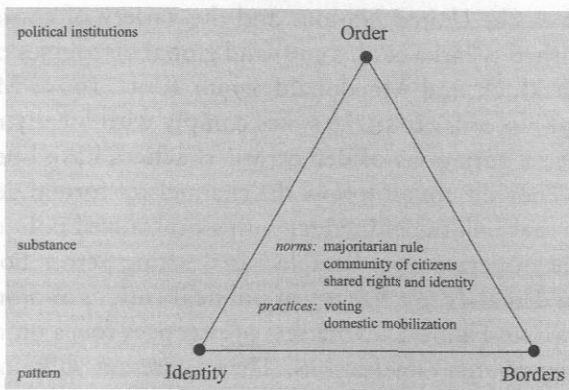


Figure 1. Democratic order in modern nation-states.

border crossing by a variety of nonstate actors such as interest groups, as well as transnational movements and migration flows, have challenged the perception of a shared national identity as the building block for the *demos*. Second, international interdependence expressed by institutional arrangements that went beyond international treaties, such as regimes and much more strikingly the pooling of sovereignty among states in the European Community and now Union, has challenged the sovereign power of the (national) polities. Both processes have contributed to nonstate actor mobilization on a global level around policy-shaping processes of international organizations, e.g., nongovernment organizations' (NGO) networks aim to influence the World Trade Organization (WTO). Local social movements and interest groups have begun to successfully apply globally developed human rights discourse as a resource in local community disputes. And in the EU, lobby groups, NGOs, legal advisers, and a number of unidentified political actors have formed *policy networks* as new actors on an intermediate level within the Euro-polity (Bromberg 1996; Mazey 1993; Peterson 1995).

In other words, a variety of political actors who are often characterized as forming part of a global civil society (Macdonald 1994; Shaw 1994; Wapner 1995) mobilizes around policy issues such as trade, the environment, and social policy. Their motivation can be summed up along two different sets of transnational practices. One focuses on interest groups demanding a say in policy processes that stretch beyond national polities; the other uses international institu-

tions such as the United Nations and the variety of conferences it has established (Clarke et al. 1998) and global discourses on human rights (Blacklock and Macdonald 1998; Klotz 1995; Menschenrechte 1998) in order to make states comply with locally raised demands. These variations of democratic practices have one thing in common: They do not all follow the channels of formal democratic procedure that link the individual with a centralized political entity. Instead, they operate on a flexible basis, acting across boundaries, addressing demands to a variety of political entities and/or levels of governance (see Figure 2). Both sets of practices focus on new ways of accessing political institutions. They express a shift in political action as a reflection of new types of polities that constitute the space for a "politics without a centre" (Della Sala 1999).

The societal and political changes that follow from these practices of border and order crossing challenge the substance of democracy in a way that leaves no easy answers on the basis of formal institutional innovations. Indeed, they shed light on the limits of democratic procedures and access to participation in postmodern polities. However, they do not simply challenge the validity of modern democratic norms beyond the nation-state; they also contribute to the gradual redefinition of central. Different from studies that focus on the effects of global norms that penetrate national politics (Menschenrechte 1998; Klotz 1995), I seek to also assess the impact of actors on the construction of norms. The focus is on changes in state-society relations that are enhanced by globalization. The leading empirical question is: how does the essence of identity and order hold under the challenge of globalization, which brings about, for example, medieval-like polity patterns and postmodern citizen behavior?

The booming literature on citizenship and migration is one expression of emergent cracks in the once successfully established democratic norms. In other words, the modern "crystallization" of citizenship rights and state building is losing its balance. As a discourse that reflects and sets the "borders of order" (Kratochwil et al. 1994) and a core institution to the construction of modern polities, citizenship has long been challenged by political actors. Social movements, as well as advocacy groups and interest groups, have taken issue with the twofold pattern of citizenship consisting of *rights* and *identity* by struggling for *access* to participation. The changing global political scenario suggests that this basic pattern of citizenship

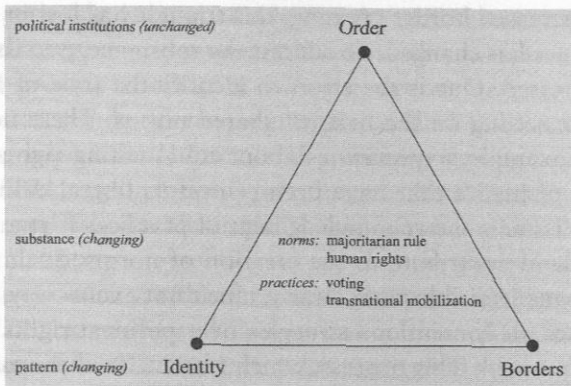


Figure 2. Substantive changes within modern nation-states.

is now further challenged by processes of globalization that enforce the stress on access even more. With the fading overlap of identity and political borders, the access problematic enhances the problem of democratic deficit. It can therefore be concluded that the practice of border crossing involved in current interest politics and migration flows highlights the dissonance between democratic principles and democratic practice. The substance that ties both together is, however, shifting, and therefore requires further examination.

I argue that the crucial theoretical and empirical problem posed by this transformation is the conceptual mismatch between the medieval pattern and modern substance. While the pattern of current polity constellations may be medieval, i.e., the form of political entity varies according to overlapping borders, the substance of these polities bears the experience of modernity. It is entrenched in historically constructed institutions and socially constructed norms. Although subject to change, the traits of history including modernity will not disappear because democratic substance is marked by historicity. It follows that any research on the principled articulation of political space within and accordingly among these polities stands to incorporate a tension between pattern, i.e., changing constellation of units, and substance, i.e., norms constituted through practice. The pattern of differently structured and shaped polities without fixed boundaries challenges modern assumptions about democratic substance that are best characterized by the triangle of identities, borders, and orders (see Figure 1).

With increased border crossing, this triangle has lost its balance; the substance has changed. To address the substance, two issues need to be addressed. One is the effort to identify the style of a specific democratic setting on the basis of shared norms. These norms express, for example, expectations about equal voting rights and the principles of justice that have been central to liberal democracies. The other issue is the acknowledgment of practices that are guided by norms and contribute to the creation of norms. Such practices have been made visible most clearly, albeit not exclusively, by work that focuses on contentious struggles over political rights (Tarrow 1998; Tilly 1975). This process, which I have elsewhere called “citizenship practice,” has contributed to the forging of institutionalized terms, i.e., the norms, of citizenship (Wiener 1998). It has therefore been found to acquire a central role in processes of state building. It follows from these observations that the mutually constitutive role of practices and norms shed light on the substance of democracy in different contexts. As analyses of democracy in a post-Westphalian nonstate cannot rely on the rhetoric of cosmopolitan charm derived from the classic democratic idea, they must turn to the messy situation on the ground to focus on the empirical facts about new forms of constructing democracy. From these facts and from expectations and experiences of democracy, insights about the social construction of new forms of sovereignty and citizenship may be conceptualized. In order to assess democracy as a meaningful concept for post-Westphalian polities, we need to establish new coordinates at the crossroads of dissolving sovereignties and newly emergent identities in the form of new political institutional links. This task involves studying emerging democratic norms in context.

THE DEMOCRACY DEFICIT DEBATE IN THE EUROPEAN UNION

Students of global politics have observed the emergence of a new pattern of politics in postmodern³ times. Crucially, they argue this pattern differs from the core realist assumption of an international system of (nation-)states. Instead, it shows medieval traits presented by a pluralist conglomeration of polities “the essential characteristics of which was a system of overlapping authority and divided loyalties” (Held 1997, 261). However, “while students of democracy have examined and debated at length the challenges to democracy that emerge from within the boundaries of the nation-state, they

have not seriously questioned whether the nation-state itself can remain at the center of democratic thought; the questions posed by the rapid growth of complex inter-connections and interrelations between states and societies, and by the evident intersection of national and international forces and processes, remain largely unexplored" (ibid., 252). Indeed, debates over how democratic order might be established within a polity that does not match the pattern of modern nation-state polities suggest that the theoretical capacity to imagine democracy within a nonstate polity remains limited at best.

The EU's extensive and largely inconclusive discussion of the "democracy deficit" is a case in point. It suggests that, conceptually speaking, an answer to Dahl's question of whether or not we are about to reinvent the city-state above the modern national state as a context for democracy is more often than not a "yes." This chapter contests that answer by elaborating on the theoretical and empirical consequences of a negative answer to Dahl's question. It contends that while modern democratic institutions have adapted to and been formed by the concepts of liberal or communitarian styles of democracy, this sort of adaptation has yet to take place with a view to democratic polities after modernity. If it is true that global politics is currently undergoing a large transformatory change toward post-modern or, for that matter, medieval patterns of organization, then we need to address the substance of this sort of organization and its ability to recontextualize modern democratic concepts. The following summary of this debate points to the fact that both approaches miss the target of establishing democratic legitimacy because they operate on the assumptions of the modern triangle of political order (see Figure 1), based firmly on fixed identity and formal procedures.

In comparison with the centrally organized liberal democracies of nation-states, the EU represents a dramatically deviating case. As a polity that is neither an international organization nor a national state, the EU does not encompass the formalized democratic institutions of national liberal democracies. The Euro-polity is a political arena that is not fixed but in a continuous state of construction. Its incremental character is specified in the TEU that establishes the determination of its fifteen signatories "to maintain the *acquis communautaire* and build on it" and to "create an ever closer union among the peoples of Europe."⁴ While comprising a supranational bureaucratic apparatus and a highly sophisticated system of economic

integration, no familiar concept of governance applies to the EU. Even though the EU is considerably more than an international regime, it is still less than a fully fledged polity (Wallace 1996). In this political entity, the process of governing and being governed stretches across various levels, it is polycentric, and citizens are entitled to fragmented citizenship rights and practices. As a result, voting and "tangible policy change" (Wendt 1996, 62) appear increasingly disconnected.

In this context the democracy deficit has been defined as a "gap between formal legitimization and material democratic deficiency."⁵ To address the deficit conceptually or politically requires some framework of reference that defines the core normative and institutional characteristics. Finding such a framework is made exceptionally difficult by the undefined character of the EU's polity.⁶ For studies of the relation between potentially emerging collectivity/ies and polity/ies in this context, it is important to consider that this developing relation is placed within the context of a "new practice of governance beyond the state" (Jachtenfuchs 1995, 115). The actors who influence policy changes appear in a new variety of shapes and with new fragmented and diffused patterns of territorial affiliation identified as policy networks that act across multiple levels of governance. While it is entirely possible to speak of the EU as a system of governance encompassing a broad spectrum of supranational policies, institutions, and a constitutional framework, this system differs from modern nation-states. The polity fits within the perception of a new "medieval" pattern of global polities (Ferguson and Mansbach 1996a) (see Figure 3). The EU has, for example, taken steps toward building institutions that establish a principled relationship between a collectivity and a newly emergent polity including the step-by-step expansion of a quasi-constitution (integration through law), the stipulation of political citizenship rights, and the pooling of sovereignties in various policy areas. These institutional innovations are tied together by the concept of subsidiarity. Together these changes give a new postmodern character to the Euro-polity.

These institutional innovations notwithstanding, or possibly precisely because of these significant challenges to modern experience and expectation, the Maastricht treaty has renewed the debate over democracy (Everson 1998; Grimm 1995; Weiler 1997, 1999; Zuleeg 1997). Two major strands have developed in the course of this de-

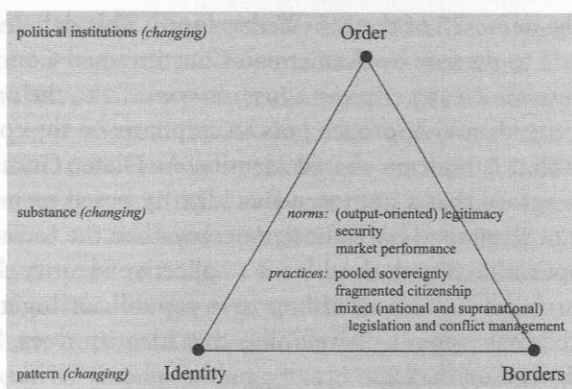


Figure 3. Changing the IBO constellation toward a postmodern democratic order?

bate. They reflect the twofold set of norms that have so importantly contributed to the meaning of modern citizenship, i.e., rights and identity. Accordingly, the first strand focuses on the establishment of formal political institutions in order to establish legitimacy within the multilevel Euro-polity. I term this approach the *procedural approach* because formal political procedures are considered the primary factor for establishing democratic legitimacy. The other strand discusses the possibilities of developing a European *demos*. Contributors to this line of thought draw on constitutionalism, legal thought, and political theory in particular (Grimm 1995; Preuss 1998). I call this model the *identity approach* because a shared identity is considered a necessary condition for democratic legitimacy. While the European *ethnos* based on nationality is not necessarily required, a shared European identity in a republican or communitarian sense is expected nonetheless.

The former model focuses on the formal conditions of democracy such as establishing centralized democratic organs including a stronger European Parliament, an elected Commission, a bicameral Council of Ministers, as well as a stronger constitutional basis of democratic institutions, for example, citizenship (Monar 1998). Thus, for many observers, the lack of appropriate institutions is the main cause of the democracy deficit, "the lack of a responsible EU parliament and the lack of a European polity" (Anderson and Eliassen 1996, 3), exemplifying its core. The latter has produced an ongoing debate on

“Who is the demos?” of the EU (Weiler 1996). This debate was crucially pushed to the fore by the German Constitutional Court’s Maastricht Judgment of 1993 (Zuleeg 1997). In contrast to the procedural approach, the identity approach puts an emphasis on the collectivity, the *demos* that is built on shared identity. As Dieter Grimm points out, if it is agreed that a homogeneous identity based on a common ethnos is not a required basis for democracy, then the focus remains on a European identity derived from a collective identity developed by the European *demos* according to a republican logic (Grimm 1995; Habermas 1992c). Developing this identity does, however, crucially depend on the existence of a public sphere. “What obstructs democracy is accordingly not the lack of cohesion of Union citizens as a people, but their weakly developed collective identity and low capacity for transnational discourse. This certainly means that the European democracy deficit is structurally determined. It can therefore not be removed by institutional reforms in any short term. The achievement of the democratic constitutional state can for the time being be adequately realized only in the national framework” (Grimm 1995, 297).

The European debate over democracy has been characterized by the search for a missing public sphere, which would ideally form the birthplace for a European *demos* built on a collective European identity (identity approach) on the one hand, and the absence of political issues that would mobilize voter interest on a European level (procedural approach) on the other. Propositions to overcome the democracy deficit have subsequently included Europe-wide referenda (Grande 1996) and improving the conditions for representative democracy in order to stabilize the formal link between Euro-politicians and the electorate, for example, by electing the Commission (Hix 2000). As Renaud Dehousse has critically pointed out, such a majoritarian avenue toward tackling the democracy deficit would, however, involve identifying shared issues of European political interest to establish a political substance similar to that of national politics (Dehousse 1995, 120). The former hinges on a shared language, which has so far not developed; the latter requires further sovereignty pooling toward the creation of a European center, an unlikely development after the recently increased intergovernmentality of EU politics.

In sum, debates over how democratic order might be established within a polity that does not match the pattern of modern nation-

state politics suggest that the theoretical capacity to imagine democracy within a nonstate polity remains limited at best. The EU's extensive and largely inconclusive discussion of "democracy deficit" is a case in point (Grande 1996). Indeed, the thrust of this discussion suggests that, conceptually speaking, an answer to Dahl's question "Will democracy as an idea and a set of practices now shift to the grander scale of transnational governments?" (Dahl 1994, 27) is currently still hard to imagine in other than state-centric terms. The temptation to reinvent a state above the modern national state as context for democracy persists despite the serious theoretical challenges, pointed out by European integration scholars in particular (Armstrong and Bulmer 1998; Joerges and Neyer 1997; Ladeur 1997; Majone 1994; Schmitter 2000).

TOWARD A PROCESS-ORIENTED APPROACH TO POLITY FORMATION

The previous section shed light on the temptation to reinvent the nation-state beyond its own borders based on the example of the democracy deficit debate in the EU. In the remainder of this chapter I argue that the deterritorialization of politics, i.e., the rupture of political institutions, practices, and principles from the concept of the modern nation-state,⁷ cannot be successfully met by focusing on questions of formal democratic procedures or identity politics alone. As insights from constitutional theory suggest, the institutions, practices, and principles of a constitution and its respective impact on democratic rule depend on a set of historically contingent practices that construct the meaning of the constitution (Bellamy and Castiglione 1996). They contribute to the construction of regulative and constitutive norms. The practices and norms are hence mutually constitutive for the substance of democracy. This substance is historically contingent; it is reflected in the institutionalized state-society relations. However, it changes according to place and time. As political institutions are increasingly decentered, yet still require legitimation for decision making, and political processes extend beyond borders, it is no longer obvious how to organize political order. Efforts to address this problem in the EU have, so far, resulted in bringing back the two main conceptual pillars of democratic rule, the concept of a *demos* with a shared identity as the collective basis of democratic governance on the one hand, and majoritarian rule as the necessary political procedure on the other.

Speaking of a deficit always includes a comparison with something else. From the literature on the EU's democratic deficit, we can conclude that the EU's state of democracy is usually measured against perceptions of democracy that have been formed on the basis of either the experience or the philosophically formed expectations of nationally defined frameworks of democracy. That is, both the ideal and the really existing democracy on the ground are firmly linked with the institutional arrangements of the modern nation-state. If this understanding of democracy is the yardstick for democracy in the EU, then any measure to overcome the deficit is implicitly directed toward the establishment of democratic elements similar to the national experience.⁸ Speaking of a democracy gap in the EU therefore means addressing the deficit between supranational and the national models of democracy. The *democracy deficit* then indicates European shortcomings vis-à-vis national models.

This way of approaching the EU democracy deficit includes two caveats. The first caveat is based on the observation that national democracy has become a largely contested concept itself. It has been pointed out that the material appearance of democracy on the ground has long differed from the classic ideal of people governing themselves in the Greek city. Instead, the relationship between the "normative although impossible ideal" and the "concrete, yet quite different, contemporary reality" (Green 1993, 30) has been found to develop into a growing tension between the two poles of the democratic ideal and democratic practice. With popular sovereignty becoming increasingly fragmented, access to democratic participation has become equally diffused. One result of this fragmentation of democratic practices is that democracy has become a generally contested concept. In other words, the democracy deficit is not restricted to the EU polity. Secondly, the state-like development of the Euro-polity seems unlikely.

The second caveat therefore involves the application of state-centric analyses to a polity that will not develop into a state. This does not necessarily prohibit insightful work on the democracy deficit, quite to the contrary. As this chapter argues, to overcome the democracy deficit requires finding ways to overcome state-centric analyses. This chapter argues the need to reformulate the question about the democracy deficit in the EU. Instead of trying to identify the proper model of democracy based on modern concepts, it is suggested that

the question of how democracy is addressed by social and political actors be pursued. Thus, the impact of substance provides an empirical access point to reach beyond the concept of formal democracy characterized by procedural and institutional attributes. A view on substantive democracy then offers analytical potential to address the silence about the people based on the inclusion of the Tocquevillian notion of the “societal condition toward equality.”⁹ The fit between collectivity/ies and polity/ies is measured against expectations and experiences of citizens that have been shaped over time as a result of contentious political struggle over citizens’ rights.

Two aspects about this relationship can be singled out. One aspect is that of process. It highlights the way in which the substantive aspect of democracy is created, bringing the process of claims making, discursive struggle, and identity building to the fore of the analysis. Studies of constitution building and citizenship have pointed to the fact that democratic change can take place either in a revolutionary or evolutionary way with both modes of change implying a different concept of the citizen-regime relationship or, in other words, of citizenship. In the former case, transformatory moments of democratic change are singled out (Closa 1995); in the latter case, democratic changes evolve over time through the day-to-day practice of constitution making. The second aspect is that of concepts. It focuses on formal democracy, that is, the institutional and procedural framework for democracy as it is established by the assumption of the state-people relationship of classical democratic theories. It involves a critical reconceptualization of the state and the people both defined by and interrelated through different forms of sovereignty (state sovereignty and popular sovereignty). Work on global politics has pointed out that state sovereignty has been socially constructed. Indeed, as Thomas Biersteker and Cynthia Weber write, state sovereignty is “an inherently *social* concept. States’ claims to sovereignty construct a social environment in which they can interact as an international society of states, while at the same time the mutual recognition of claims to sovereignty is an important element in the construction of states themselves” (1996, 1–2).

Similarly, the people—and more specifically popular sovereignty—as the other part of this relationship and the crucial contributor to democratic legitimacy have been challenged by two debates that are interdependent but have usually been led apart; one is rooted in

comparative constitutional studies, the other in critical historical as well as liberal feminist studies of citizenship. For example, comparative constitutionalism has highlighted the problematic two-step assumption about the transfer of power from the people to the constitution¹⁰ and noted that the actual experience of sovereignty on the ground is that popular sovereignty has become liquidized (Habermas 1992c, 626). It has therefore become difficult to locate the democratic roots of legitimate governance within a polity. In most modern democracies, sovereignty is indeed not transferred to the institutions of government in a moment akin to the ideal Rousseauian moment of classical democratic theories, but it has become proceduralized instead. It may be examined as discourse about democratic legitimacy that is spread over the manifold discursively shaped steps of decision making within the institutions of a polity (Habermas 1992c, 621–29). This development entails a move of the people further and further away from the government. Citizens are represented by and through a plethora of democratic institutions that define the democratic state of affairs within a polity.

The perception of both state sovereignty and popular sovereignty as socially constructed introduces an important conceptual doubt about the people and the state as reference points for democracy. This perspective situates the inquiry about the democracy deficit in nonstate polities within a conceptual framework with two loose ends. Since both concepts are subject to deconstruction, their use as methodological reference points needs to be handled with care. Since it is beyond the framework of this chapter to pursue both aspects of democracy, that of process in its different real existing formations of evolutionary and revolutionary changes toward constitution making and that of concept within the interdependent global politics and citizenship debates over contested concepts, it must suffice here to state the importance of both interrelated aspects for our thinking about democracy.

I propose to scrutinize the understanding of input-legitimated democratic rule to include a more complex notion. While the notion of input is familiarly restricted to voting as the central element of majoritarian rule within a representative liberal democracy, I argue that it also involves the communicative processes that precede the act of voting. These communicative processes are crucial aspects of democratic input because they are formative for public opinion *and*

identity formation. Both are determining factors of electoral behavior (Lazarsfeld et al. 1944). In other words, input legitimation entails discursive input apart from votes. While the former is usually granted by the constitution and enacted according to formal procedures of electoral law, the latter needs to be established as *access* to participation in processes of deliberation. It is often part of informal processes of communication that are not exclusively situated in the public sphere. Indeed it has been suggested that, instead of hinging on formal democratic institutions that provide the institutional framework for an interest group model of liberal democracy, institutional settings for democracy beyond the nation-state would seek ways of establishing citizens' *access* to a "plurality of modes of association" (Benhabib 1996, 73).

If this access were established, then input-oriented legitimation of governance could be understood to be communicative. It would ideally entail a two-step process of communicative interaction: electoral issues among citizens and at the ballot box through the act of voting. Yet, it has been demonstrated that the expansion of governance beyond the constitutional limits of national borders has weakened the potential of input-based democratic legitimation (Scharpf 1995, 1999). Majoritarian rule based on the citizens' right to vote as the prime characteristic of political participation loses its legitimizing function under conditions of a crumbling national identity. This development shifts the focus of political legitimacy toward an output-oriented model of democracy stressing the efficiency of political and economic performance (Majone 1997) over political procedures and national identity as the familiar pillars of input-oriented democratic legitimation.

CONCLUSION

This chapter highlighted crucial changes within the modern triangle. To that end it drew attention to the implications of the mutually constitutive interplay of practices and norms on the triangle of identities, borders, and orders. If the goal was to identify the substance, not just the form, of the medieval polities that emerge in postmodern times, democratic institutions—and the rules, procedures, and norms attached to them—need to be addressed as a function of principles contested by practices. This implies that change does not appear at the corner points of the triangle but needs to be analyzed as

a function of changing practices and norms. These changes are best identified by the interplay of change in both state-society relations pushed by actors and norms that structure political behavior.

The chapter raised conceptual and methodological questions with a view to contributing to the larger project of imagining democratic institutions beyond the nation-state. To that end, it suggested focusing on the tension between practice and norms of modern democracy, which trigger postmodern interest group behavior and medieval polity formations in global politics. Both were found to challenge the limited organizing capacity of modern democracies, including the formal procedures and shared norms. Border-crossing activities of a variety of social actors point to the shortcomings of modern democratic norms and procedures within a postmodern or, for that matter, medieval context. The argument built on both, the observation of medieval patterns in global politics and the suggestion for an associative model of deliberative democracy. Both approaches agree from the different viewpoints of global politics and critical theory on a new pluralism that challenges conceptual and territorial boundaries. They offer new insights into the contextual and conceptual changes that are spurred by the large transformatory process from modern to postmodern polities. While both approaches offer substantial theoretical improvements in their respective subfields of political science, they still leave the question of how to apply deliberative democratic principles in postmodern/medieval polities unanswered. The emerging gap between pattern (medieval polities) and concept (ideal deliberative democracy) remains to be bridged by empirical work.

NOTES

While this final version is the responsibility of the author, for comments on earlier versions of this chapter I would like to thank Mathias Albert and Karin Fierke; the participants of the Workshop on Identities Borders Orders: New Directions in IR Theory, Aschaffenburg, 10–12 January 1998; the Seminar Series of the Sussex International Relations and Politics Group, the University of Exeter European Politics Workshop, 19 January 1998; as well as the Lunch Time Seminar at the Robert Schuman Centre, European University Institute, February 1998.

1. For the focus on substance and procedure in democratic theory, see Cohen (1996).

2. For example, Weiler, Haltern, and Mayer find that in the European discussion, "Typically and endearingly there is an implicit projection onto Europe of a national self-understanding of democratic governance" (1995, 2).

3. I use the term "postmodern" to indicate a difference from things "modern." This use of the term is purely temporary. It does not entail epistemological claims.

4. See Article B(5) TEU and Article A TEU respectively. The *acquis communautaire* entails the shared legal and procedural properties of the EU. It lies at the core of EU governance since it reflects the shared norms, rules, and procedures at any time (Wiener 1998).

5. Weiler 1995, 11. Weiler takes issue with seemingly unreflected assumptions about democracy when he states, "An interesting feature of the democratization discussion in Europe, especially the blueprints for change, concerns the very understanding of democracy. Very rarely, if at all, is there more than cursory acknowledgement of the uneasy co-existence of competing visions and models of democracy which, in turn, should inform both diagnosis, prognosis and possible remedy of democratic shortcomings" (*ibid.*, 2).

6. This led some students of the democracy deficit to state that "the problems of democracy, legitimacy and effectiveness in the EU can never be solved within the present set of constraints placed upon it by the member states. The only logical solution from a strict democratic point of view is to strengthen the EU Parliament at the expense of member states, which implies moving towards some form of federal system" (Andersen and Eliassen 1996, 11). Others have, however, begun to wonder about alternative ways of thinking about this polity.

7. The term "modern nation-state" refers to a territorialized concept.

8. Subsequently, "From a normative democratic point of view the lack of a unified polity is the most serious democratic deficit, since the legitimacy of the parliamentary institution as such is based upon voters having at least a common frame of political reference. The formation of such a common identity is at best a long term project" (Andersen and Eliassen 1996, 7).

9. Drawing on Tocqueville, Mary Kaldor and Ivan Vejvoda (1997) point out that the distinction between formal (procedural) and substantive democracy is crucial for transitional processes.

10. This perspective on the "how" is based on the relationship between the citizen and the regime. Constitutionalists have identified it as "the perennial problem of the proper fit between citizens and regimes" (Murphy 1995, 237).