Is democracy possible today?

Erik Oddvar Eriksen

Is democracy possible today?

The Democracy and Power Study

In March 1997, the Danish parliament decided to implement a Danish study of democracy and power with the official title "An Analysis of Democracy and Power in Denmark." The study, which is expected to finish in 2003, is headed by an independent research committee.

The study's research results are published in a book series by Hans Reitzel's Forlag and in a series of shorter works by the Democracy and Power Study.

Magtudredningen

Folketinget besluttede i marts 1997 at iværksætte en dansk magtudredning eller, som det officielle navn er, *En analyse af demokrati og magt i Danmark.* Projektet, der forventes afsluttet i 2003, ledes af en uafhængig forskningsledelse.

Magtudredningens forskningsresultater publiceres i en række bøger, som udgives på Hans Reitzels Forlag og i en skriftserie, som udgives af Magtudredningen.

<div align="center">

Lise Togeby
(formand)

</div>

Jørgen Goul Andersen   Peter Munk Christiansen

Torben Beck Jørgensen   Signild Vallgårda

Erik Oddvar Eriksen

Is democracy possible today?

Magtudredningen

Contents

Introduction

The standard model of representative democracy, which took shape in post-war Western societies and which contributed to their stability, is currently facing severe challenges.[1] In this model, parliamentary politics is the result of group-based struggle which is both mediated by inter-party competition and entrenched in a formalized system of contact between employee and employer organizations. This so-called neo-corporatist model of governance included widespread use of enabling or framework acts and large-scale involvement of experts and civil servants in the policy making process. This system of governance highlighted strong groups, whose interests were administered by political parties increasingly removed from their grass-roots and a passive electorate. It was 'the state of the strong organizations' (Rokkan 1966, Olsen 1988) where functional interests and technical expertise established the decision making premises. Technocracy prevailed. It was apparent as early as the 1970s that this model had to change, and since then it has been undermined in several different ways. New exigencies have emerged and altered the conditions for governance. These are globalization, deregulation, and trans- and supranational patterns of integration. In addition to the new problems posed by technological developments, internationalization and increased immigration, there are also problems associated with documenting the effects of traditional policies. High unemployment rates, lengthy public service queues, crime, and increased marginalization testify to the fact that *the welfare state* has not solved the problems inherent in capitalism, but has instead made itself quite inevitable and irreversible.

The increased public agenda of the welfare state, extensive collective decision making on public goods and the provision of social services by public agencies all served to further strain the parliamentary chain of governance. In the 1980s and 1990s, the New Right responded by highlighting *citizens' choice,* whereas leftists, feminists and ethnic groups emphasized the problems of welfare state *paternalism and technocracy*. The pattern of delegation and frequent use of professional discretion have produced an unauthorized delegation of power and hence a perceived *democratic deficit* in the provision of public services: the welfare of the citizens is decided by agencies and

civil servants not effectively accountable to anyone (Lipsky 1980:159, Rothstein 1994:98f). There is a new struggle for recognition which highlights respect for difference, participation, and self-governance or empowerment.

Critique and opposition, disagreement and uncertainty about the future mark these societies. There is more dissent and more insecurity and obscurity concerning collective goals and common values. *Modernity*, hence, spurs a value-based *pluralism* – there is no authoritative or comprehensive definition of the good life, or the public interest, that can be appealed to in order to solve common problems and social conflicts – and *complexity*, i.e., conflicts prevail and popular governance is made difficult in modern large-scale, differentiated and economically and technologically advanced societies (cp. Rawls 1993, Bohmann 1996).

Intense conflicts over values and norms will likely be devastating to the standard model of governance, as it was not merely a technical arrangement for aggregating preferences. It was also underpinned by a strong we-feeling, and agreement on a shared vision of the good life, which made for solidarity and social justice. The war-time experience, the mobilization and domestication of the working class, and the shared conception of progress and prosperity all contributed to the notion of a unified collective project. The welfare state was a result of the fortunate combination of values and interests, and of nation and democracy, a connection that today no longer seems to apply. The so-called post-material values and new social movements have, together with increased knowledge and more intense public debate, effectively contributed to the dissolution of the consensus and homogeneity of post-war welfare states. Today, there is no unquestionable common denominator to appeal to; the political system is marked by dissent; and decisions are frequently taken in corporatist and network arrangements that are beyond popular control. This is reinforced by globalization in media, telecommunications and financial systems, which further undermine the governmental structure of the nation-state. There is an increased discrepancy between politics and policies (Dehousse 1997:53), and there are added layers of governance – both above the central level of the nation state and below it – all of which exacerbate the problems of legitimation. The parliament is clearly not the sole center of political authority.

The idea of the rule of the people through representative government and executive power, subject to judicial review, is, thus, challenged. How, then, is democracy at all possible today? How can citi-

zens control the legislative process - how can they be decision makers and not merely decision takers? The standard model itself, this reveals, suffers from normative defects and has to be reformulated. What is needed is an alternative conception of the democratic process that is also capable of handling *the fact of pluralism and of complexity*. In order to get to the modern idea of democratic politics, I will spell out the normative content of the democratic constitutional state based on a discourse-theoretical conception of deliberative democracy (cf. Habermas 1996a). This may serve as a viable alternative when nationality is relinquished as the basis for democracy. First I elaborate the challenges facing the standard model of representative democracy in a brief and conventionalized manner.

Complexity, pluralism and globalization

The basic model of western democracy entails the following stipulations: Governments and legislatures are chosen directly or indirectly in periodic elections with universal equal franchise, the voters' choice being normally a choice between political parties. All adult persons possess equal political rights and all votes count equally. The principle of majority vote applies, however, constrained by constitutional essentials. There are certain civil liberties, such as freedom from arbitrary arrest and imprisonment, freedom of speech, of publication, and of association and organization. The interests of the individual are protected by rights entrenched in private law statutes. Together with contract law and property rights in general, this concept of law contributes to institutionalizing a depoliticized economic order – the capitalist market economy. The *liberal paradigm of law* underpinning this model, however, suffers from justice blindness relating to the inherent unfairness of capitalism. The injustice, which became all too evident during the period of industrialization, had to be compensated for and corrected by political intervention.

> "... democratic governments cannot plan and control the operations of the economic system, but they also cannot live with the crises and distributive injustices generated by uncontrolled capitalism." (Scharpf 1997:207)

This paradigm, thus, successively became supplemented by *the welfare state paradigm of law*, hence the welfare state which implies the materialization of law. The state became a redistributor as well as a procurer of public goods similar to the industrial-economic system

(Böckenförde 1972). Law was turned into an instrument for realizing collective goals and was *relativized;* it became a tool of efficient government rather than a higher ranging protector of civil society and private interests. In addition, the incorporation of organizations, the peacekeeping formula of labor and capital, the principle of centralized collective wage bargaining and the legitimizing role of expertise all contributed to enhance the capacity for governance.

The conception of representative democracy in mainstream political science increasingly took on a market model of political behavior in which the polity was seen as a system for service production based on preference aggregation (cf. Hernes 1978:22). It is the performance – efficient production of public goods – that induces legitimacy. Popular sovereignty is conceived of as located in parliament by elections based on free and equal access, turned effectively into governmental action by party competition and majority vote and implemented administratively through bureaucracy adhering to principles of neutrality and impartiality, viz., *the parliamentary chain of governance* (Olsen 1978:24). The capacity of this system of governance to make binding and far-reaching decisions was, as mentioned, effectively underpinned by a background consensus that made collective will formation possible on a broad basis. Externally the system was stabilized by the principles of *state sovereignty* based on mutual recognition and non-intervention – the Westphalia order. There is no legal authority beyond the sovereign state and the relations between states are only subjected to international law if each state agrees.[2] Even though the ideals of popular sovereignty were far from being realized, because of value consensus on material progress and because of lucidity and simplicity, a notion of correspondence between demos and government prevailed. The fit between governmental structure and the problems facing demos seemed more optimal in the post-war period than appears to be the case today.

First of all, the fact of *complexity* has increased not only due to expertise and the high degree of division of labor, but also because of technical innovations, new occupational roles, organizational diversification and the demise of industrial society. The rise of "post-industrial society" and of modern communication systems – computer world – means new forms of differences, interdependencies and new classificatory schemes. Peoples' identity is not solely dependent on where they work and live - work is no longer the key category for understanding society (Bell 1976, Offe 1984, 1985). The traditional alliances and alignments for political behavior change. In a complex

world, people are affected by decisions made earlier and present deci-sions that are not subject to popular control. Modern societies in-creasingly have developed into *risk societies*, and it is held that the gap between what decision makers decide and the possible dangers of the decisions for affected parties has become ever bigger and where this gap is difficult to bridge politically.[3]

Second, *the fact of pluralism* gives rise to new sets of problems. Societies can no longer rely on a widespread and stable background value consensus. The pluralisation of values due to education, reflec-tion and increasing criticisms in public fora make it more difficult to appeal to virtues that make for solidarity. The common denominator of society is becoming increasingly smaller as the older, religious ones, are deconstructed and found illegitimate. The traditional norms of behavior are scrutinized with regard to authenticity claims (Giddens 1991). Youth culture, new forms of identity, sub-political formations and trans-cultural involvement all contribute to the dissolution of tra-ditional culture and to the demise of political unity:

> "The struggles over wealth , political position, and access that characteri-zed bourgeois and working-class politics throughout the nineteenth and the first half of the twentieth century were replaced by struggles over abortion and gay rights, over ecology and the consequences of new medi-cal technologies and the politics of racial, linguistic, and ethnic pride. … Instead of political parties, there was a shift to movement politics and to loosely coalesced groups of activist women, people of color, gay indivi-duals and concerned citizens" (Benhabib 1994:4).

These trends proliferate by of processes of internationalization and *globalization*. A cluster of dynamics are captured by the latter term. Increasingly, the world is becoming one through the revolution in telecommunication, in transportation and in the formation of global financial markets (Held 1995). These three revolutions have made capital and information available everywhere and made possible worldwide mass-media and culture production. Especially in the eco-nomic area this process is heading on, as financial and world financial and banking centers fuse into one integrated network. "Over $ 1 tril-lion flows across the world's foreign exchange markets every day; over 50 times the size of worlds trade and dwarfing the collective foreign reserves of the world's richest states" (McGrew 1997:6). Globalization poses problems for national democracy, because deci-sions are made in contexts beyond national control, and because it narrows down the options available. The scope of social organization

no longer appears to coincide with national territorial boundaries.[4]
Globalization is a direct result of *modernity* (Giddens 1990), and, thus,
also entails potentials.

There are new levels of risks and uncertainty, but also prospects for
new forms of governance. The sovereignty and governmental capacity
of the nation state are affected not only by economic and technologi-
cal changes, but also by new political, legal and normative regimes.
This process is multi-dimensional, as there are transformations to be
observed also in societal, cultural and political areas. Actually, in
culture there are not only processes of globalization – i.e., American
culture industry - but also *regionalization processes* due to the new
wave of 'identity politics', while in the political sphere there are
merely conspicuous trends of internationalization. We have, however,
been witnessing intensification of the degree and quality of interaction
trans- and supra-nationally. Trans-national associations such as the
UN, WTO, CSCE, Human Rights Courts, and in Europe the EU in-
creasingly take on new missions and change conditions for national
governance and decision making.

Globalization, in short, means growing interconnectedness of states
and of societies, because of multiple and rapidly growing networks of
communication internationally and also because of *post-national re-
gimes*, diplomacy and even transnational civil society (cp. Bohmann
and Lutz-Bachmann 1997). On regional, international and global lev-
els, regimes have been created beyond the nation state, and, at least
partly, these have compensated the national loss of governance capac-
ity (Zürn 1998).

The parliamentary chain of governance has been undermined both
because of delegation downwards - to regions, local municipalities
and professional welfare procuring agencies - and upwards to transna-
tional institutions, especially the EU. The role of executive power has
increased and the state as a hierarchical collective decision making
body with territorial and social control has been severely restricted.
Several causes have, thus, served to undermine and change the politi-
cal order of Westphalia, i.e., the notion that nation states are sovereign
with fixed territorial boundaries and entitled to autonomously conduct
their internal and external affairs. These causes also undermine the
liberal model of democracy:

> "For if state sovereignty is no longer conceived as indivisible but shared
> with international agencies; if states no longer have control over their own
> territories; and if territorial and political boundaries are increasingly per-

meable, the core principles of liberal democracy – that is self-governance, the demos, consent, representation, and popular sovereignty – are made distinctively problematic" (McGrew 1997:12).

The standard model of democracy institutionalized as parliamentary democracy is, of course, merely the institutional operationalization of an idea. It is not synonymous with democracy *tout court*. Rather it is a *polyarchy* (Dahl 1989). It may be that this particular model of liberal democracy is threatened or exhausted, because liberal democracy's "… emergence is associated with the development of the nation state" (Huntington 1991:13). However, democracy as such may not have become obsolete. Although the notion of democracy has undergone major transformations since its inception in ancient Greece, democracy, even when viewed as an institutional expression of a system of governance, is never merely an *organizational principle*: A democratic system of governance always entails normative commitment whose specific ideals are variable in time and differ from one political culture to another. This transformation is not only due to the fact that participation has to be traded for effective goal realization, but also because rights and representation today are included in the very concept of democracy. However, within the context of modernity and thus within the context of liberal democracy, the plasticity of the notion of democracy is limited.[5] In short, democracy means autonomy and co-governance in contrast to heteronomy and autocracy, and "… comprises procedures for arriving at collective decisions in a way that secures the fullest possible and qualitatively best participation of interested parties" (Keane 1991:168). A notion of democracy is required that is not based on substantial assumptions of community and organizational form. Democracy implies collective self-determination, but the idea of *popular sovereignty* has to be compounded by the idea of *human rights* as this is an equally strong component of the modern conception of democracy. Without human rights, no democracy! How can that be? I shall start with the way in which the idea of constitutional democracy solves the tension between popular sovereignty and human rights.

The constitution of modern democracy

I spell out an alternative model partly by way of addressing the flaws of liberalism, based on a quite narrow – economic-atomist - interpretation, and of republicanism, based on a communitarian reading. The alternative model is based on the insight that constitutional democracies entail the idea of *legality* (which subjects the governments to the rule of law) including *human rights*, secured by a bill of rights beyond political reach, *the division of powers,* and in particular *a public realm* "... through which the society itself … mandate and monitor the exercise of state power" (Poggi 1978:135).[6]

Popular sovereignty and human rights

The modern idea of the state as an impersonal and privileged legal order descends from the ancient world of Greece and Rome, but took shape in the western world in the sixteenth century. Through the democratic revolutions, the legally circumscribed political order loosened its ties with property rights and religion, and took the form of an autonomous institution based on self-legitimation. It became autonomous, and separate from civil society, because of the automatic regulations of relations with the environment through taxation capacity on the one hand and through citizens' influence based on universal suffrage on the other hand. The latter made further *democratization* of the constitutional order possible as it turned the subjects of the prince into active citizens. The modern concept of the state is closely tied to the western idea of individual freedom, that is, the notion of the individual equipped with inalienable and inviolable rights that every authority is bound to respect. This notion embodies the idea of a private sphere, of personal intimate relations and of the dignity and sacredness of human beings. It descends from a concept of freedom that is barely older than the renaissance and the reformation, but upon which our whole civilization hinges (Berlin 1969:129).

It is a system of governance constituted by the rights of the individual understood as protections of individual liberty, that is *negative freedom*. Rights entrenched in constitutions and operative in non-majoritarian essentials and checks and balances protect individuals'

interests. These provisions restrain majority rule by imposing supra-electoral answerability. Constitutions are thus important as they endow people with rights that make them citizens and protect their interests, even against state authority and collective opinion. It is the *consent* of individuals that legitimates government in a liberal state. In the original model stemming from natural right it is *the social contract* that is the mechanism of consent,[7] while in times of universal suffrage the mechanism is *the ballot box*. This is due to the modern invention of representation as a new way of selecting power holders. This invention of Madison, Siéyès and Burke made governing into a special profession and was originally understood as fundamentally different from democracy.[8] Periodic elections confer the citizen's authority on government. Indirect democracy denotes the idea that people can rule to the extent that they possess the means necessary to keep their representatives responsive and responsible, i.e., to convey popular demands to representatives, to apply popular pressure on their actions while in office, and to remove irresponsible and irresponsive representatives by judicial or voting procedures.
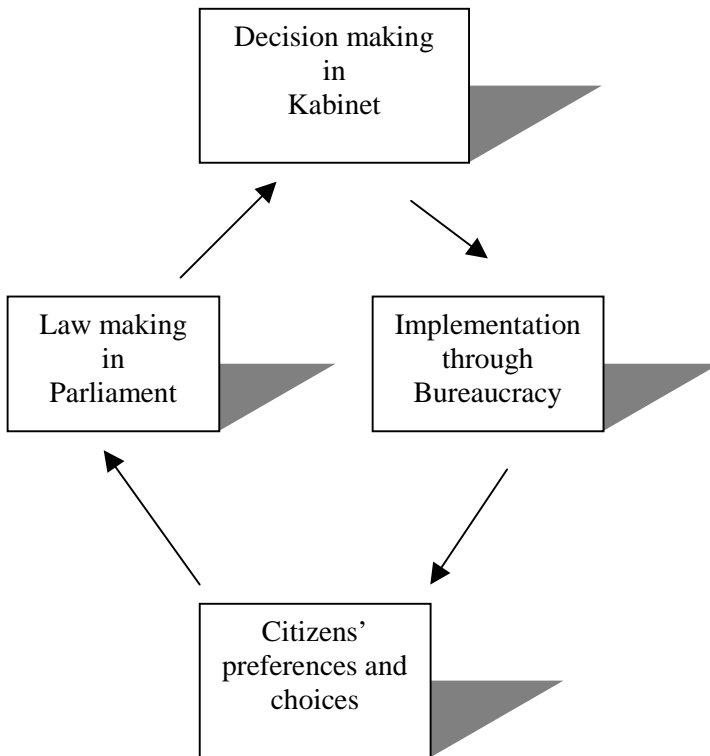
The common minimum that all liberal states subscribe to entails the following cluster of rules according to standard political theory:

a) all citizens who have reached legal age, without regard to race, religion, economic status, sex etc. must enjoy political rights i.e. the right to express their own opinion through their vote and/or to elect those who express it for them;

b) the vote of all citizens must have equal weight;

c) all citizens enjoying political rights must be free to vote according to their own opinion, formed as freely as possible, i.e. in a free contest between organized political groups competing among themselves so as to aggregate demands and transform them into collective deliberations;

d) they must also be free in the sense that they must be in a position of having real alternatives, i.e. of choosing between different solutions;

e) whether for collective deliberations or for the election of representatives, the principle of numerical majority holds - even though different forms of majority rule can be established (relative, absolute, qualified), under certain circumstances established in advance;

f) no decision taken by a majority must limit minority rights, especially the right to become eventually, under normal conditions, a majority (Bobbio 1978:17)

These rules are obvious rules of the political game, but taken together they give a rather one-sided representation of democracy: They equate democracy with thin procedural rules – majoritanism and negative,

judicial freedom. Liberals in the pluralist and elitist tradition conceive of political interaction as merely strategic, i.e. competition among groups for more resources and a competition among elites for the votes of the citizens.[9] In this mode of thinking, democracy is seen as an arena for bargaining based on the procedures for voting and compromise formation. It is the preferences of the citizens and the way they are aggregated and respected by legal procedures and governmental agencies that bear the burden of legitimation. Hence, the liberal chain of democratic governance, in which the aggregation of particular interests into a political will is accomplished through voting, the composition of elective bodies – the Parliament - and formation of Cabinet, implemented by the work of neutral administration – Bureaucracy.

Figur 1. The liberal-democratic chain of governance

The flaws of this model pertain first and foremost to a) the status of voting, and b) the notion of freedom that constitutions are to secure.

a) The voting mechanism cannot stand alone but requires discussion as a precondition and an additional device of decision making (cp. Dewey 1927). Not only is it an empirical observation that a whole lot of communication is going on in a decision making situation, as claims and proposals require verbalization and justification; there are also logical problems concerning robust results from aggregation of exogene preferences, as was shown by Arrow (1951) and Riker (1982). Even though preferences may be rational and transitive, the resulting social rankings are fundamentally arbitrary; majority decisions do not represent «the will of the people» (Shapiro 1996:34). From a normative point of view, aggregation of preferences is not enough to legitimate political decisions because majority vote merely reflects the preferences of the many, not the common will. Non-reflective and non-deliberative preferences, i.e., preferences that are not debated and critically examined in public debate, are not qualified and consequently command no respect. In addition, the liberal conception of democracy as method of preference aggregation presupposes the idea of a self-contained and self-governing community, and hence is not compatible with globalizing modernity.

b) The constitutional revolutions of the modern world did not only secure citizens' negative freedom, but also entailed the right to participation and collective self-determination through deliberative processes in civil society. The liberal aggregative conception of constitutions is one-sided because it gives priority to rights and the private autonomy of the citizen. Constitutions protect pre-political rights and popular authorization of government is accomplished through elections. However, the content of these rules and procedures – their quality and legitimacy - are not irrelevant or inconsequential. They are non-negotiable and constitute an absolute for liberals but are themselves in need of popular justification (Maus 1994:148ff.). The liberal model has trouble explaining the shaping of the common will and of the agreement necessary to uphold rights and procedural rules. In fact, liberals favor protective rights to political participation, which, however one defines it, constitutes the hallmark of democracy. This is evidently reflected in the principle of rotation and selection by lot in Athens which gave the right to rule to those who had been, and again would be, ruled; a principle which was seen as conducive to justice. Political participation was seen as a way to find out what justice is. Liberals, on their part, can tell what is unfair, but not how justice is brought about (Wolin 1989:116).

The latter is the hallmark of the republican tradition in political theory, which highlights popular sovereignty and the *public autonomy* of the citizens. This pertains to the classical version of the rule of the people and reflects the notion that democracy is an arrangement for reaching collective binding decisions on the background of comprehensive deliberation on the common good. Whilst liberals hold that *voting* is the basic feature of democracy, republicans hold that the preceding and surrounding debate is the most important. Accordingly, *deliberation* is the currency of democracy.[10] In this civic-republican conception of democracy, stemming from Aristotle, citizens are endowed not only with rights, but also with *duties:* they are seen as carriers of virtues and capable of other-regarding behavior. Politics is a collective self-interpretation process through which people can reach agreement on collective goals. The people only exist in the public sphere: only when individuals assemble and become a public can there be a collective will (Schmitt 1923:16). In the conventional civic-republican tradition, the polity is conceived of as an ethical community of belongings and commitments; it is *a forum* for defining and expressing a common cultural identity. Politics becomes the succession of ethics. This notion is reflected in Hannah Arendts' conceptualization of political power as *communicative power*:

> "Power is actualized only where word and deed have not parted company, where words are not empty and deeds not brutal, where words are not used to veil intentions, but to disclose realities, and deeds are not used to violate and destroy but to establish relations and create new realities (Arendt 1958:200).

On the one hand, this perspective is an important corrective to liberal contractualism (in the tradition of Hobbes and Locke) which does not distinguish between power and violence. The basis of political power is not the renunciation of individual violence in the state of nature - which in turn in fact makes the state an instrument of violence: Leviathan - but the co-operation of united citizens (Habermas 1996a:149). Republicans may explain the generation of political power – as communicative power - at crucial points in history, i.e., when "we-the-people" make revolutions and constitutions (Ackerman 1991).

However, on the other hand, this republican notion of politics does not sit very well with the legal and administrative structures of modern societies, which procedurally regulate the formation of power and

mandate the use of power. *Power* in modern societies is an institutionalized capacity of legally authorized organizations and persons; it is embedded in a system of rights and in a hierarchy of authority relations (Weber 1922, Easton 1953, Parsons 1963). A purely communicative concept of power becomes confining and bears overly idealistic connotations today.

The discourse theory of deliberative politics

The problem associated with the republicannotion of democracy - and communitarianism in general - is the priority of good over right. The shortcomings of republicanism, which gives priority to collective will formation, parallel the one-sidedness of liberalism, which favors (pre-political) rights. The defenders of civic-republicanism, dating back to Aristotle and Rousseau, understand democracy as a *community* - i.e., *sittlichkeit* constitutive to identity - which deliberates upon what is equally good for the members (cp. Hegel 1821, Sandel 1996). By implication, they do not recognize anything that is not in accord with the authentic understanding of the common good. This theory pictures democracy as a process of collective self-discovery, which only gives human rights a binding status as long as they correspond to society's ethical self-understanding (Habermas 1995). When democracy is framed as deliberation on the public good, on collective goals and communal ends, then the central point of modern western politics, which pertains to the neutrality of the state regarding substantive conceptions of the good life - the public interest - is left out. Within modern societies there is a pluralism of values and conflicting views about the good life which vary among groups, local communities and cultures. When many share certain values, opponents and minorities are threatened. Thus, a polity favoring some values or virtues may be unfair to dissidents.

Also from an empirical point of view, this perspective becomes confining, as modern democracies are politically integrated on the basis of common notions of justice and fairness, rather than on substantive values (Kymlicka 1989:21). In fact, they are not "nation states" as they, as a rule, contain more than one ethnic or cultural group: In spite of comprehensive nation building there is never complete overlap between etnos and demos,[11] and what is more important, it is not required (cp. Ingram 1996). Modern constitutional democracies are united around a procedural commitment to treat people *equally and fairly* (Dworkin 1977). They are integrated on the basis of what is "right" and not only of what is "good" (due to a valued way of life, common tradition, heritage, be-

longing, etc.). The political order is framed in such a way that different groups with different moral and ethical outlook can live together under common laws, as the constitutional order is neutral with regard to competing notions of the good life.[12] For such an order to be stable the requirement is not common cultural outlook or consensus on values, but respect for laws whose content reflect basic principles of freedom and equality. It is intended to make possible peaceful *coexistence between strangers*, not only between friends and neighbors: The basic principles are of moral-cognitive character, which makes them understandable universally and binding transculturally.[13] Therefore, a deliberative concept of politics has to reflect the way procedures and *the system of rights* institute and regulate the political process, how they intervene in the shaping of a collective will and in monitoring decision making processes, not only how people unite and act collectively. In opposition to civic-republicanism, I reconstruct the discourse-theoretical notion of democracy in three stages:

1. In contrast to the civic-republican idea, discourse theory does not conceptualize democracy as decision making in a particular community marked by a distinct cultural identity kept together only with linguistic bonds. The point rather is that deliberation and decision making take place *within a procedure* that the participants cannot choose themselves. Rights offer individuals protections and entitlements and constitutions are intended to curb administration. Political deliberation in modern democracies thus takes place within a system of rights that already exists. This system of rights, viz., modern constitutions, distributes rights and responsibilities, establishes dikes, rules and procedures for decision making, and gives priorities and safeguards against majority tyranny. In addition to formal rules of representation and decision making, comprehensive *legal protection* of individuals is guaranteed by an independent jury and by a principle of judicial and parliamentary monitoring of administration. This together with the principle of *separation of state and society* is, according to the discourse theoretical reading of modern institutions, intended to secure democratic legitimacy (Habermas 1996a:169; cp. Walzer 1984). This institutional arrangement is intended to filter out base preferences and particular wills through argumentative processes and secure that decisions are not reached by use of force or extra-political resources, but rather on the basis of a broad account of societal interests and values.

2. Second, the civic-republican picture of politics neglects *internal differentiations* of the process of collective will formation and decision making in modern states. As it now stands, it underestimates the task of

transferring an achieved agreement on what to do, to a rational and binding collective decision. The process of reaching understanding and agreement must be accorded with the process of reaching collective decisions. In the process of opinion and will formation, different kinds of procedures are called for to answer qualitatively different questions and to resolve miscellaneous problems. Procedures for deliberation, but also for bargaining and voting are required, the latter in case severe conflicts prevail.[14] Conceptions of democracy today need to come to grips with the kind of attitude and the sort of deliberation required when laws are to be enacted in complex and pluralist societies, i.e., laws that claim validity in time and space and that have to harmonize with different interests and notions of the meaning of life. They have to recognize the important role of justice and the level of abstraction needed to decide what is in the equal interest of all, when value systems and notions of the common good collide (Rawls 1993). Constraints stemming from entrenched rules and prerogatives which constitute *judicial discourses* are also to be included in a model of deliberative politics, because weakness of the will and the many reasonable excuses that persons may have for not obeying consensual agreements require sanctions. Judicial norms validate and constitute political power and are required to make the collective will formation and decision making process complete. From a juristical point of view, everything the state does is bound to the law (Luhmann 1990:187). In these societies, law and politics are the official means for problem solving and conflict resolution: They stabilize behavioral expectations of the citizens in relation both to state power and to other citizens. Political programs have to be translated into law statutes or connect to existing law. However, the existence of these means or mediums implies not only division of labor between *law, politics* and *morality*, but also that deliberation and decision making are set apart – as political *opinion formation* in public spheres and as *will formation* in bodies specialized for reaching collectively binding decisions (Habermas 1996a:159).

3. The civic-republican model of democracy omits the distinction, as well as the relation, between decisions reached by adhering to formal democratic procedures and the *informal processes* of opinion formation that take place in the public sphere in civil society. In modern societies citizens are endowed with rights they can employ *against* state power. In short, republicanism suffers from some of the arguable shortcomings of participatory and communitarian conceptions of democracy. This particular outline of democracy conceptualizes politics as deliberation within a context of common valuation and consensus on the notion of

the good polity. As a consequence it runs the danger of becoming moralistic. It is a concept of politics that does not discriminate between the moral validation of norms and the political justification of norms. In political justification of norms a host of grounds and reasons, contextual, factual and strategic, may legitimately be employed. Moral grounds are only one among several premises for political decisions, and function rather to limit and constrain the political validation of norms (Wellmer 1986:122). Subjecting politics to moral assessment only underestimates the instrumental nature of modern politics and overburdens the power medium as well as the citizens.

Discourse theory on its part pays attention to the way formal procedures of rational will formation – including bargaining between strategic actors in institutional settings - stand in a reciprocal relationship with informal spheres of civil society. The democratic procedures constitute, according to Habermas, a *context of justification*, as they provide the reference point for decision making and negotiations that make clear which norms and goals are to be realized. This is the place for the composition of elected bodies and formation of cabinet regulated by the parliamentary principle. However, the organized public stands in a dynamic relation to opinion formation in *civil society* uncoupled from imperatives of decision making which often involve voting and bargaining of fair compromises and where available resources rather than rational arguments are decisive. Informal arenas for public discussion and opinion formation provide a *context of discovery*. These are open and inclusive networks of public spheres with fluid boundaries and criss-crossing relations intended to make possible the free formation of public opinion. The public sphere is a unique European invention constituted by nothing outside the common action we carry out in it and where no authority can claim control, but must seek approval.[15] Habermas at once attacks the republican concept of popular sovereignty conditioned upon "the will of all", as well as the notion of a center of society, the legislatures, as the locus focus of democratic legitimacy. In the discourse theoretical reading of procedural democracy it is the public and informal opinion formation, freed from necessities, compulsion and coercion involved in actual decision making, that connects political action to the interests and needs of civil society. The constitutional protection of the public sphere is intended to make possible free processing of opinions and information, and formation of free position taking and shaping of legitimate power.

A third normative model of democracy

The democratic process, which itself is legally constituted and gives the individual a firm basis in the process, is the source of legitimation, according to discourse theory.

> "... the principle of democracy states that only those statutes may claim legitimacy that can meet with the assent (Zustimmung) of all citizens in a discursive process of legislation that in turn has been legally constituted" (Habermas 1996a:110)

The legal institutionalizing of equal participation rights regulates the external conditions for discursive opinion and will formation. Thus, we may understand the democratic procedure as securing the conditions for integration through self-legislation. This practice is anchored in the medium of law as it simultaneously secures *the private autonomy* of the individual by certain protective rights, and secures *the public autonomy* of the individual by a right to participation. Both components are necessary because individual rights cannot be formulated adequately unless those affected first have been engaged in public deliberation to discuss how to treat typical cases. While rights are important because they locate responsibility, and are required for law to function, experiences of insults and articulations of identity are necessary in order to formulate and apply rights properly (cp. Minow1990, Young 1990, Honneth 1995).

Compared to existing "models" democracy, Habermas' proposal represents an achievement, as it overcomes the traditional controversy between liberal - right based - theories and republican - community-based - theories of democracy. The discourse theoretical reading of procedural democracy makes these two elements not only compatible but *presuppositions for each other:* it is only possible to form a common will in a qualified way when individuals possess autonomy - negative freedom - to make their minds up independently and are relieved of the obligation to make decisions. However, these conditions can only be accomplished through collective action. First the political institutionalization and safeguarding of human rights makes them real assets – de jure freedom is worthless without de facto freedom (Alexy 1985:485). Human rights and popular sovereignty, constitution and democracy presuppose each other reciprocally. Even though liberties are among the topics of deliberation, they nevertheless constitute the framework that makes rational discussion possible. They "..are to be viewed as rules of the game which can be contested within the game but only insofar as one first

accepts to abide them and play the game at all" (Benhabib 1992:39; cp. Maus 1994). In this way, we may say that discourse theory makes for a normative model of democracy that is neither infused with the short-comings of liberalism nor those of republicanism. While the participa-tory model in the Aristotelian tradition of political theory does not give due emphasis to the constitution and negative freedom, the atomist model of liberal democracy does not attend to collective will formation adequately: it gives priority to pre-reflective and non-deliberative prefer-ences. It is merely a model of an economic society.

In the discourse theoretical reading of procedural democracy, both the atomistic individual (of liberalism) and the supra-individual subject (the republican fusion of individual wills into a collectivity - a nation) disappear. It is the stream of free communication that in itself warrants popular sovereignty, not the formal aggregative procedures that the lib-erals put their trust in or the coming together in forums and "halls"[16] that the republicans salute. Every substantial formulation of the common good or the general will is fallible as new participants and new knowl-edge may invalidate every actual consensus, and no legal form or insti-tutional embodiment of public reason can warrant rationality. No feasi-ble political procedure can guarantee justice (Rawls 1971:198, Dahl 1989:161).

Discourse theory launches a de-substantialized and intersubjectivist concept of sovereignty and locates it in the anonymous and dispersed forms of communication in civil society - in the public spheres - com-bined with institutionalized discourses within the formal political complex. Democracy is conceived of as a set of argumentative pre-suppositions and procedural conditions. These bear the burden of legi-timation, and discourse theory applied to the institutional nexus of modern societies leads to the following stipulation:

> "Only the principles of the guaranteed autonomy of the public spheres and competition between different political parties, together with the par-liamentary principle, exhaust the content of the principle of popular sov-ereignty" (Habermas 1996a:171).

The discourse-theoretical model of democracy is intended to mend some of the deficiencies of existing conceptions of democracy. The concept of sovereignty and the notion of autonomy are reframed in discursive terms. Sovereignty hinges on the communicative space for collective self-determination, while autonomy hinges on the possibilities for ra-tional will formation. This makes the model of democracy not only more

adequate but also more suitable for addressing the challenges facing the territorially circumscribed nation state. Currently, there are global structures of production, trade and communication that evaporate the boundaries of the state. International legislative and policy making bodies and transnational policy networks have emerged, and have added to the existing complex of local, regional and national centers of authority. The nation state is challenged not only by internationalization and globalization, but also by regionalization, and by changes in the dynamics of domestic decision making. Key words are decentralization, deregulation and the intrusion of market-analogous steering mechanisms in the public sector. These trends, which are attended to later in the paper, serve to decouple citizens' participation and representation from bodies whose decisions have severe consequences for individual interests. Globalization serves to lengthen the actual chains of representation, control and legitimacy, and makes the process of aggregation more cumbersome. Hence, the liberal electoral model seems even less fit. However, direct symmetry between the institutions of representative democracy and the community they serve is a presupposition in all democratic thinking. Also in this regard the Republican concept of democracy becomes confining akin to its linking of democratic legitimacy to actual participation in decision making processes: political decisions must reflect "the will of all". This is not often the case, and republicanism is at pain to explain and assess political realities in complex, pluralistic and increasingly globalized societies.

> "Since the days of Aristotle's polis, the republican tradition has viewed selfgovernment as an activity rooted in a particular place, carried out by citizens loyal to that place and the way of life it embodies. Self-government today, however, requires a politics that plays itself out in a multiplicity of settings, from neighbourhoods to nations to the world as a whole. Such politics requires citizens who can think and act as multiply-situated selves" (Sandel 1996:351).

The democratic circulation of power

The discourse model ties democratic legitimacy to non-exclusion and the open debate, however, mediated by legal rights. It focuses on the public sphere in civil society - outside the realm of state power - and the channels of communication in determining democratic autonomy. This way of addressing democratic legitimacy does not only claim normative superiority, but also claims to be more in line with the actual development of modern democracies. In order to delineate criteria for legitimate governance, more precise differentiated conceptionalizations of power are required.

Social, communicative and administrative power

The whole idea of constitutions is to create and secure the legitimacy of political power and constrain the wielding of power. This requires the possibility of separating legitimate power from merely factual power. Generally, power denotes the resources actors have and employ in order to realize goals and interests as reflected in the conventional definition of power stemming from Max Weber (1922): "A has power over B to the extent that he can get B to do something that B would not otherwise do" (Dahl 1957). Generally, power entails the capacity to change actor's behavior. One aspect of this is captured by the concept *social power,* which denotes the actual resources needed in order to get things done; it is "…. a measure for the possibilities an actor has in social relationships to assert his own will and interests, even against the opposition of others*"* (Habermas 1996a:175) Social power, as such, is not validated or justified; it may be based upon asymmetrical relations and illegitimate patterns of dominance. It is the type of power embedded in all kinds of social relations and denotes the physical, economic, technical, social etc., means necessary to realize ends and goals; or, alternatively, to structurally obstruct goal achievement through non-decisions (cp. Baccarat and Barest 1970, Lukes 1974, Hernes 1975).

However, this concept is too unspecific to grasp the way political power is generated and used in modern democracies, i.e., as employment of already constituted power. In this regard power is a specific

mechanism – or medium – in the hands of legally authorized actors and agencies. The democratic constitutional state is an institutional arrangement for testing and securing that the power relations of the civil society are not harming vital social concerns. It is an arrangement intended to tame the factual, force-based power of civil society and to generate legitimate power, i.e., a normatively validated means for achieving collective goals. While social power prevails in all spheres of life due to differentials in resources and interests - and is set free within market-relations in modern society because of institutions like the contract, private property and wage ownership - the modern constitutional state represents barriers to and constraints upon the employment of social power in all walks of life. It is an arrangement for securing that might is not converted into right and that the masters' power is subjected to popular authorization.
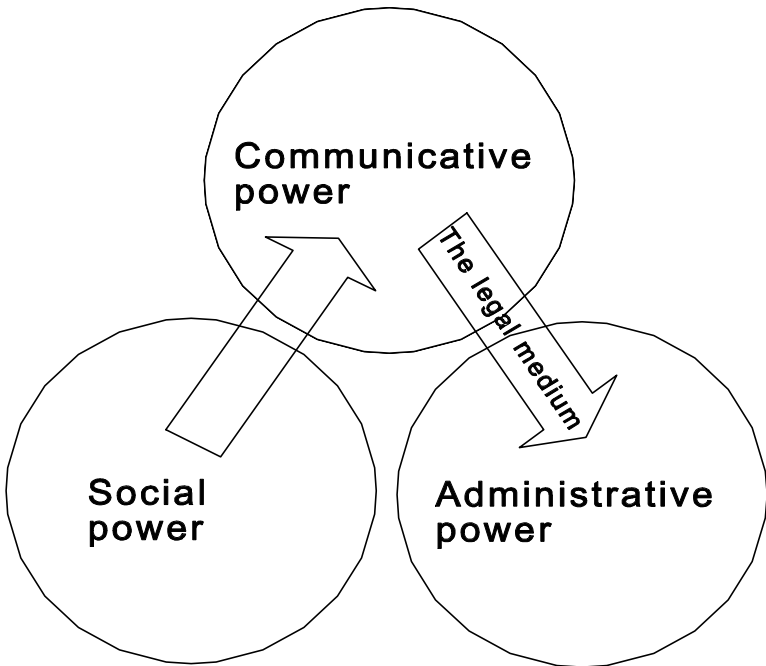
From social power we must, then, separate *communicative power*, which denotes the constitution of normative power: "The strongest is never strong enough to always be the master, unless he transform strength into right, and obedience into duty" (Rousseau 1988:16). Communicative power signifies the force of arguments in forming and changing actors' preferences. This kind of power comes into being when citizens come together in public arenas and shape a common opinion. *Solidarity* and collective action arise from the unification of the citizens. In modern societies, this is made possible in face-to-face interactions in the public spheres where everybody is entitled, by the freedom of speech and association, to participate in the collective deliberations of what interests should be realized, and how to treat equal/unequal cases. This is the communicative notion of politics stemming from Hannah Arendt who, as mentioned (page 18), pictures politics as a collectively self-determinating process; power is shaped when people unite and deliberately act on the basis of a shared conception of collective goals. Constituting legitimate power in a democratic society requires that all participate, because decisions are only justified as far as they are consented to by all in public discussion. However, adding communicative to social power is still insufficient to fully grasp political power in constitutional democracies.

Not everybody is able to participate in all legislative processes, and in modern states representative bodies of citizens – in particular parliaments and congresses – are established to mend this problem. The principle of representation compensates for the lack of participation of all affected parties as it potentially makes their voices heard. It may also contribute to rationality: If the composition of elected bodies

complies with publicly acceptable criteria, and if the operation of deliberation and decision making processes is well conducted, institutionalized deliberations contribute to enhancing reflection and rationality in collective decision making processes. Representation contributes to political rationality by lifting elected members of the community out of parochial settings, potentially corrupted by local factions and self-interested representation, to supralocal settings where they have to ground their claims with regard to others' interests and needs. This practice, which is based on the absence of imperative mandates and legally binding pledges, requires enlargement of views, arguing and impartiality (cp. Sunstein 1991, Weigård 1995). Constitutional democracy based on the principle of representation, then, possess intrinsic normative value.

Representation is, nevertheless, a contested concept (Pitkin 1972), and has been defended on several grounds. While James Madison contended that "it may well happen that the public voice, pronounced by the representatives of the people, will be more consonant to the public good than if pronounced by the people themselves", Edmund Burke maintained that "Parliament is not a *congress* of ambassadors from different hostile interests, which interests each must maintain, …; but Parliament is a *deliberative* assembly of *one* nation, with *one* interest, that of the whole " (cited from Manin 1997: 2, 186) . However one defends the principle of representation, in order to be justified outcomes of institutionalized discourses and bargaining processes conducted by representatives require, in a second step, the ability to withstand critical scrutiny in a free public debate. From a democratic point of view, the quality of debate and the level of critical, public scrutiny are most important in assessing legitimacy. The generalizability of interests is tested in a public debate, and institutionalized procedures filter influence from the public sphere and convert it into communicative power. This in turn legitimates collective decision making in parliamentary bodies (Habermas 1996a:371). Hence, the criteria of legitimate power: "If binding decisions are legitimate, that is if they can be made independently of concrete exercise of force and of the manifest threat of sanctions, and can be regularly implemented even against the interests of those affected, they must be considered as the fulfillment of recognized norms." (Habermas 1975:102).

Figure 2. The threefold model of political power

As illustrated in Figure 2, political power is again differentiated: communicative power is now separated from *administrative power*. The latter denotes power actualized legally in political bodies – cabinets and committees - specialized for making binding collective decisions. Communicative power that comes into being in public debates and is validated in legislative processes is executed and implemented through adjudicative processes in judicial and administrative bodies. Legal statutes and enacted political programs constitute the resources of administrative power, not the material resources of social actors or the arguments of moral actors. Through a set of procedures and legal constraints regulating parliamentary and administrative bodies, formal decision making and implementing agencies are authorized to exercise political power. Political and judicial bodies possess resources of their own and their competencies are specified by the principle of legality. It is, thus, necessary to distinguish power that is already constituted and institutionalized in parliamentary and administrative bodies from the generating of power in an open and free debate. Administrative power designates the employment of legitimately constituted power

by bodies under legal control. How, then, can society possibly mandate and monitor the exercise of administrative power. How can society govern itself via politics?

The official model of power circulation

Discourse theory locates the focal point of democracy in the public sphere, however it is constituted and constrained by indispensable legal rights. This is the starting point for the reconstruction of a normative model of the circulation of power. The public sphere(s) constitutes the locus of popular sovereignty as everybody, in principle, is entitled to address whatever issue and item they like, and to talk with whoever they want as long as they want: all citizens are entitled to participate and have an equal right to launch questions and claims, to put forward reasons, to challenge established values, needs and interests. Among the generic set of conditions are, then, *inclusion* (of all), *freedom* (protection from coercion), *equality, participation* and *open agenda*, which, however, are idealizations that contribute to the contra-factual status of the public sphere in that they, taken together, anticipate the ideal discourse comprising all opinions and participants. As an ideal the public sphere both refers to the horizon of total representations and to the process of rational deliberation.
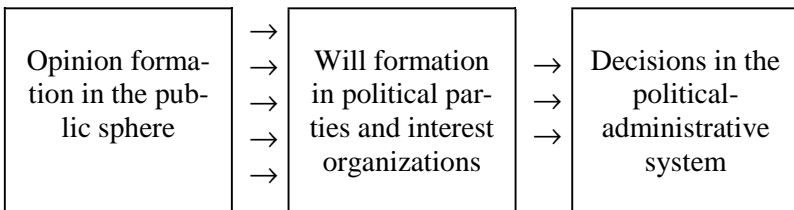
There are, however, many publics in modern societies oriented towards different topics and goals, and not all have political functions. The public sphere is located in civil society - it is "... a communication structure rooted in the lifeworld through the associational network of civil society" (Habermas 1996a:359). From a political point of view, the relevant public sphere constitutes *the periphery* to the political center through opinion formation which also governs nominating and voting processes (Peters 1993:327ff). In the public sphere, problems are seen and verbalized, thematized and dramatized, decision makers are controlled and criticized, and institutions and constitutions are supervised. It is a sphere for moral argumentation and for shaping collective identities and solidarity:

> "The freedoms of speech and association not only provide the guarantee of a more extensive political activity than the vote; they are also the means whereby the inequalities of civil society are transmitted to the political domain" (Beetham 1992:48).

A well-functioning public sphere (or spheres) is the first prerequisite for the democratic reconstruction of the political circulation of power. As far as opinion formation is made possible on a free and equal basis, and as far as there are channels and procedures for influencing and controlling government, there is reasonability to a presumption of popular rule.

However, the influence generating processes in civil society do not necessarily yield legitimate solutions to social problems and political conflicts. Force, resource differentials, dogmatism, pure self-interest, base motives, strong emotions and self-serving concepts of justice may prevail in communication processes (cf. Elster 1984, 1998b). In order to know whether or not collective opinions are justified and are entitled to respect, they have to be tested in an institutionalized context of justification. In such a context, the discourse is about which concerns and claims require public attention and political alleviation. This is the second step in reconstructing legitimate opinion and will formation. With the help of social movements, interest organizations, parties, media, (national and international) non-governmental organizations (NGOs), opinions are condensed and specified and converted into concrete claims, wills, and proposals for decision making. Political parties and interest organizations have a special role aggregating and integrating interests and preferences. Even if parties mostly are to be considered election machines – they are specialized in winning elections and recruiting political leaders - they are catalysts of public opinion and participants in opinion formation in civil society.[17] Also interest organizations involved in the corporative decision making system of modern governments may have such a mediating role, as illustrated in Figure 3.

Figure 3. The political process

After interests and claims have been critically examined and attention and support have been mobilized, the political-administrative system

starts to function. Collective decision making and legislation are brought about in a rather complex process consisting of several procedural arrangements: From debates in the public spheres and elections, via deliberation in representative, parliamentary bodies to further delineation of alternatives for decision making and implementation in governmental and executive bodies. Political will formation requires several decision making procedures - deliberative, bargaining and voting procedures - because questions and problems of different kinds have to be answered and different kinds of conflicts between actors resolved.

From a normative point of view, some of these procedures are relevant even though they are not solely oriented towards regulating discourses on what is morally right and ethically good. Some regulate solely collective decision making on pragmatic matters. Institutionalized deliberation regulates different kinds of political questions, and requires claims to be justified in relation to a broader set of concerns than the ones present in a free public debate in bodies which do not have to reach a decision and, thus, may take on a pure moral point of view. In decision making bodies, actors cannot disregard available resources, established political programs, administrative expediency, constitutional rights, prerogatives, precedents, etc. Judicial norms constrain political decision making as collective goals eventually have to be formulated in the language of laws in order to claim social validity.

It is thus a rather long and circumstantial process from discovering and verbalizing needs and problems in civil society, via formation of collective opinions in the public sphere and conversion of these into wills and claims in parties and organizations, until they are developed into concrete alternatives for political decision making and programs for administrative implementation.[18] From a normative point of view, these procedures are seen as mechanisms for excluding untenable, non-justifiable or politically impossible and judicially illegal claims. They are to secure legitimate law making, which requires that collective binding decisions be made in compliance with legal statutes and that they can be rationally defended; that is, they must both secure legal protection and endure public scrutiny. This theory represents an interpretation of the rule of the people entrenched in modern constitutions and rooted in western political culture. It is by showing that collective decision making processes – or problem solving and conflict resolution - have followed this route that political power today may claim legitimacy.

This is the official version that expresses the self-understanding of our system of democratic governance today. However, it is a version at odds with the one put forward by many sociologists and political scientists. The latter in fact maintain that democracy is not for real in modern states. There is thus an in-official version of the circulation of power.

The counter-circulation process of power

In the in-official version of the political process, it is not people that rule themselves via political means, but rather the other way round. The distinction between state and society is blurred on several dimensions and has reversed the relations of power. In civil society it is the power of interest organizations and of capital that dominates, not the common interests of the citizens' (Bowles and Gintis 1986). Under neo-corporatism the state is needed for securing societal integration (Schmitter 1983, Willke 1992). Nevertheless, it is the strong interests' state (Rokkan 1974:206ff, Olsen 1988:77ff), because business interests possess a privileged position in capitalist societies (O'Connor 1973, Lindblom 1977). Further, in the public sphere it is not opinions of lay people that govern will formation, but commercial interests, propaganda and manipulation exacerbated by mass media and the culture industry (Chomsky 1989, Kellner 1995). However, such statements seem hard to validate. Capital interests are diverse and conflictual (Przeworski 1985), social movements and ad-hoc actions impact on parliamentary policies (Olsen 1983, Loftager 1994), and the development in press and media are manifold. Opinion is not merely manufactured or fabricated (Keane 1991, 1993, Hjarvard 1999). In addition, internet and new media restrict the possibilities of manipulation: there is room for oppositional discourse (Buchstein 1997).

Nevertheless, from a functionalist point of view it is contended that the sheer differentiation of modern societies – their complexity - makes popular governance obsolete. Due to division of labor and specialization, modern societies have become highly differentiated. They are split into diverse segments of action and comprehension – systems – which operate through *generalized media* of communication. These specialize discourses according to *binary codes*. Niklas Luhmann has worked out the media and codes of nine systems: Economy, law, family, politics, science, education, art, mass-media, religion (and Helmut Willke adds sport). Symbolic media like *money* in the economy, *power* in the political context govern interaction. Without money you

can't buy, without power (votes) you cannot decide. Interaction is structured according to binary codes such as legal/illegal in the judicial system, payment/non-payment in the economic system, government/opposition in the political system. It is only by adhering to the logic of these communication codes that anything at all can be achieved in these contexts. Other values are the excluded. They simply are not relevant (Brekke 1999:21).

In modern differentiated societies, citizens and common concerns are not able to govern. Political parties and interest organizations are highly selective and are receptive only of such arguments and reasons that will bring more resources and votes. Because of the codes of the systems, they act on predetermined preferences and on established programs which filter out concerns and rationalize decision making. Politicians decide according to the schemata government/opposition, and do not manage without inputs from administration. Administrative bodies, on their part, select for themselves the reasons necessary to make expedient decisions. Moral and ethical norms play no independent role, because legal procedures contribute to make the system independent of affected parties' consent (Luhmann 1983). Law has become independent of the political system and decides autonomously according to the code legal/ illegal.[19] Public debate is, on its part, contingent on the way programs and cases are already treated by the political system.

But the administration also needs popular participation in order to function properly in increasingly complex societies where application of legal statutes has become difficult and poly-centric: added communication and hence co-operation of lay persons is needed to be able to decide rationally. The voluntary compliance of affected parties required for an interventionist government to function efficiently is made possible because of administrative work on themes and opinions in inclusive procedural arrangements where ordinary citizens are included. In these contexts, independent opinions are transformed into *influence*, i.e., to a commodity or a pragmatic value that can be treated in administrative categories and made useful for the system. Consequently, normative justification takes the shape of (after) rationalization (in a Freudian sense).

Thus, a counter process of power circulation is identifiable: participation of citizens is necessary, not for programming administration, but for an autopoetic and self-programmed system to function adequately. Rationality and decision making imperatives make lay participation rather a legitimation strategy for executive power (Luh-

mann 1981, 1983, 1995, cp. Doublet 1995). This activity can be posi-
tive, but basically the "iron law" of bureaucracy is at work:

> "Like a puppet within a puppet, participation develops into an organiza-
> tion within an organization, into a bureaucracy within a bureaucracy. The
> result can be condemned as bureaucracy or praised as participation …
> Obviously, democratic bureaucracies are also subject to the law of bu-
> reaucracies: to minimize changes" (Luhmann 1990:224).

This amounts to saying that there is an unofficial counter circulation
of power in modern societies: administration dominates politics, be-
cause the latter cannot function without administrative inputs, while
politics dominates the public debate because the latter is contingent on
political decisions. Citizens are too far away from actual decision
making in the politico-administrative system to make democracy
work. Opinion is not necessarily suggestionized or manipulated but
the sheer complexity of modern politics makes popular insight and
supervision impossible. The functionality of decision making requires
preparation of themes and selection of persons prior to public delib-
eration (Luhmann 1981:164). When this is the case, political law and
decision making rather adhere to the logic of social and administrative
power than to the logic of popular sovereignty. It is not the rule of the
people, but the rule of expertise and of established programs for se-
curing socio-economic interests. One may, however, object to such an
overly pessimistic view on the grounds that functionality does not per
se drive out all normative reasons. That is, democracy may, after all,
be possible. In the next sections, I will try to substantiate this conten-
tion.

Technocracy or democracy?

The pattern of delegation and the extensive use of professional discre-
tion in modern welfare states raise the problem of *technocracy,* which
refers to how decisions with potentially grave consequences for citi-
zens' interests – regarding their life and welfare – are made in con-
texts that are beyond citizens' control. Administrative bodies work
instrumentally and are highly selective in their ability to incorporate
social concerns, and professions possess norms and standards of their
own beyond the premises constituted by science, law and politics.
Their decisions often reflect internal standards of justice and notions
of the good life. In other words they do not only rely on empirical,

scientific knowledge or on legal norms in their decision making, but also on informal values and personal notions of what is in the best interest of the client (Eriksen and Terum 1999). However, when dealing with questions involving moral and ethical concerns – i.e., non-pragmatic political questions - they have to draw upon publicly defensible normative reasons. Save this they are not able to justify actions and vindicate decisions. Even if modern administration, due to complexity, increasingly has taken on measures that strictly speaking belong to the political domain, they nevertheless have to get decisions *right*:

> "The technocratic denial and empiricist redefinition of normative questions in no way leads to a matter-of-fact treatment of administrative problems. Rather, it results in opportunistic or unreflective ways of reconciling value complexes without the guidance of reasonable criteria" (Habermas 1996a:436).

Whenever decision makers have to rely on extra-legal or extra-empirical reasons in order to decide on matters outside the proper jurisdiction of administration, they have to show that the norms chosen are justified. Today, however, substantial notions of what is good or right (e.g., natural or religious law) do not provide justification in western societies. Because society has become pluralistic, citizens cannot know for sure the ends of public life; what is collectively good is not to be posited in advance, but to be found in deliberation, i.e., through the democratic procedure itself (Cohen 1991:21). It is, as mentioned, only through law and political power that one today can find solutions to collective problems and resolve conflicts validly. In short, decision makers have to show that they are entitled to use the very norms they pick and the reasons they employ by pointing to the way democratic processes have authorized their choices.

As far as democratic procedures allow for incorporation of relevant interests and different viewpoints and needs are secured a due hearing and consideration, and as far as communicative power of public opinion formation can have an indirect influence on the reasons available for administrative bodies, the presumption of technocracy is not sustained.[20] Whether or not public concerns and citizens' interests can influence administrative decision making bodies may be further discussed with regard to the recent development of the welfare state. The process of reforming the structure of public organizations - the development towards a more humane public sector and a more democratic

bureaucracy – is of interest with regard to the viability of democracy, because it entails new possibilities for participation intended to secure citizens' interests.

Participation or rationalization?

With the growth of the welfare state, citizens gained new benefits in the fields of medical care, education and social services. These are rights guaranteed by law and distributed by bureaucratic and professional experts. While the central state agencies provide the standard services, local governments and agencies provide those services which require some sort of judgment or evaluation, those which involve face-to-face contact. However, the traditional welfare state is often accused of paternalism and technocracy. *Welfare state paternalism* refers to people on social assistance being restricted in choosing their own way of life, and where benefits are assigned on the basis of standardized and stereotyped images of social needs (Habermas 1996a:388ff).

As a response to the paternalism involved in the *client role* of the welfare state, and in response to the explosive growth of the public sector in the post-world war II era, a period in which everyone, more or less, became service recipients, the citizens' right to participation was also extended. The *users* of services became involved in co-operative bodies, contact committees, boards of representatives, and councils for day-care centers, schools, health institutions and other public sector institutions. The new functions, which the public sector subsequently assumes, imply that the citizens enter into a new relation to the public sector in addition to the client relationship. These developments are also evidence of a rejection of authoritarian professions, unnecessary regulation and standardization, and a turn towards a more humane and service-minded administration. The new reforms give the users of services a right to co-determination in co-operative bodies, contact committees, boards and councils.[21] In addition to the Ombudsman institution and different legal guarantees, there are new forms of contacts and participation, of accountability and public scrutiny; there are quasi-judicial procedures, consensus-conferences, hearings and co-governance structures as a direct effect of the new reforms. These reforms represent achievements from a democratic point of view, as the possibilities for participation and a due hearing are increased.[22]

A rather complex access structure for citizen participation emerges when we consider the governmental structure of modern welfare states. In fact, citizens have achieved new rights and possibilities for participation on different levels; not only in the legislation process, but also in the process of policy implementation. There are different bodies for governing - professional, administrative and political - on several levels - local, regional, national, and international - in which politicians, bureaucrats, professionals, lay persons co-operate in decision making. The quality of interaction in such settings may be of different kinds, and the problems of asymmetric information; disturbances to communication, frames of interpretation, organizational imperatives, and power relations must not be disregarded. Participation may, following Luhmann, merely yield a means to *rationalize governance* in a domain heavily exposed to efficiency standards, and may also favor strong parties and lead to evasion of liability. Thus, extended participation cannot replace legal protection of the individual.[23] However, as far as affected parties are given a due place and decisive role in the decision making process, the presumption of democracy and not of technocracy is supported. An example is the procedure that regulates child custody matters in Norway – the county mediation board - in which the parties' consent is part of what it takes to make a right decision (Eriksen and Skivenes 1998).

Democracy or obscurity?

From a deliberative perspective, a rather differentiated concept of evaluation emerges, and one which focuses on the increased possibility of participation involved in *the multi-level structure of governance* stimulated by "democratization" of the public sector. However, obscurity prevails.

In the last decade, the great expansion in public responsibilities, an increasingly mixed economy and negotiated administration, and, in addition, new technologies and types of knowledge, have all contributed to a great variety of organizational forms that are puzzling for the entrenched distinction between public and private. Increasing specialization and professionalization imply that public services and institutions now legitimate their existence by reference to their knowledge base rather than hierarchical position. Major legal, decision making power – including normative discretion - are being delegated to local agencies, and private firms and non-profit organizations take over functions that used to be public responsibilities. Contracting out to

private firms, such as consulting firms and temporary help agencies is now commonplace. Market-based organizational forms and American management styles of leadership - New Public Management - are introduced in several areas.[24] Public institutions are divested from political governance as state firms, foundations and traded companies. New user-based and voluntary organizations are also emerging. Even though vital decisions are compromises between sectarian interests struck behind closed doors in policy networks by a limited circle of actors, who are hard to hold publicly accountable, they have to be ratified at higher political levels. Networks decisions "… are typically negotiations under the shadow of hierarchical authority. In many areas compromises are subject to review at higher levels of administration, and policy choices worked out among the organized interests must be written into binding law by legislative authority or converted into binding decisions by administrative agencies" (Scharpf 1994:41).

The new organizational forms look like *hybrids*, and their functions and identities may be confusing. The velocity and magnitude of change is astonishing, and there is a great deal of insecurity relating to what is going on and why. There is also a great deal of confusion relating to the principal distinction between what is and what ought to be subjected to political governance and democratic control. There is a lack of consensus relating to the division of labor between central and local levels and to the appropriate use of foundations, private consulting firms and state firms. It is difficult to tell exactly what the various trends and new organizational forms mean, as market and commercialization trends are conspicuous, but so is the rise of self-help and national and international non-governmental organizations (NGOs) – i.e., associations of civil-society. Even though there is no chance of equal access and there is limited public accountability, and even though business seems to hold the lead, it is difficult to assess the long-term impact of these miscellaneous developments and of the status of democratic governance when dealing with the provision of public goods today compared to earlier days. One has to bear in mind the kinds of technocracy and paternalism heavily involved in previous forms of governance. However, other dimensions have to be taken into consideration in order to discuss the viability of democracy today.

Legitimate governance?

Party membership has declined, and new values and schisms have emerged and have transformed the structure of parliamentary politics.

The process of "reparlamentarization" – i.e., the increase in Parliaments' power vis-à-vis executive power - which is seen to have been going on since the 1970s due to minority governments[25] – has not done away with corporatism. In addition, another channel of influence with dubious democratic quality: *lobbyism* is rising: "There is still clear evidence of strong corporatist structures, but parliamentary lobbyism has increased as traditional corporatism has declined in scope and intensity" (Christiansen and Rommetvedt 1999:209).

However, from the point of view of democracy it is difficult to account for processes of professionalism, informal contacts and undue influence compared to other opinion generating processes affecting public agenda setting. The end of the Cold War and of the party press, the deregulation and liberalization of media regulations, opinion polls, etc., have made possible quite new currents of information and communication in civil society. Mass media today – TV, Radio and newspapers - and public debate in general may be seen to play a decisive role in political will formation and represent extra-parliamentary influence of quite another kind. In addition, opinion surveys which autonomously construct versions of the popular will at odds with electoral will give voice also to non-participants and lower the costs of expressing opinions. Nowadays, "… the people do not only make their presence known in exceptional circumstances. The extra-parliamentary voice of the people is both made more peaceful and rendered commonplace." (Manin 1997: 231). One may, nevertheless, ask whether the anarchistic public debate, and the several possibilities for political admission today, which obviously contributes to demolishing hierarchical forms of discourse and authority, is a way to formulate new norms of solidarity that takes care of difference and exclusion in a better way, or whether these structures contribute to mere pluralism and fragmentation.[26] However, de-institutionalization and 'denationalization' of politics have several causes.[27]

Decline in party membership, trade union split-ups, and the demise of Keynesianism certainly contribute to weaken the traditional mode of governance. Politicians can no longer rely on stable groups of voters nor on fixed means of decision making, because of new risks, new values, identity and movement politics and the like (as mentioned earlier). There is reportedly declining effectiveness of governance and growing personal insecurity. The welfare state itself is now viewed as a risk-producing system (Beck 1997). Civil society has grown more pluralistic and civic communities more fragmented; reflection, critical and public debate accelerate. The established system of governance

based on interest-incorporation and expertise, extensively made possible by delegation and framework law, has come under fire from both democrats and economists – it gives, in fact, two votes to some citizens and cannot even deliver the goods. It is not efficient and compatible with the new social agenda, hence New Public Management.

The new situation for mass-media today, commercial and competitive forces, is a catalyst of this development, which on a larger scale may be termed *globalization*. The world order is fluctuating, constantly being created and recreated by interaction of states, diplomats, international organizations, corporations, social movements, non-governmental organizations and opinion formation through the anonymous hand of public reasoning in an emerging global civil society (Shaw 1994). Globalization also entails political initiatives building up supra-national political institutions, in particular the EU, which has shown a remarkable and unprecedented capacity to take on new collective measures and deepen integration. But it is a process that may sap parliamentary sovereignty.

The EU is a trans-national construction that is demanding both in descriptive and normative terms. It is a complex network of institutions for regulating common affairs, but it is not unitary and self-contained as a political unit. Even if its institutional structures resemble the separation of powers, akin to the separation of power in a nation state, there are profound differences. The Council of Ministers consists of representatives from the member states, and legislates on behalf of the Union. It decides some matters by qualified majority, but most by unanimity. The European Parliament which is directly elected by the peoples of the member states, have not until recently had much legislative power. Nor has it had much authority to hold the executive accountable. However, the Treaty of Amsterdam (1997) increased its role. The European Commission is the executor of Union policies and is endowed with the right of initiative, which includes the right to issue legislative proposals. In addition, hundreds of Committees, which were originally constructed to control delegation of powers from the Council to the Commission, are in operation. Such a system may blur the constitutional distinction between legislative and executive powers, between politics and administration.

Democracy, i.e., equal right to liberty and self-determination, by definition functions through public discussion on important issues. This is not very much the case with the EU's political system today, which is marked by lack of transparency, expert dominance, lobbying, bargaining and pork-barreling between sectarian interests: in short, lack of openness and political accountability. It is not only seen as

undemocratic, but also as undermining national sovereignty and as unconstitutional. However, a legal hierarchy with EC law on top is not recognized, even though the European Court of Justice long has asserted the principles of supremacy and direct effect:

"Opponents of further European integration in Denmark succeeded in activating the courts in their effort to strike down the Maastricht Treaty. In 1993, twelve persons charged the PM with having violated the constitution because he signed the Maastricht Treaty. The Supreme Court decided to hear the case and handed down its verdict on April 6, 1998. The Supreme Court found for the PM and asserted that (a) Danish membership in the EU is consistent with the Danish Constitution; (b) the 1953 Danish Constitution permits quite a comprehensive relinquishment of national sovereignty to an 'interpopular' authority; (c) the question of relinquishment of sovereignty is to be based on political considerations; and (d) the particular manner in which the EU has expanded its powers and competences, through article 235, is consistent with the Danish Constitution. But the Supreme Court also noted that if a legal act by the EU Court of Justice conflicts with the Danish Constitution, the latter shall prevail. The Danish Supreme Court therefore did not acknowledge that the European Court of Justice had *Kompetenz-Kompetenz*.[28]" (Fossum 1999).

However, it is also contended that a new political regime is evolving at the EU level, as implementation of legislative acts is assisted by hundreds of committees of experts from member states. The Council has been reluctant to confer implementing powers to the Commission, and some have proposed to see Comitology – the system of committees - as a new political order that may mend the democratic deficit and contribute to *deliberative supranationality:*

> "European committees cannot simply be classified as the agents of a bureaucratic revolution. Rather, with all its sensitivity for the modern complex of risk regulation and for the intricacies of internationalised governance within non-hierarchical and multi-level structures, the committee system may be argued to possess a normative, if underformed, character of its own; or, more precisely, to operate within a novel constitutional framework informed by the notion of 'deliberative supranationalism'" (Joerges and Everson 1999)

The existing institutional variety suggests that a mix of processes and procedures are relevant for an assessment of the democratic quality of governance today. Different institutional arrangements foster and regulate different kinds of deliberation and decision making processes

about common problems and conflicting interests. Institutions not only constrain, but also enable action and interaction; they not only facilitate aggregation of preferences and *strategic bargaining,* but may also foster *arguing* according to standards of communicative rationality. Representative bodies, committees, boards, councils may all be seen as institutional arrangements for settling conflicts of interests by way of discussion. It is necessary to understand how these, in addition to policy networks, triangulars, corporatist arrangements and the like, actually deal with conflict resolution and problem solving in order to evaluate democracy today.

Assessment criteria

Constitutional democracy is a system of procedural rules with a normative content. It specifies not only who is authorized to make collective decisions through what procedures, but also what it takes to justify political decisions to the people who are bound by them, i.e., vis – a-vis the citizenry. It entails the idea of public deliberation whereby political decisions "undergo the trial of debate" (Manin 1997:6). Democracy is not merely an institutional arrangement for efficient decision making or service production; in particular it is a *legitimation principle* specifying what it means to get political results right. Only by adhering to democratic procedures can power holders justify their decisions, and only by employing these procedures can people achieve collective goals legitimately, and only through legal procedures can laws be changed and new laws enacted.

Thus, in order for a regime to be legitimate, it must, at a minimum, be organized in such a way that the public realm is open to free access, that governmental positions are open to all, that those who govern are appointed by election at regular intervals, and that the decision making power is independent of social and economic interests. However, this does not take us very far when considering the complexity of modern politics which today is radically increased because of delegation of power both down the chain of governance to local municipalities, professions and service producing agencies, and upwards to supra-national bodies, in particular the EU. Citizens' interests are affected in ways and by bodies which are difficult to hold responsible via the ballot box. Globalization means that those who can be kept accountable have little control over the factors affecting peoples lives, and those who have the decisive power are beyond democratic reach (cp. Dahl 1994, Held 1995).

However, from the discourse-theoretical perspective, a political order, to be democratic, has to comply with criteria beyond the legal accountability and electoral representativeness that constitute conventional models of democracy. The deliberative notion of democratic legitimacy, which hinges on public accountability, non-coercion and non-exclusion, provides us with a more far-reaching set of criteria. Democratic legitimacy is ultimately seen to consist in approval of decisions in a free debate (constrained and mediated by legal measures). This theory, then, is equipped to also assess decentralized sub-national and trans-national institutions of governance from a democratic point of view. On the one hand, the question is to subject decision makers to a modicum of accountability and responsibility. On the other hand, the question is about the possibilities for participation in collective opinion and will formation in order for people to reflectively and effectively influence decision making in governmental bodies. The latter calls attention to participation rights, entailing elections, referendums, direct representation, and possibilities of voice in general with regard to policy making that has consequences for citizens' interests.
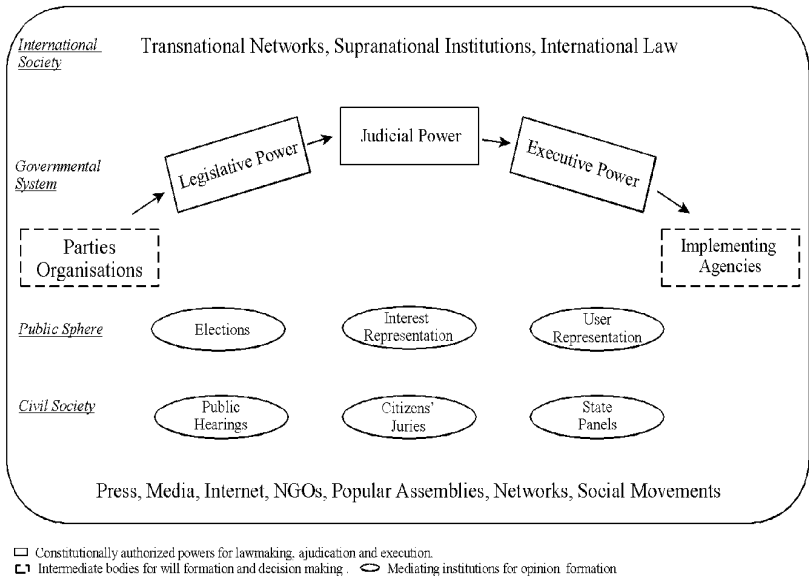
As is illustrated in Figure 4, a rather complex set of criteria comes into consideration:

1) First, one has to examine the possibilities of opinion formation in the public sphere and the possibilities for assembling and organizing in civil society including the question of the prevalence and quality of press and media, and of what resources individuals have to make up their minds autonomously and to make their voice heard. Hence, questions like the level of education and the "enlightenment" of the citizens are also relevant. Further; is there a free press, (possibilities for) voluntary organizations, competing parties, and what are the prospects for effective opposition, the quality of communicative fora and of the channels needed for sluicing public opinion into the parliamentary complex – such as elections and referendums?

2) Second, one has to examine the existence, composition and structure of representative bodies at local, regional and national levels, including the selection and election of members of cabinets, committees and boards, and also the structure and quality of the administrative and judicial system. How are these systems construed? An important question pertains to the quality of the institutionalized processes of deliberation, bargaining and voting. Are they structured to include relevant voices, to balance differences in resources and to reach collective decisions rationally, i.e., by way of rational discus-

sion? Are interests and values given due consideration and fair treatment, and are the representative decision making bodies liable to access and inspection?

Figure 4: The Democratic Circulation of Power

☐ Constitutionally authorized powers for lawmaking, ajudication and execution.
⊏⊐ Intermediate bodies for will formation and decision making . ⬯ Mediating institutions for opinion formation

3) When it comes to delegation of power to supra-national bodies – i.e., the EU - we also have to address the network of intermediate organizations, NGOs, political parties, social movements and crisscrossing communicative channels of civil society. Do they contribute to opinion formation, maintain popular pressure on EU decision makers, and do they question the legitimacy of the EU's undertakings and the way in which power is being delegated from national to EU decision making bodies[?] And, are the composition and structure of representative bodies in EU at all in accordance with democratic ideals?[29]

4) In a complex welfare state, participation extends far beyond voting and eligibility rights as affected parties have a general right to hearing whenever their interests are affected by public authorities. Do citizens really possess rights as recipients (clients) of public welfare and as users of public service agencies, and are they or their representatives involved when their needs and claims are being dealt with at the local level?

Taken together, these checkpoints render it possible to assess democratic legitimacy along several dimensions and focus on the many black holes and deficits with regard to the idea of popular governance.

Conclusion

Democracy is, it seems, the only legitimate form of governance in modern states. The liberal-democratic chain of governance, however, locates popular sovereignty in the Parliament, which becomes the expression of the popular will. The representatives are merely elected and every substantive wording of the common good or the public interest is fallible. No legal form and no actual assembly can per se claim legitimacy. The parliamentary principle does not warrant democratic legitimacy. Procedures securing individual rights and public debate must be added. The result is a de-substantialized and non-empirical concept of democratic legitimacy. This notion is reflected both in modern constitutions as they entail rights protecting individual interests – also against state power, common opinion and majority vote - and in the modern, post-metaphysical political culture which, actually, is rooted in a distinction between might and right, between power and law.

The discourse-theoretical conceptualization of democracy, when applied to the procedural arrangement of modern welfare states in an age of globalization, makes us aware of the multitude of features that have to be taken into consideration to assess democracy today. Debate over specific political issues is no longer confined to parliament, to special committees or to parties, but takes place in several arenas and forums. This development, which is effectively sponsored by new technological innovations and commercial interests, has narrowed the gap between representatives and represented, and has subjected political power to public criticism and critical scrutiny. The danger of fragmentation and technocratization prevails due to pluralism and complexity. We have, however, also become aware of the many efforts to empower citizens, to make participation effective, to protect civil and political rights and to enhance the quality of public debate. Such efforts include legal aid to victims and claimants, ombudspersons, arbitration boards, 'user-democracy', in addition to measures meant to secure critical public debate - support for newspapers, public facilitation and regulation of mass-media, Internet, public hearings, creation of state panels and citizens juries – which, however insuffi-

cient and vacillated, testify to the enduring normative force of the principle of government by the people. A principle which today denotes governance by the public use of reason.

Notes

1 I am grateful for comments made by John Erik Fossum, Kristian Kindtler, Jørn Loftager, Helene Sjursen and by the leaders of the Danish project on Democracy and Power.

2 "Sovereignty over the same territory cannot reside simultaneously in two different bodies" (Morgenthau 1967: 307).

3 On this see, e.g., Beck 1986, 1998, Luhmann 1991, Eriksen 1994.

4 Cp. Beck 1997, Held 1993, 1995, Stubbs and Underhill et al 1994, and for a different view see Hirst and Thompson 1996, Østerud 1999.

5 I am grateful for comments on these points made by Kristian Kindtler. See also Eriksen 1993:125ff, Kindtler 1994, Lefort 1998, Maus 1994.

6 These "… three overlapping constitutional arrangements were expected to safeguard the distinctiveness and autonomy of the societal realm in the face of the state" (ibid.).

7 "Men being, as has been said, by Nature, all free, equal and independent, no one can be put out this Estate, and subjected to the Political Power of another, without his own *Consent*" (Locke 1970:348).

8 On this, see Manin 1997, cp., "Selection by lot (*le suffrage par le sort*) is in the nature of democracy, selection by choice (*le suffrage par choix*) is in the nature of aristocracy". (Montesquieu, De l'Esprit det Lois (1748), sited from Manin 1997:70-71).

9 See e.g. Weber 1922, Schumpeter 1942, Dahl and Lindblom 1953, Dahl 1956, 1961, 1989, Bobbio 1987, Zolo 1992.

10 On the place of deliberation, communicative rationality or arguing in social and political contexts see, e.g., Dewey 1927, Habermas 1981, 1983, 1994,1995, 1996a, Benhabib (ed.) 1994, Elster 1998a,b, Bohman and Rehg (eds.) 1997, Gutman and Thompson 1996, Manin 1987, Eriksen and Weigård 1997a, 1999.

11 G. Baumann (1996) discovers the creation of new identities among ethnic groups in West London, which documents to the fact that communities do not divide neatly into particular cultures.

12 See also Walzer (1990:9) and Kersting (1997:397ff). Of course, one may dispute the actual neutrality of modern states as the Norwegian debate on the state church institution, on the Christian objects clause of schools and kindergartens reflects. Discourse theory on its part does not exclude values, but merely holds that the values should be constrained by moral claims to fairness.

13 This may also be given a legal twist: people who govern their commonalties by law are compelled to accede each other equal rights if peaceful co-existence is to be achieved under modern conditions (cp. Kant 1970).

14 Habermas distinguishes five types of relevant discourses and supplementary processes that constitute a rational will formation process:

a) In *pragmatic discourses* the answer to what ought to be done is found in the free choices of actors and the way to make rational decisions on the basis of given ends and interests with the help of simple decision making methods.

b) When there is no agreement on collective goals, actors may have to shift to *ethical-political discourses* oriented towards collective self-interpretation and authentic identity formation.

c) *Strategic bargaining* based on para-argumentative resources is often necessary to reach a decision through voting when disagreement is founded upon non-generalizable interests. The procedures that regulate bargaining must be just and satisfy moral requirements of a fair process to make voting outcomes legitimate.

d) A *moral discourse* is required when interests are affected and values are conflicting. In order to solve such conflicts, parties take a neutral and disinterested stand on the questions considered and ask what is in the equal interest of all. That is, they try to solve conflicts according to the principle of universalization.

e) Finally, the process of deliberation terminates in decisions that must be formulated in the language of law - *the judicial discourse.* Law makers can only justify legal statutes that are compatible with the system of rights and the content of existing programs of policy making (Habermas 1996a:207).

15 See, e.g., Taylor 1995:266f, Habermas 1962/1989, Lefort 1988.

16 Cf. the famous slogan of the "godfather" of Norwegian Parliamentarism, J. Sverdrup: "All power in this hall", about the Norwegian Parliament, *Stortinget*.

17 This may be so even if they merely function as arms of the state and as instruments for aggregation of preferences and for strategic positioning, and not as deliberative bodies (see Habermas 1996a:443). However, while Schumpeter (1942) maintained that democracy has to be governance by parties as citizens are ignorant, Robert A. Dahl (1961) maintained that parties that consist, in principle, of ordinary people, bring representatives closer to the people. Parties make representatives more accountable and responsive.

18 Compare this to the steps in the well-known policy making process (see e.g. Lindblom 1980).

19 "The law is an autonomous function system of society that by itself determines what it regulates and subjects all matters about which it communicates to the binary code of legal/illegal" (Luhmann 1990:188).

20 "Communicative generated legitimate power can have an effect on the political system insofar as it assumes responsibility for the pool of reasons from which administrative decisions must draw their rationalizations" (Habermas 1996a:484).

21 The customer role, in addition to the user role, which is also to be obser-
   ved, on its part symbolises the distinction between masters and servants.
   This is more extensively discussed in Eriksen and Weigård 1997b; cp. Sø-
   rensen 1998, Beck, Foss Hansen, Atonsen, Melander 1998.

22 See e.g. Andersen et al (eds.) 1993, Andersen and Torpe (eds.) 1994, and
   Goul Andersen 1996 on the conditions for citizens' participation in Den-
   mark.

23 Initiatives for service declarations (Norway) and Citizen Charters (UK)
   document to this problem.

24 On this see, Eriksen 1999a,b, Olsen and Peters 1996, Sand 1996, Eriksen,
   Ringstad and Sand 1994, Greve 1998.

25 See Olsen 1983, Damgard 1994, and Rasch and Rommetvedt 1999 for an
   overview.

26 The democratic quality and the effects of public debate should, however,
   be examined from an evaluative perspective that puts argumentative qua-
   lity at the core, not solely resources and commercial interests, as today is
   most common among media researches.

27 See, e.g., Beck ed. 1998, Menzel 1998, Habermas 1996b, 1998.

28 That is, competence to increase its own competence.

29 On this see Eriksen 1999c and Beetham and Lord 1998.

References

Ackerman, B (1991). *We the People.* Cambridge: Harvard University Press.

Alexy, R. (1985). *Theorie der Grundrechte.* Baden-Baden.

Andersen, J., A-D. Christensen, K. Langberg, B. Siim and L. Torpe (1993). *Medborgerskap.* Herning: Systime.

Andersen, J and L. Torpe (eds.) (1994). *Demokrati og politisk kultur.* Herning: Systime.

Andersen, J.G. (1996). "Marginalization, Citizenship and the Economy: The Capacities of the Universalist Welfare State in Denmark". In E.O. Eriksen and J. Loftager (eds). *The Rationality of the Welfare State.* Oslo: Scandinavian University Press.

Arendt, H. (1958). *The Human Condition.* Chicago: The University of Chicago Press.

Aristotle (1962). *The Politics.* London: Penguin.

Arrow, K (1951). *Social Choice and Individual Values.* New Haven: Yale University Press.

Baccarat, P. and M.S. Barest (1970). *Power and Poverty*. New York: Oxford University Press.

Bauman, G. (1996). *Contesting Culture. Discourses of Identity in multi-ethnic London*. Cambridge: Polity Press.

Beck, T. J., A.F. Hansen, M. Antonsen and P. Melander (1998). "Public Organizations, Multiple Constituencies, and Governance". *Public Administration,* vol. 76:499-518.

Beck, U. (1986). *Risikogesellschaft. Auf dem Weg in eine andere Moderne*. Frankfurt: Suhrkamp.

Beck, U. (1997). *The Reinvention of Politics. Rethinking Modernity in the Global Social Order*. Cambridge: Polity Press.

Beck, U. (ed.) (1998). *Politik der Globalisierung*. Frankfurt: Suhrkamp.

Beetham, D. (1992). "Liberal Democracy and the Limits of Democratization", *Prospects for Democracy: Political Studies Special Issue*, no. 40.

Beetham, D. and C. Lord (1998). *Legitimacy and the European Union*. London: Longman.

Benhabib, S. (1992). *Situating the Self. Gender, Community and Postmodernism in contemporary Ethics.* New York: Routledge.

Benhabib, S. (1994). "Introduction." In S. Benhabib, (ed.): *Democracy and Difference: Contesting the Boundaries of the Political.* Princeton: Princeton University Press.

Benhabib, S. (ed.) (1994). *Democracy and Difference: Contesting the Boundaries of the Political*. Princeton: Princeton University Press.

Bell, D. (1976). *The Cultural Contradictions of Capitalism*. London: Heineman.

Berlin, I. (1969). *Four Essays on Liberty*. Oxford: Oxford University Press.

Bobbio, N. (1978). "Are there alternatives to Representative Democracy". *Telos,* 35:17-30.

Bobbio, N. (1987). *The Future of Democracy.* Oxford: Polity Press.

Bohman, J. (1996). *Public Deliberation. Pluralism, Complexity, and Democracy.* Cambridge, Mass.: The MIT Press.

Bohmann, J. and M. Lutz-Bachmann (1997). *"Introduction".* In J. Bohman and M. Lutz-Bachmann (eds.): *Perpetual Peace. Essays on Kant's Cosmoplitan Ideal.* Cambridge: The MIT Press.

Bohman, J. and W. Rehg (eds.) (1997). *Deliberative Democracy*. Cambridge, MA: MIT Press.

Bowles, S. and H. Gintis (1986). *Democracy and Capitalism*. New York: Basic Books.

Brekke, O. (1999). *Funksjonsbegrepets funksjon i Niklas Luhmanns systemteori*. Bergen: LOS-Senter-notat 9922

Böckenförde, E-W. (1972). "Die Bedeutung der Unterscheidung von Staat und Gesellschaft im demokratischen Sozialstaat der Gegenwart," in *Rechtsfragen der Gegenwart.* Stuttgart.

Buchstein, H. (1997). "Bytes that Bite: The Internet and Deliberative Democracy". *Constellations,* 4:248-263.

Chomsky, N. (1989). *Necessary Illusions.* London: Pluto Press.

Christiansen, P.M. and H. Rommetvedt (1999). "From Corporatism to Lobbyism?" *Scandinavian Political Studies,* vol. 22, no. 3:195-220.

Cohen, J. (1991). "Deliberation and Democratic Legitimacy." In A. Hamlin and Ph. Pettit (eds.). *The Good Polity*. Oxford: Basil Blackwell.

Dahl, R.A. (1994). "A Democratic Dilemma: System Effectiveness versus Citizen Participation." *Political Science Quarterly,* Spring, 109(1):23-34.

Dahl, R.A. (1956). *A Preface to Democratic Theory.* Chicago: The University of Chicago Press.

Dahl, R.A. (1957). "The Concept of Power", *Behavior Science*, 2:201–215.

Dahl, R.A. (1961). *Who Governs?* New Haven: Yale University Press.

Dahl, R.A. (1989). *Democracy and its Critics*. New Haven: Yale University Press.

Dahl, R.A. and C. Lindblom (1953). *Politics, Economics and Welfare: Planning and Politics – Economic Systems Resolved into Basic Social Processes.* New York: Harper and Row.

Dworkin, R. (1977). *Taking Rights Seriously*. London: Duckworth & Co.

Damgard, E. (1994). "The Strong Parliaments of Scandinavia." In G.W. Copeland, & S.C. Patterson (eds.). *Parliaments in the Modern World.* Ann Arbor: The University of Michigan Press.

Dehousse, R. (1997). "European Integration and the Nation-state." In M. Rhodes, P. Heywood and V. Wright (eds.). *Developments in West European Politics.* Basingssoke: Macmillian.

Dewey, J. (1927). *The Public and Its Problems.* London: George Allen & Unwin.

Doublet, D. (1995). *Rett, vitenskap og fornuft.* Bergen: Alma Mater.

Downs, A. (1957). *An Economic Theory of Democracy.* New York : Harper & Row.

Easton, D (1953). *The Political System.* New York: Alfred Knopf.

Elster, J. (1984). *Ulysses and the Sirens. Studies in Rationality and Irrationality*. Cambridge: Cambridge University Press.

Elster, J. (ed.) (1998). *Deliberative Democracy*. Cambridge: Cambridge University Press.

Elster, J. (1998a). "Introduction". In J. Elster (ed.). *Deliberative Democracy*. Cambridge: Cambridge University Press.

Elster, J. (1998b). "Deliberation and Constitution Making." In J. Elster (ed.). *Deliberative Democracy*. Cambridge: Cambridge University Press.

Eriksen, E.O. (1993). *Grenser for staten?* Oslo: Universitetsforlaget.

Eriksen, E.O. (1994). "Orden og usikkerhet". In E.O.Eriksen (ed.). *Den politiske orden.* Oslo: Tano.

Eriksen, E.O. (1999a). *Kommunikativ ledelse.* Bergen: Fagbokforlaget.

Eriksen, E.O. (1999b). "Towards a Logic of Justification". In M. Egeberg and P. Lægreid (eds.). *Organizing Political Institutions.* Oslo: Scandinavian University Press.

Eriksen, E.O. (1999c). "The Question of Deliberative Supranationalism in the EU". In E.O. Eriksen and J.E. Fossum (eds.). *Democracy in the European Union – Integration through Deliberation?* London: Routledge (forthcomming).

Eriksen, E.O., V.Ringstad and I.J. Sand (1994). *Om forholdet mellom offentlig og privat sektor*. Bergen: LOS-senter Notat 9420.

Eriksen, E.O. and J. Weigård (1997a). "Conceptualizing Politics: Strategic or Communicative Action?" *Scandinavian Political Studies*, 20(3):219-241.

Eriksen, E, O. and J. Weigård (1997b). *The End of Citenzenship?* University of Exeter, Rusel, Working paper 30.

Eriksen, E. O. and M. Skivenes (1998). "Om å fatte riktige beslutninger i barnevernet." *Tidskrift for Samfunnsforskning* no. 3:352-381.

Eriksen, E. O. and J. Weigård (1999). *Kommunikativ handling og deliberativt demokrati.* Bergen: Fagbokforlaget.

Eriksen, E.O., and L.I. Terum (1999). *Frontlinjebyråkratene og det teknokratiske mistaket*. Bergen: LOS-senter notat (forthcomming).

Fossum, J. E. (1999). "Constitution-making in the European Union". In E.O. Eriksen and J.E. Fossum (eds.). *Democracy in the European Union – Integration through Deliberation?* London: Routledge (forthcomming).

Giddens, A. (1990). *Consequences of Modernity.* Cambridge: Polity Press.

Giddens, A. (1991). *Modernity and Self-Identity*. Cambridge: Polity Press.

Greve, C. (1998). *Den grå zone – fra offentlig til privat virksomhed.* København: Jurist- og Økonomforbundets Forlag.

Gutmann, A. and D. Thompson (1996). *Democracy and Disagreement.* Cambridge, Mass.: The Belknap Press.

Habermas, J. (1962/1989). *The Structural Transformation of the Public Sphere*. Cambridge, Mass.: The MIT Press.

Habermas, J. (1975). *Legitimation Crisis*. Boston: Beacon Press.

Habermas, J. (1981/1984/1987). *The Theory of Communicative Action,* Vol. 1-2. Boston: Beacon Press.

Habermas, J. (1983). *Moralbewusstsein und kommunikativen Handeln*. Frankfurt: Suhrkamp.

Habermas, J. (1994). "Om den interne forbindelsen mellom rettsstat og demokrati". In E.O. Eriksen (ed.). *Den politiske orden*. Oslo: Tano.

Habermas, J. (1995). "Tre normative demokratimodeller: om begrepet deliberativ politikk". In E.O. Eriksen (ed.). *Deliberativ politikk*. Oslo:Tano.

Habermas, J. (1996a). *Between Facts and Norms. Contributions to a Discourse Theory of Law and Democracy.* Cambridge, Mass.: The MIT Press.

Habermas, J. (1996b). *Die Einbeziehung des Anderen. Studien zur politischen Theorie*. Frankfurt: Suhrkamp.

Habermas, J. (1998). *Die Postnationale Konstellation. Politische Essays.* Frankfurt: Suhrkamp.

Hegel, G.W.F (1821/1926). *Grundlinien der Philosphie des Recths*. Frankfurt: Suhrkamp.

Held, D. (1993). "Democracy: From City-States to a Cosmopolitan Order?" In D. Held (ed.). *Prospects for Democracy: North, South, East, West*. Cambridge : Polity Press.

Held, D. (1995). *Democracy and the Global Order. From the Modern State to Cosmopolitan Governance*. Cambridge: Polity Press.

Hernes, G. (1975). *Makt og avmakt.* Oslo: Universitetsforlaget.

Hernes, G. (1978). "Makt, blandingsøkonomi og blandingsadministrasjon". In G. Hernes. *Forhandlingsøkonomi og blandingsadministrasjon.* Oslo: Universitetsforlaget.

Hirst, P. and G. Thompson (1996). *Globalization in Question.* Cambridge: Polity Press.

Hjarvard, S. (1999). "Politik som mediemontage. Om mediernes forandring af den politiske kommunikation". In J.G. Andersen, P.M. Christiansen, T.B. Jørgensen, L. Togeby and S. Vallgårda (eds.). *Den demokratiske udfordring.* København: Hans Reitzels Forlag.

Honneth, A. (1995). *The Struggle for Recognition. The Moral Grammar of Social Conflicts*. Cambridge: Polity Press.

Huntington, S.P. (1991). *The Third Wave – Democratization in the Late Twentieth Century*. Norman, University of Oklahoma Press.

Ingram, A. (1996). "Constitutional Patriotism". *Philosophy & Social Criticism*, 22:1-18.

Joerges, J. and M. Everson (1999). "Challenging the Bureaucratic Challenge". In E.O. Eriksen and J.E. Fossum (eds.). *Democracy in the Euro-*

pean Union – Integration through Deliberation? London: Routledge (forthcoming).

Kant, I. (1970). *Kant's Political Writings*. Ed H. Reiss. Cambridge: Cambridge University Press.

Keane, J. (1991). *The Media and Democracy.* Oxford: Polity Press.

Keane, J. (1993). "Democracy and the Media – without Foundations". In D. Held. (ed.). *Prospects for Democracy*. Oxford: Polity Press.

Kellner, D. (1995). *Media Culture: Cultural Studies, Identity and Politics Between the Modern and the Postmodern.* New York: Routledge.

Kersting, W. (1997). *Recht, Gerechtigkeit, und demokatische Tugend.* Frankfurt: Suhrkamp.

Kindtler, K. (1994). *Gode grunner, svake garantier.* Aarhus: Institut for Statskundskab, mimeo.

Kymlicka, W. (1989). *Liberalism, Community and Culture*. Oxford: Clarendon Press.

Lefort, C. (1988). *Democracy and Political Theory*. Cambridge: Polity Press.

Lindblom, C. (1977). *Politics and Markets*. New York: Basic Books.

Lindblom, C. (1980). *The Policy making Process.* New Jersey: Prentice-Hall, INC., Englewood Cliffs.

Lipsky, M. (1980). *Street-level Bureaucracy – Dilemmas of the Individual in the Public Services.* New York: Russel Sage Foundation.

Locke, J. (1970). *Two Treatises of Government*. (by P. Laslett) Cambridge: Cambridge University Press.

Loftager, J. (1994). "Den politiske offentlighed i teori og praksis." In E.O. Eriksen (ed.) *Den politiske orden*. Oslo: Tano.

Luhmann, N. (1981). "Machtkreislauf und Recht im Demokratien", *Zeitschrift für Rechtssoziologie*, 2, no. 2:158-167.

Luhmann, N. (1969/1983). *Legitimation durch Verfahren.* Frankfurt am Main: Suhrkamp.

Luhmann, N. (1990). *Political Theory in the Welfare State*. Berlin: Walter de Gruyter.

Luhmann, N. (1991). *Soziologie des Risikos.* Berlin: Walter de Gruyter.

Luhmann, N. (1995). *Das Recht der Gesellschaft.* Frankfurt: Suhrkamp.

Lukes, S. (1974). *Power - a Radical View*. London: Macmillan.

Manin, B. (1987). "On Legitimacy and Political Deliberation." *Political Theory,* 15(3):338-368.

Manin, B. (1997). *The Principles of Representative Government.* Cambridge: Cambridge University Press.

Maus, I. (1994). *Zur Aufklärung der Demokratiteorie.* Frankfurt: Suhrkamp.

McGrew, A. (1997). "Globalization and territorial Democracy: an Introduction". In A. McGrew (ed.). *The Transformation of Democracy.* Cambridge: Polity Press/Open University.

Menzel, U. (1998). *Globalisierung versus Fragmentierung.* Frankfurt: Suhrkamp.

Minow, M. (1990). *Making All the Difference*. Ithaca: Cornell University Press.

Morgentau, H. (1967). *Politics Among Nations.* New York: A. Knopf.

O'Connor, J. (1973). *The Fiscal Crisis of the State.* New York: St. Martin's Press.

Offe, C. (1984). *Arbeitsgesesellschaft – Strukturprobleme und Zukunftsperspektiven.* Frankfurt: Suhrkamp.

Offe, C. (1985). *Disorganized Capitalism.* Oxford: University Press.

Olsen, J.P. (1978). "Folkestyre, byråkrati og korporativisme". In Olsen, J.P. (red.). *Politisk organisering.* Oslo: Universitetsforlaget.

Olsen, J.P. (1983). *Organized Democracy.* Oslo: University Press.

Olsen, J.P. (1988). *Statsstyre og institusjonsutforming.* Oslo: Universitetsforlaget.

Olsen, J.P. and G.B. Peters (eds.) (1996). *Lessons from Experience. Experiential Learning in Administrative Reform in Eight Democracies.* Oslo: Scandinavian University Press.

Parsons, T. (1963). "On the Concept of Political Power." *Proceedings of the American Philosophical Society,* 107:232-262.

Peters, B. (1993). *Die Integration moderner Gesellschaften.* Frankfurt: Suhrkamp.

Pitkin, H. (1972). *The Concept of Representation.* Berkeley, Calif.: University of California Press.

Przeworski, A. (1985). *Capitalism and Social Democracy.* Cambridge: Cambridge University Press.

Poggi, G. (1978). *The Development of the Modern State.* Stanford: Stanford University Press.

Rasch, B.E. and H. Rommetvedt (1999). *Makt og demokrati i norsk parlamentsforskning.* Oslo/Stavanger. mimeo.

Rawls, J. (1971). *A Theory of Justice.* Cambridge, MA: Cambridge University Press.

Rawls, J. (1993). *Political Liberalism.* New York: Columbia University Press.

Riker, W.H. (1982). *Liberalism Against Populism.* San Francisco: Freeman.

Rokkan, S. (1966). "Numerical Democracy and Corporate Pluralism". In R.A. Dahl (ed.). *Political Oppositions in Western Democracies.* New Haven: Yale University Press.

Rokkan, S. (1974). *Stat, nasjon, klasse.* Oslo: Universitetsforlaget.

Rothstein, B. (1994). *Vad bör staten göra? Om velferdsstatens moraliska och politiska logik.* Stockholm: SNS Förlag.

Rousseau, J-J. (1988). *The Social Contract.* New York: Prometheus Books.

Sand, I.J. (1995). "Diskursive forvaltningsorganer – kan rett og politikk håndtere sosial kompleksitet?". I E.O. Eriksen (ed.). *Deliberativ politikk: Demokrati i teori og praksis.* Oslo: Tano.

Sand, I.J. (1996). *Styring av kompleksitet.* Bergen: Fagbokforlaget.

Sandel, M.J. (1996). *Democracy's Discontent. America in Search of a Public Philosophy.* Cambridge, Mass.: The Belknap Press of Harvard University Press.

Scharpf, F.W. (1994). "Games Real Actors could Play: Positive and Negative Coordination in embedded Negotiations." *Journal of Theoretical Politics,* 6(1):27-53.

Scharpf, F.W. (1997). *Games Real Actors Play.* Boulder: Westview Press.

Schumpeter, J. (1942/1976). *Capitalism, Socialism, and Democracy.* London: George Allen and Unwin.

Schmitt, C. (1923). *The Crisis of Parliamentary Democracy.* Cambridge: The MIT Press.

Schmitter, P. (1983). "Democratic Theory and Neo-Corporatist Practice", *Social Research* 50(4):885-928.

Shapiro, I. (1996). *Democracy's Place.* Itacha: Cornell University Press.

Shaw, M. (1994). *Global Society and International Relations.* Cambridge: Polity Press.

Sunstein, C.R. (1991). "Political Self-Interest in Constitutional Law." In J.J. Mansbridge (ed). *Beyond Self-Interest.* Chicago: The University of Chicago Press.

Stubbs, R. and G.R.D. Underhill (eds.) (1994). *Political Economy and the Changing Global Order.* Basingstoke: Macmillan Press.

Sørensen, E. (1998). "New forms of Democratic Empowerment. Introducing User Influence in the Primary School System in Denmark". *Statsvetenskaplig Tidsskrift*, 109(2):129-143.

Taylor, C. (1995). *Philosophical Arguments.* Cambridge: Harvard University Press.

Walzer, M. (1984). "Liberalism and the art of Separation". *Political Theory* 12(3):315-330.

Walzer, M. (1990). "The Communitarian Critique of Liberalism". *Political Theory,* 18:6-23.

Weber, M. (1922/1978). *Economy and Society.* Berkeley: University of California Press.

Weigård, J. (1995). "Representasjon og rasjonalitet". In E.O. Eriksen (ed.). *Deliberativ politikk: Demokrati i teori og praksis.* Oslo: Tano.

Wellmer, A. (1986). *Ethik und Dialog.* Frankfurt: Suhrkamp.

Willke, H. (1992). *Ironie des Staates. Grundlinien einer Staatstheorie polyzentrischer Gesellschaft.* Frankfurt: Suhrkamp.

Wolin, S. (1989). *The Presence of the Past. Essays on the State and the Constitution.* Baltimore: The Johns Hopkins University.

Young, I.M. (1990). *Justice and the Politics of Difference.* Princeton, N.J.: Princeton University Press.

Zolo, D. (1992). *Democracy and Complexity. A Realist Approach.* Oxford: Polity Press.

Zürn, M. (1998). *Regieren jenseits des Nationalstaates.* Frankfurt: Suhrkamp.

Østerud, Ø. (1999). *Globaliseringen og nasjonalstaten*. Oslo: Ad Notam Gyldendal.

About the author

Erik Oddvar Eriksen is Professor at ARENA, the University of Oslo, and Adjunct Professor at the LOS Centre, University of Bergen, Norway. His research interest is in social and political theory, with particular emphasis on the EU.

Recent publications include *Grenser for staten* (1993), *Kommunikativ ledelse* (1999). He has edited *Den politiske orden* (1993), *Deliberativ politikk* (1995), and *The Rationality of the Welfare State* (with Jørn Loftager) (1996). He is the co-author, with Jarle Weigård, of *Kommunikativ handling og deliberativt demokrati* (1999).

Publications from Magtudredningen

Books
Jørgen Goul Andersen, Peter Munk Christiansen, Torben Beck Jørgensen, Lise Togeby and Signild Vallgårda (eds.) (1999). *Den demokratiske udfordring.* København: Hans Reitzels Forlag.

Shorter works
Erik Oddvar Eriksen (1999). *Is democracy possible today?* Århus: Magtudredningen.