

Chapter 9

Deliberative *Demoi*-cracy in the European Union *Towards the Deterritorialization of Democracy*

Samantha Besson¹

Our European *demoi*-cracy is neither simply a *Union of democracies* nor a *Union as democracy*. Our European *demoi*-cracy is instead one of the most innovative political machines ever invented to create and manage not only economic but also democratic interdependence. [...] Our European *demoi*-cracy is predicated on the mutual recognition, confrontation and ever more demanding sharing of our respective and separate identities – not on their merger. The EU is a community of others. In political terms, a *demoi*-cracy is not predicated on a common identity. European public space and political life. Instead, it requires informed curiosity about the political lives of our neighbours and mechanisms for our voices to be heard in each other's forums. In time, a multinational politics should emerge from the confrontation, mutual accommodation and mutual inclusion of our respective political cultures. (Nicolaidis, 2003, p. 5)²

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² The paper from which this quote was excerpted has since been revised and published as Nicolaidis (2004).

Introduction

Whether cosmopolitan³ or national, many democratic theories suffer nowadays from a territorial bias that prevents them from accounting properly for the new democratic reality in Europe. Even though most theories have realized the necessity of post-national⁴ democracy, although they have acknowledged the tyranny of national paradigms of democracy and hence developed new models of post-national democracy and although the “*demoi* without *ethnos*” thesis has now gained extensive support, the relevant democratic polity and hence the relevant democratic subject in most cosmopolitan democratic theories remains a territorial one. It has indeed long been recognized as the *paradox of the democratic polity* that the modern democratic polity is both constituted and constrained by pre-political territorial boundaries (Benhabib, 2004, ch. 4; Whelan, 1983; Offe, 1998). The problem, however, is that territorial boundaries of democracy exclude many non-citizens’ interests, which are affected by domestic decisions, and therefore conflict more and more with political equality and with the inclusive nature of democracy. Despite increasing evidence of the so-called “detritorialization of politics” at the global level (Held et al., 1999, p. 32; Held, 1995a, p. 237) and of the porosity of national boundaries, the territorial boundaries of democracy are still held to apply to regional and cosmopolitan democracy.⁵ Supranational politics, whether regional or global, are thought of as overlapping territorially delineated national entities and as sharing in part at least the same constituencies, thus simply adding another layer of territorialized democracy rather than opening national democracies or other non-state, albeit territorially distinct, polities to one another along functional instead of territorial lines only.⁶

This is the case in most accounts of democracy in the European Union (EU) which focus on the co-operation of territorially delineated national *demoi* (Weiler, 1999) or on the constitution of a pan-European *demoi*, which encompasses all the national *demoi* within their territorial boundaries (Habermas, 2001a). Even though the national states with the territorially delineated democratic

3 “Cosmopolitan democracy” need not imply a world democracy institutionalized along the lines of state-like democracy; it refers merely to “post-national” democracy, i.e., democracy beyond the state whether it is international, supranational or purely transnational, without assuming the disappearance of national democracies. On the term, see Archibugi (2004); Dryzek (1999).

4 I refer to the term “post-national” as a generic term to mean non-strictly national, whether supranational or merely international. It should not be taken to mean that post-national law supplants and replaces national law; it can well coexist with it.

5 See for example Pogge (1997). See for a critique, Archibugi (2004, p. 445 ff.); Dryzek (1999, p. 44).

6 See for example Habermas (2001a). See also, albeit to a minor extent, Held (1995b, pp. 154, 236) as shown in the critique by Dryzek (1999, p. 32) and Bohman (2005).

politics they promote remain crucial to European democracy,⁷ there is legal and political evidence pointing in the direction of a progressive detrterritorialization of democracy in the European Union (Benhabib, 2004, ch. 4). The main features of European democracy have already been discussed at length elsewhere: in a nutshell, it is an unprecedented and fully institutionalized form of post-national democracy, whose primary agents remain the many national *demoi* and not (only) a single and distinct European *demoi* and in which the relevant national and European *demoi* are gradually decoupled from underlying *ethnoi*. Hence, the now famous idiosyncratic concept of European *demoi*-cracy (Van Parijs, 1998; Weiler, 1999; Poiares Maduro, 2002; Nicolaidis, 2003 and 2004; Bohman, 2004 and 2005). There is more to the unique organization of European *demoi*-cracy, however, and this novelty lies, I will argue, in the progressive detrterritorialization of the relevant *demoi* in the EU.⁸

It is crucial to pay heed to this transformation, since, without democratic detrterritorialization, truly transnational deliberation could not really take place and European *demoi*-cracy would amount to no more than wishful thinking. Deliberative democracy should be seen as part of this transformation. Besides its other advantages, it re-centers attention, I will argue, on the European citizen and the moral-political constituents of each national *demoi* and hence the functional European *demoi* in which they may participate depending on the issue, rather than only focusing on each single national or European territorially-bound *demoi* with their electoral constituents.⁹ A lot of progress needs to be achieved to

7 It is important not to conflate nationality with territoriality as non-nationals usually see their civic credentials assessed on territorial grounds in contemporary politics. It suffices to think of the residence-based approach to European citizenship that aims at freeing EU citizenship from national nationalities, but that remains founded on a territorial criterion of citizenship and democracy. See Schachar (2003); Benhabib (2004). This explains reversely how the detrterritorialization of democracy need not imply the end of national states, as we will see.

8 From a methodological perspective, the chapter purports, starting from the evidence of detrterritorialization of democracy in Europe, to discuss its theoretical underpinnings, then suggesting in return ways in which the institutionalization of European democracy may develop this deliberative potential. A combination between a “top-down” and a “bottom-up” approach is required that allows for a certain influence of the post-national political and legal reality on normative considerations (Gutmann and Thompson, 2004, p. 37), while also in turn constraining that institutional reality with those very normative considerations. All this explains how the EU can be used as an example against which one should test institutional considerations of cosmopolitan democratic theory, without, however, necessarily being taken as an absolute model and an optimal outcome, given the constant need for institutional reform (Nicolaidis and Lacroix, 2003, p. 137).

9 On the opposition between moral and electoral constituents, see Gutmann and Thompson (2004); Thompson (1999, p. 120 ff.). I am referring here to moral-political constituents to emphasize the political role of these constituents as opposed to a purely moral presence (on the latter, see Cheneval, 2006, in this book).

enhance the deliberative dimension of European *demoi*-cracy, however. Based on the deliberative model of democracy, the chapter will venture different institutional proposals aimed at making the best of Europe's deterritorialized *demoi*-cracy. I will start by presenting the specificity of the democratic legitimacy of the European polity and of European deliberative democracy (Section 1). The second section will identify the relevant democratic subjects in the EU and conclude to the plurality of European *demoi*. In the third section, I will address the paradox of the democratic polity and argue for the deterritorialization of *demoi*-cracy in the EU. This will lead, in the fourth section, to the development of a model of deterritorialized deliberation in the EU and beyond.

1 The Democratic Legitimacy of the European Polity

Ever since the European Union entered its so-called "legitimacy crisis" in the early 1990s (Bellamy and Castiglione, 2000; Poiras Maduro, 2002), the issue of the democratic legitimacy of the EU has become an object of fascination for both Europeanists and democratic theorists alike (Weiler, 1995; Craig, 1999; Mény, 2003). Very rapidly it has indeed become clear that, if there were a need for legitimacy on the part of a polity which has a huge impact on the life of its legal subjects, the *sui generis* nature of that polity (Poiras Maduro, 2002; Bohman, 2004, p. 330; Schilling, 1996; Weiler and Haltern, 1996) had to have an influence on the kind of regime legitimacy it called for (Eriksen and Fossum, 2000a, p. 13).¹⁰ National paradigms of democracy are useless in alleviating the growing democratic deficit, whether at European or, even worse, at national levels (Bellamy and Castiglione, 2000; Poiras Maduro, 2002). The mixed nature of the polity, situated between a State and an international organization (Mancini, 1998; Weiler, 1998; von Bogdandy, 2000), and its multi-level¹¹ type of governance¹² call for a new model of post-national democracy. In fact, each layer of supranational, international and infranational governance in the European polity should be matched by a specific regime whose legitimacy will depend on the political characteristics of governance required. Moreover, what need to be adapted are not only European democratic requirements, but primarily national models of democracy, which are themselves in deficit due to globalization (Mény, 2003; Moravcsik, 2003; Magnette, 2003a; Thompson, 1999, p. 121 ff.; Beetham and Lord, 1998; Closa and Fossum, 2004). In what follows, I will first discuss models of post-national democracy and then post-national deliberative democracy in general, before addressing the question of deliberative democracy in the EU.

¹⁰ On the notion of post-national legitimacy, see Follesdal (2004); Bellamy and Castiglione (2004).

¹¹ See Jachtenfuhs (2001); Weiler (1999).

¹² On this long-lasting debate on democratic governance as opposed to government, see e.g., Held (1995a); Dryzek (1999, p. 31 ff.); Archibugi (2004).

Post-national Democracy in General

Cosmopolitan or post-national democracy draws the consequences of *globalization* for democracy. National states are no longer the only sources of decisions (Habermas, 2001a); many decisions are taken outside the reach of national political processes and national political processes produce decisions that affect people outside their electoral constituents. Globalization thus generates a legitimacy gap that needs to be filled by globalizing democracy and extending it beyond the national state (Archibugi, 2004, p. 438).

Post-national democracy groups all democratic processes that occur beyond the national state or within the national state, but in ways that link national democracy to other transnational, international or supranational democratic processes. It is not simply about improving national processes, nor about legitimizing international processes indirectly through those national processes (Archibugi, 2004, p. 442). Nor should it, however, be confused with the idea of a cosmopolitan state, as it does not prejudice the nature of the post-national polities whose regime should be democratized (Beitz, 1994; Gosepath, 2002; Besson, 2006). The multiplication of levels of governance and accountability need not indeed necessarily benefit democracy (Gutmann and Thompson, 2004, p. 62). In revealing the beneficial connections between national democracy and transnational or post-national democracy, cosmopolitan democracy proposes the implementation of a multi-layered and multi-centered democratic society *within, among and beyond* states.

Of course, if one transposes democracy beyond the state, it is important to adapt it to the new post-national constellation and its many layers of governance. Post-national polities cannot be governed in the same way as national ones and this undermines the argument according to which international organizations are far less democratic than national states.¹³ These models need, however, to be revised at the national level too, since, on the one hand, national democracies can be deemed deficient in many ways (Mény, 2003; Archibugi, 2004, p. 465; Schmidt, 2004, p. 976) and, on the other, cosmopolitan democracy is a global process that integrates all different layers in such a way that their democratic quality can no longer be judged in an isolated fashion (Dryzek, 1999; Archibugi, 2004).

Deliberative Post-national Democracy in General

Among the different models of democracy that can account for the new post-national democratic processes, one should mention deliberative democracy. By definition, deliberative democracy fits globalized polities better than other democratic theories: deliberation accommodates fluid boundaries, since what matters is the participation of those affected by a decision, wherever they are (Thompson, 1999; Gutmann and Thompson, 2004, p. 36 ff.). In a global world,

¹³ See, for example, Dahl (2001, p. 38).

186 many national decisions affect people other than those people deciding. It seems therefore that deliberative democracy theories, which emphasize the need to justify decisions to people who have to live with the consequences of collective decisions and to deliberate with them, can easily extend their requirements to the post-national arena.

The idea that democracy revolves around the transformation of preferences through *deliberation* rather than the mere aggregation of preferences through voting has now become one of the major creeds in democratic theory. Deliberative democracy remains, however, a complex ideal with a variety of forms and its legitimacy is still heavily debated (Gutmann and Thompson, 2004; Dryzek, 2005; Besson, 2003 and 2005a, ch. 7). Deliberative democracy, broadly defined, is any one of a family of views according to which public deliberation among free and equal citizens lies at the heart of legitimate political decision-making and self-government. One may summarize the core phenomena that count as deliberative democracy as (i) a process of collective decision-making with the participation of all those affected by the decision (Dryzek, 2001, pp. 651, 662) or at least of their representatives (Benhabib, 1996, p. 68; Besson, 2005a, ch. 10) (democracy) and (ii) a means of reasoned argument offered by and to participants who are committed to values of rationality and impartiality (Elster, 1998, p. 8; Cohen, 1989, p. 22) (deliberation).¹⁴ Whatever form it takes, a conception of deliberative democracy "is organized around an ideal of political justification" (Cohen, 1996) (public justification) requiring free public reasoning of equal citizens (reasoned argument). Claims on behalf of or against such decisions have to be justified to these people in terms that, on reflection and using their common reasons, they are capable of accepting (Dryzek, 2000, p. v).

Deliberative Democracy in the EU

Different democratic models have been put forward to legitimize the EU (Martí, 2003, p. 147 ff.). It is deliberative democracy, however, that is usually regarded as the most promising model for the development of regime and polity legitimacy in the European Union (Curtin, 1997; Weiler, 1999; Eriksen and Fossum, 2000a; Bellamy and Castiglione, 2000; Pólares Maduro, 2002; Gerstenberg and Sabel, 2002; Martí, 2003; Chalmers, 2003; Lord, 2004; Lord and Magnette, 2004).

There are many reasons for this and I will only mention a few here (Martí, 2003). First of all, the *nature* of the European polity. Because deliberation accommodates fluid boundaries particularly well, it fits the mixed and polycentric nature of the European polity. This is even more the case as power is not divided according to the functions of government in the EU, but among stakeholders and these are scattered across the EU (Lord, 2004, pp. 188–89; Thompson, 1999). A second reason to base the democratic legitimacy of the EU on the deliberative

model lies in the specificity of the EU's political regime. The latter is indeed neither truly majoritarian nor consociational; it accommodates national diversity and protects against majoritarianism, but without losing in decisiveness (Magnette, 2003b; Dryzek, 2005). A third justification to support the deliberative model of democracy in the EU lies in its reflexivity. Deliberative democracy allows indeed for widespread disagreement and deliberation over the legitimacy of the polity and its regime (Gutmann and Thompson, 2004). This is particularly important in a complex polity like the EU in which decisions affect the lives of many and should hence be regarded as open to potential critiques and revision (Eriksen and Fossum, 2000b, p. 258; Lord and Magnette, 2004). A final and connected reason lies in the dynamic nature of deliberation (Gutmann and Thompson, 2004, p. 6). It is a long-term process in which decisions may constantly be re-opened. This applies particularly well to the EU in which the same decisions are taken in iterated fashions by different authorities.

Numerous questions remain unanswered regarding the application of deliberative democracy to the EU, however. As a post-national polity, deliberation in the latter cannot entirely equate deliberation in a national democracy.¹⁵ One may mention three of these difficulties here: first of all, what motivates us to deliberate (Neyer, 2003, p. 693)? Differences among European citizens might trigger deliberation, but they may also prevent it depending on the circumstances. Second, what kind of deliberation should we privilege? And, finally, what kind of empirical and institutional arrangements could best encourage deliberation in the EU? In what follows, I would like to concentrate on the second and third questions. It is important indeed to suggest an adequate institutional framework of deliberation in the EU, that corresponds to its polycentered and heterarchical nature. To be able to do so, we need to turn, first, to the identification of the democratic subjects in the EU.

2 The Plurality of Democratic Subjects in the EU

Democracy cannot exist without a subject: its *demos* or its people. The same applies therefore in principle to post-national or global democracy. In fact, the absence of a global *demos* is one of the main objections to global democracy. This objection is also referred to as the *no-demos thesis* in the European Union; there allegedly cannot be a European democracy because there is no European *demos*. To develop European deliberative democracy along the lines I have just described, it is crucial to address this objection and identify the relevant democratic subjects in the EU. To do so, I will first discuss the notion of post-national democratic subject in general, before addressing the issue in the European context.

¹⁵ See, for example, the essays in Eriksen and Fossum (2000a).

¹⁴ On the relationship between the democratic and deliberative components of deliberative democracy, see Martí (2006) and Lafont (2006), in this book.

making. They are also the indirect source of the democratic legitimacy of all intergovernmental decision-making at the European level. Finally, even if the European *demoi* is much more than the sum of national *demoi*, it is, as we will see, plural in nature and hence cannot be detached from each single national *demoi*. Thus, even supra-national European law-making implies national *demoi* in its legitimation process. This explains why the EU is often regarded as a whole of both states and peoples (Nicolaidis, 2003).¹⁶ European democracy is a whole that cannot simply be assessed either from a purely national or a purely European standpoint. To quote Nicolaidis, European democracy is neither a "Union of democracies" nor a "Union as democracy" (Nicolaidis, 2003, p. 5; Bohman, 2004 and 2005).

The European demoi If the European *demoi* is more than the mere sum of national *demoi*, the question remains as to its exact constituency. There are two distinctions worth dwelling on here: first, the distinction between the *demoi* and the *ethnos* and, second, the distinction between a single *demoi* and many *demoi*. A third question arises, once one accepts the existence of a European *demoi* that is imbricated in the many national *demoi*: that of the territorial or functional nature of the European *demoi*.

Demos or *ethnos*. Traditionally, the *no-demos* thesis has been phrased around the paradox of the existence of a *demoi* without an *ethnos* in Europe. In many European national states, and in Germany in particular, the national *demoi* is constituted on the pre-political grounds of an *ethnos*, whether that *ethnos* is regarded as racial, ethnic, cultural or religious. Some authors make it a condition of the existence of a European *demoi* therefore that it relies on a European *ethnos*. In the absence of such pre-political elements of a European identity, they declare European democracy impossible.¹⁷ This is not a purely European view, however, and the issue of the pre-political origins of modern politics is a growing concern in a multi-cultural world (Canovan, 1996; Benhabib, 2004).

The problem with this view is twofold. First of all, the link between the *demoi* and the *ethnos* is not absolute at the national level. Not all European democracies developed on the basis of an *ethnos* historically. Moreover, many democracies are multinational. And, finally, there is a growing tendency to dissociate citizenship rights from nationality in European states facing the challenges of immigration and the social and political integration of migrants. Secondly, the *demoi-ethnos* linkage need not necessarily apply to post-national democracy and European

¹⁶ See, for example, the Preamble to the Treaty establishing a Constitution for Europe: "Grateful to the members of the European Convention for having prepared this Constitution on behalf of the citizens and States of Europe" (emphasis added).

¹⁷ One may distinguish between ethno-nationalists (89 BVerfGE 155, [1994] 1 CMLR 57, *Maastrichturteil*) and civico-nationalists (e.g., Grimm, 1995), depending on whether the reasons to found the *demoi* in an *ethnos* are pre-political or related to the national boundaries of political association.

The absence of a global *demoi* is one of the main objections to global democracy. According to this objection, minorities and elites are still the primary participants in discussions relative to global politics, rather than the whole community of global stakeholders (Urbinati, 2003).

The problem is that there is no agreed set of criteria as to how to judge what makes a multitude of people a *demoi* or a political community. Self-rule or self-legislation, which lie at the core of democracy, also imply self-constitution; the community which binds itself by the laws it generates also defines itself as a democratic subject by drawing its own boundaries (Benhabib, 2004, ch. 4). All it takes therefore is some kind of "we-feeling," a form of solidarity among different "stakeholders" (Archibugi, 2004; Lord, 2004). This requirement of solidarity feeling should also apply to the post-national level, therefore. According to Calhoun, indeed, solidarity does not necessarily respect state boundaries (Calhoun, 2003). In fact, solidarity need not necessarily be pre-political at all; it can be generated by the political exercise of constitution of global institutions. Moreover, this solidarity need not even be territorial. Peoples can be interpreted as the inhabitants of a village, of a city, or of a country, but also as ethnic groups, members of religious movements, and even fans of a football team. In many functional areas of governance, there are different *demoi* which are not always clearly associated to states' borders. If communities of fate overlap *de facto*, it is regressive to anchor in a static manner a political community to a geographically delimited and in some cases pre-political "population" (Archibugi, 2004).

In fact, it is not only the pre-political and often territorial boundaries of the *demoi* which are put into question at the post-national level, but also the single nature of the post-national *demoi*. Post-national democracy is indeed the result of the imbrication of many national, transnational, international and supranational democratic processes in which the democratic subjects are many and do not necessarily constitute a single *demoi* (Archibugi, 2004; Bohman, 2005). All this is particularly relevant to the identification of the democratic subjects in the European Union. The questions we need to ask are the following: what is the European *demoi* based on? Is there more than one European *demoi*? And, are the different European *demoi* territorially-bound?

The European Democratic Subjects

Among the different democratic subjects in the EU, it is important to distinguish between the national *demoi* which subsist as a basic layer of European democracy and the European *demoi* that is either independent or imbricated in national *demoi*, thus raising difficult issues pertaining to the nature of that imbrication.

The national demoi The national *demoi* are clearly the basic subjects of European democracy; they retain sovereign competences in many areas of European law-

democracy in particular. This may be confirmed by EU citizenship which depends on national nationality, but not on a European nationality. As such, European democratic membership is decoupled from nationality and any form of pre-political identity apart from national ones. This has been exemplified lately by the extension in the 2000 Charter of Fundamental Rights of many of EU citizenship rights to third country nationals residing in the EU, thus calling for a redefinition of a denationalized European citizenship (Davis, 2002).

As a consequence, the European *demos* may be understood in civil and political rather than in ethno-cultural terms. On this view, European citizens do not by definition share the same nationality nor do they need to share the same identity. The substance of their membership in the same European *demos* lies in a commitment to the shared values of the Union (Weiler, 1999, p. 344 ff.). These shared trans-European values are best captured by what Habermas calls the European "constitutional patriotism" (Habermas, 2001a and 2001b).¹⁸ Authors diverge, however, on whether or not this European *demos* already exists (Soysal, 2003) or whether its emergence is at the most possible and desirable in the foreseeable future (Habermas, 2001a and 2001b). They diverge also on whether the European *demos* fosters the different *ethnos* corresponding to the national *demos* (cosmopolitan communitarians: e.g., Weiler, 1999) or is indifferent to them (cosmopolitan globalists: e.g., Lacroix, 2004b).¹⁹

Demos or *demos*. If one accepts the possibility of a European *demos* constituted politically without an *ethnos*, another question arises. There may indeed be one or many subjects of European democracy (Bohman, 2005; Gerstenberg and Sabel, 2002), depending on whether there is a distinct and overarching European *demos* or, on the contrary, a *demos* of many European *demos* in which are imbricated the national *demos* linked by European values.

According to some authors, there cannot be a European democracy without a single European *demos*. These authors group pure intergovernmentalists, who are skeptic of the European political construction, but also supranationalists, who believe in a European super-state. What they have in common is the statist model of post-national democracy, according to which there can only be one overarching *demos* in a democracy (Nicolaidis, 2003, p. 5). For the former, however, this *demos* can only exist if it matches a pre-existing *ethnos* in Europe, and, as there is none, all we have are national *demos* and hence no European democracy (Grimm, 1995). For the latter, by contrast, the true post-national European *demos* need not match a pre-existing *ethnos* in Europe and can be developed on purely civil and political grounds by developing a European public sphere, etc. (Habermas, 2001a; Zürn, 2000). According to this approach, all members of a national *demos*

¹⁸ See also Cronin (2003); Lacroix (2002, 2004a and 2004b).

¹⁹ Whereas Habermas (2001a) considered that the new European *demos* would eventually replace the national *demos* and *ethnos*, the new Habermas (2005) seems to cling to the latter more closely.

are also members of a European *demos* and European membership can hence be understood on the model of concentric circles of political membership.²⁰

Those who reject the statist model of the European polity approach the latter's democratic legitimacy differently and do not look for a single state-like *demos* in Europe. They acknowledge the existence of a complex European *demos*, but emphasize the plurality of European *demos* constituting it without an overarching and distinct European *demos*. Rather than having a single subject, European democracy would have a plurality of *demos* at its core. These *demos* are more together, however, than the mere sum of many distinct democracies with their different national *demos*, because all of them are distinctly European. Europe is not only a union of states in which *demos* are connected indirectly through their leaders, but also a union of peoples in which these *demos* are connected directly (Nicolaidis, 2003, p. 5). If European democracy is neither a Union of democracies nor a Union as democracy, it should be regarded as a Union as *demos*-cracy (Nicolaidis, 2003, p. 5, and 2004; Bohman, 2004 and 2005). If European membership is not to be viewed merely as an overarching *demos*, it should therefore be understood as an additional form of *demos* that is necessarily imbricated to every single national *demos* as a *demos* of *demos* (Cohen, 2000). This is exemplified by the fact that EU citizenship is dependent on national citizenship.

Authors differ on how the different European and national *demos* may relate to constitute more than a mere sum of national *demos* organized intergovernmentally and more precisely how the Europeanness of these *demos* emerges. The European *demos* no longer refer in this case to national *demos* but to the European interconnection of national *demos*.²¹ A first approach may be to understand individuals as belonging simultaneously to two *demos* based critically on different subjective factors of identification, in the way someone may regard herself as being both Irish and Catholic. The problem with this approach is that Europeanness may be dispensable; just as one can be a Catholic without being Irish or be Irish without being a Catholic, membership to the European *demos* could be detached from membership to national *demos*. This would not be otherwise were the European *demos* an overarching and single territorial *demos*. A second approach understands individuals as belonging simultaneously to a national *demos* and to the European *demos* in a way that both memberships cannot be dissociated. One can only be a European citizen by being also a national citizen, but more importantly one cannot be a national citizen without also being a European citizen (Weiler, 1999, p. 346).

Territorial or functional *demos*. A third question that needs to be addressed, even once one accepts that the European *demos* need not be *ethnos* nor be grouped

²⁰ See Weiler (1999, p. 344).

²¹ In this sense, I follow Weiler (1999), although not for the same reasons: one need not believe in the value of fostering national *ethnos* to believe in the importance of maintaining many *demos* in Europe as opposed to promoting a single European *demos* à la Habermas (Lacroix, 2004b).

under an overarching single European *demos*,²² is that of the deterritorialization of European democracy.²³ The idea underlying European *demos*-cracy is indeed to instill transnational and hence trans-European democratic politics (Bohman, 2005). Since communication should take place both in existing national institutional and non-institutional channels, Dryzek's approach to decentering democracy and taking it away from institutions (Dryzek, 1999 and 2005) is not sufficient. Moreover, transnational deliberation among European *demos* does not aim at replacing national democratic processes, but rather at complementing them on specific matters; it therefore operates on a radically different mode from that of national deliberation.²⁴ Thus, if multinational democracy and transnational deliberation are to become more than wishful thinking, the solution has to lie in the deterritorialization of democracy.²⁵ According to Nicolaidis, however, European *demos*-cracy "requires informed curiosity about the political lives of our neighbours and mechanisms for our voices to be heard in each other's forums" (Nicolaidis, 2003, p. 5). If transnational deliberation among many European *demos* is a normative requirement, rather than a descriptive statement, however, it needs to rely on a normative argument. But how can this transnational deliberation be justified if democratic constituencies and fora are territorially defined and bounded and democratic requirements are therefore limited to an electoral constituency?

Of course, the deterritorialization of democracy will never be absolute given the need for located authorities and for an electoral constituency constituted of all those affected, but also accordingly by a criterion of territorial proximity.²⁶ The different national *demos* remain profoundly territorial. What matters, however, for deterritorialized *demos*-cracy is the European functional connection between

²² According to Habermas (2001a), indeed, the European *demos*, like the national *demos*, is territorially-bound. For a critique, see Gerstenberg and Sabel (2002).

²³ Even those authors who defend the co-existence of multiple *demos* do not necessarily abandon the idea of their territorial boundedness. See, for example, Held (1995a, pp. 154, 236) on an "overarching legal framework" and the critique by Bohman (2005).

²⁴ Thus, Thompson (1999, pp. 120–25) is too restrictive when he argues against cosmopolitan democracy for a deliberative form of transnational democracy in national democratic processes only.

²⁵ See Schmidt (2004, pp. 980–81) who speaks of "de-differentiation of European politics" due to European integration. Most authors like Nicolaidis (2003), Poiras Madiuro (2002) and Weiler (1999) do not explore how the transnational democratic discourse they encourage can be justified. This problem is even more acute for Nicolaidis (2003) who understands the European *demos*-cracy to encompass national *demos* only.

²⁶ Although the EU is a multi-layered entity that "de-borders the nation-state," it can clearly be analyzed as a territorial polity surrounded by external borders. See von Bogdandy (2000, pp. 34–36) and most recently the reference to the European continent in the Preamble to the Treaty establishing a Constitution for Europe. Of course, as we will see, just as in the case of national democracy, this does not mean that European democracy need necessarily be purely territorial, but only that it could be taken to be such.

the many territorialized national *demos*. It is important therefore to distinguish the subject of democracy, the European functional *demos* of *demos*, from the territorial entities in which the national *demos* are located.²⁷ It is essential to understand, however, that the functional link between the different territorial national *demos* is a political one, albeit not necessarily an electoral one, and not only a moral one. It seems artificial indeed to separate a moral constituency that deliberates from a political one that decides (contra Cheneval, 2006). Deliberation cannot be separated that neatly from the decision-making process (see Besson, 2003). Moreover, deliberation that matters politically amounts to a large extent to an institutionalized process that already calls for issues of clarification in terms of representation and forum, for instance. This actually explains how one may refer to this European functional *demos* of *demos* as a real *demos* and to EU Member States' citizens taking part in local politics in another Member State as European citizens.

3 Towards Deterritorialized Democracy

The institutional and normative practices that need to accompany deterritorialized and cosmopolitan democracy have not yet been articulated theoretically (Archibugi, 2004; Benhabib, 2004). Reasons may be found in the persistence of what one may refer to as the paradox of the democratic polity. In a globalized world, this paradox and the hiatus between territorial democratic processes and their deterritorialized impact generate increasing unease and a representation-of-interests problem and hence call for an argument for democratic deterritorialization.

The Paradox of the Democratic Polity

Advocates of deterritorialized democracy face the ancient and famous paradox of democratic legitimacy (Benhabib, 2004, ch. 4). Self-rule, which lies at the core of democracy, also implies self-constitution; the community which binds itself by the laws it generates also defines itself as a democratic subject by drawing boundaries (Whelan, 1983; Offe, 1998). The difficulty is that these boundaries are usually not only civic, but also territorial. In fact, these territorial boundaries often match pre-political territorial boundaries.²⁸ As a consequence, the will of the democratic sovereign can only extend over the territory under its jurisdiction. The problem is that the territorial limits of the polity contradict the democratic requirement that all those affected by a decision be given a voice in the decision-

²⁷ See Schachar (2003) who suggests a "*jus connexio*" instead of a "*jus sanguinis*" or a "*jus soli*" which both remain eminently territorial.

²⁸ Even those authors who consider that the *demos* need not pre-exist politics and can be politically constituted use a territorially-bound conception of the *demos*. See, for example, Habermas (2001a).

making process. This gives rise to the *paradox of the democratic polity*: the polity is both a condition and a limit on democracy. Without a bounded polity, there can be no democracy, but democracy may not extend further than the boundaries of the polity (Poiare Maduro, 2002). Thus, democracy is paradoxically limited in undemocratic ways; it cannot apply to its own constitution and to the determination of its own boundaries.

This paradox transfers to cosmopolitan democracy in a global world. Since global democracy cannot exist without a *demos*, the issue of the self-constitution of the *demos* re-arises in the global context (Archibugi, 2004, p. 461). Even though political boundaries need no longer be conceived in state-centric terms, and although post-national citizenship need not be grounded in nationality or other pre-political elements of collective identity, they remain committed to locality (Benhabib, 2004, ch. 4). Democratic governance is mostly thought to draw boundaries and create rules of membership at some locus or another, even if it is smaller or larger than those of a national state. Supranational polities, whether regional or global, overlap territorially delineated national entities and they share therefore at least in part the same constituencies, thus simply adding another layer of territorialized democracy rather than functionally opening national democracies or other non-state, albeit territorially distinct, polities to one another.

The Argument for Deterritorializing Democracy

The territorial boundaries of democracy generate a problem of political equality (Beitz, 1983) and lack of inclusion contrary to one of the basic tenets of democracy and democratic participation (Aristotle, 1988, III: 1275b13–b21, VI: 1317a40–1318a10; Dryzek, 2001, pp. 651, 662): when (territorially) elected representatives are the ones to deliberate and make decisions, not all those affected by these decisions can take part in the deliberation and in the vote that leads to the final decisions. The problem with territorialized democracy in a global world lies therefore in the growing hiatus between the exclusivity of the democratic process and the scope of its potential impact outside that democratic process. The stakeholders' communities in a relevant and growing number of specific issues do not necessarily coincide with states' territorial borders (Archibugi, 2004, p. 439; Held, 1995a and 2004). Thus, it is a representation-of-interests problem, which arises from the fact that those inside the polity can impose potential harms (intentionally or not) upon those outside their *demos*. For example, a wealthy polity like the European Union may regularly undertake actions with negative environmental externalities that impose severe pollution and health risks upon those residing outside its geographical boundaries. In understanding democratic polities as closed territorial entities, democratic theory ignores one of the most important components of cosmopolitan democracy: the imbrication of polities and the impossibility of assessing the democratic credentials of one polity in isolation of others'. It has become, in other words, counterproductive to apply

traditional models of democratic accountability to territorially isolated polities when they are already functionally much more imbricated than it seems (Bohman, 2005).

There is a twofold *deficit* in territorial democracies: first, they do not control many decision-making processes that impact on national polities, but take place outside their borders; and, second, national polities exclude from participation and representation many interests which are affected by their decisions. This may occur in three main *settings*. First of all, decisions in a national democracy may affect those taken in another national democracy. Secondly, decisions taken in a transnational process may affect those taken in a national democratic process. Finally, decisions taken in an international or supranational democratic process may affect those taken in national processes. This is the well-known problem of the many majorities overlapping over the same territory (Thompson, 1999). What this means, is that the problem is not only one of *deterritorialization* of decisions, as in the first setting, but also of their *overterritorialization* as in the two second groups of settings; whereas the former requires more inclusive democratic processes, the latter calls for both inclusion and exclusion. Indeed, in case of overterritorialization, the citizens affected by decisions taken outside their polities get a say in those decisions, even though in a more diluted and indirect way. Finally, one can identify two sets of *interests* that supersede states' borders. On the one hand, there are the matters that involve all inhabitants of the planet. Many environmental problems, for instance, are authentically global, since they influence the destiny of individuals irrespective of their nationality. But, on the other hand, there are also cross-border issues relevant to a few political communities.

There is no agreed set of criteria as to how to judge what makes a multitude of people and an "overlapping community of fate" (Held, 1995a, p. 136) a political community, i.e. a *demos*. It is a largely contingent question that depends on historical events and developmental trends (Offe, 1998, 114). As we have seen before, political communities are bound by a we-feeling or a form of solidarity. Solidarity does not, however, necessarily respect state boundaries, and this forces us to try to understand which elements bring individuals together (Calhoun, 2003; Archibugi, 2004). If communities of fate *de facto* overlap, it is regressive to anchor a political community in a geographically delimited "population." True, the *demos* is not antecedent and independent from political institutions. In some institutional contexts, sharing common institutions has given birth to a *demos*. To think that the *demos* is independent from institutions would therefore be equal to thinking that the *demos* could ever be independent from history (Archibugi, 2004). Institutions need no longer depend only on territorial boundaries, however; many are established to fulfill certain cross-border functions and this is the case of many transnational bodies. After all, it is history that made territorial boundaries the relevant boundaries of modern democracy. Ancient democracy and citizenship did not depend on nationality and territory and there is no reason why migration and globalization might not put this linkage into question (Preuss, 1995; Benhabib,

2004, ch. 4). True, the boundaries of national democracies are currently largely defined by pre-political and hence pre-democratic conditions (Whelan, 1983; Offe, 1998). Democracy can help, however, retrospectively mend the democratic deficits in its constitution and boundaries. After all, political equality commands inclusion and respect for all affected interests, and political constituents need not be restricted to electoral ones.²⁹ Defining the identity of a democratic people is an ongoing process of constitutional self-creation. While we can never eliminate the paradox that those who are excluded will not always be among those who decide, we can render these distinctions fluid and dynamic through processes of continuous and multiple democratic iterations (Benhabib, 2004).

If the European functional *demos* may be constituted on grounds of deterritorialized solidarity, one needs to determine what makes it the case that someone is a citizen of one European functional *demos* rather than of another. Most authors mention the fact of being "affected" by a polity's decision as sufficient. Stakeholders in these overlapping communities of fate are not, however, strictly speaking *bound* by the democratic decisions taken by other polities. They are at most strongly affected by them and this is a purely factual criterion which anyone can fulfill and which does not therefore suffice to trigger normative consequences and democratic rights in particular (Gutmann and Thompson, 2004; Gould, 2004). In practice, however, the difference is often moot, since stakeholders simply have to abide by the new factual or legal situation thus created. As such, their being "affected" is already, albeit indirectly, normative and not only factual. Of course, the line must be drawn somewhere (Thompson, 1999, p. 120); the criterion must be one of degree of affectation of the interests, which must be comparable to a *de facto* obligation. Thus, for instance, what makes the national *demos* in Europe part of a functional European *demos* is the fact that they mutually influence each other's normative orders (Besson, 2004a).

An objection to the deterritorialization of democracy lies in national sovereignty. Neither the idea of national sovereignty, residing in the national parliament, nor that of popular sovereignty *tout court* are easily compatible with the idea of deterritorialized democracy. This is particularly clear in the European context. Because sovereignty in the EU can only be exercised in coordination with non-national polities, it presupposes a cooperative understanding of sovereignty that pools sovereignty between national *demos* and European institutions (Besson, 2003 and 2004a, p. 271; Magnette, 2000, pp. 161–66). Purely territorial sovereignty has gradually been replaced by a differentiated and overlapping functional form of sovereignty in the EU (Walker, 2003, pp. 22–23). On this account, the exercise of sovereignty becomes reflexive and dynamic as it implies a search for the best allocation of power in each case, thus putting into question and potentially improving others' exercise of sovereignty as well as one's own. Since democratic

²⁹ Political equality should therefore be associated to the idea of "*sympoliteia*" among citizens of the City and Others as opposed to strict "*isopoliteia*" among citizens of the same City.

rule is one of the values protected by popular sovereignty, the exercise of sovereignty implies looking for the best level of decision to endow those affected by that decision with the strongest voice and hearing in Europe (Weiler, 1997, p. 112 ff.; McCormick, 1999, p. 135; Poiares Maduro, 2002).

4 Deterritorialized Deliberation in the EU

I argued before for the specific relevance of *deliberative democracy* in the EU and this specificity is confirmed. I will argue, by the latter's ability to support the deterritorialization of democracy in Europe and beyond. In what follows, I would also like to make *proposals of institutional design* that make the most of the unique deliberative potential of the complex interconnection of public spheres and of the reflexive and iterated nature of democratic deliberation inside and outside the EU. These *demos*-cratic proposals should help counter traditional measures proposed to further European democracy, which, by ignoring the inherent plurality of the European polity, have contributed to entrenching existing territorial units (Follesdal, 2000; Schmidt, 2004, p. 977) and thus to weakening democratic accountability both at national and European levels and both inside and outside Europe (Schmidt, 2004). The proposals will concern deliberative *demos*-cracy's fora and its modes of representation.

Deliberative Deterritorialization

Extending the idea of a community of stakeholders beyond territorial boundaries has recently been made much easier by deliberative democracy theories. According to these theories, indeed, the essence of democracy is not to be found only in representation or voting, but also in deliberation. Deliberation can cope with fluid boundaries and allows for transnational communication (Thompson, 1999, pp. 120–25). What matters for deliberative democracy is indeed the character of political interaction, rather than its locus. As such, deliberative democracy broadens the scope of democratic accountability beyond national borders (Dryzek, 1999, p. 44; Gutmann, 1999; Gutmann and Thompson, 2004, p. 36 ff.; Gerstenberg and Sabel, 2002; Eriksen and Fossum, 2000a; Schlesinger and Kevin, 2000; Blichner, 2000; Lord, 2004; Lord and Magnette, 2004). If one extends democratic deliberation across territorial polities to all those significantly affected by a decision, one may therefore count a new kind of deliberative constituents or subjects, i.e. moral-political constituents, besides electoral or formal political constituents (Gutmann and Thompson, 2004, pp. 37–38; Thompson, 1999, p. 120). This is the true meaning of *demos*-cracy, i.e. democratic deliberation across different territorial *demos* with citizens of these different *demos* deliberating with each other, thus constituting one *demos* along different functional lines in each case.

Among the practical and ethical reasons for limiting deliberative democracy to territorially bound democratic polities are, on the one hand, the complexity of transnational deliberation and, on the other, the absence of the grounds of reciprocity that underlie the justification duty in public deliberations (Gutmann and Thompson, 2004, p. 36 ff.). The practical limitations of transnational deliberation need not, however, be higher than national ones. As I have already explained, indeed, transnational deliberation relies greatly on national democratic processes and the latter's complexity need not be enhanced by transnational participation. In fact, the European experience shows how the interests of citizens may be beneficially protected and the equality among them may be re-established through the consideration of non-national citizens' interests.³⁰ The inclusion of other European interests in national political processes will indeed often lead to the satisfaction of dispersed national interests that were previously underrepresented in the national process (Poiare Maduro, 2002; Schmidt, 2004, p. 977). This contributes therefore to enhancing the inclusiveness and accountability of national democratic processes in EU Member States (Schmidt, 2002 and 2004; Duina and Oliver, 2005). As to the ethical grounds for limiting deliberative democracy to territorial entities, it finds its limitations in those decisions which affect and constrain significantly and hence bind, albeit informally, people in other polities as much as citizens themselves. This mutual influence of national decisions on one another provides the very ground for reciprocity in deliberation.

Of course, one may wonder how transnational deliberation can influence decision-making if in the end non-citizens have no *power to decide*. They do not take part in electoral contests and cannot therefore be sure, once they have ascertained the representation of their interests in democratic deliberations, that this will necessarily lead to decisions that take their opinions into account. This objection only cuts some ice, however, if one presumes that there is no such thing as the power of the better argument (Blichner, 2000, p. 162). Deliberation influences the constitution of citizens' opinions and judgments and as such it has a clear influence on the outcome of the decision-making process. In fact, as Dryzek argues, it may even be beneficial in divided polities to establish a distance between deliberation and decision-making and this both through a deferral in time and a delocalization in space (Dryzek, 2005, p. 223; Besson, 2005b, ch. 10); opinions are expressed and debated more coolly and in a more reflexive way. Furthermore, deferred and diffuse deliberation in a transnational public sphere adds to the benefits of national deferral those of the transnational deterritorialization of deliberation (Dryzek, 2005, pp. 232–33).

The Fora of Deterritorialized Deliberation

Any democratic account can expect to be asked about the institutions that will house the democratic processes. Hence the question of the forum of *demoi*-cratic

deliberation across polities. Literally, a forum is the institutionalized or non-institutionalized place (Bohman, 2005; Gutmann and Thompson, 2004, p. 62) in which the agent of deliberation, i.e. the people or *demoi*, deliberates. It may refer to territorial as much as to functional fora. In principle, fora of deliberation correspond to the territorial boundaries of the polity and do not transcend them. When democracy is deterritorialized and its agent is not only a *demoi* but many *demoi*, the question of the forum of deliberation needs to be addressed separately from that of the relevant existing territorial polity, be it the EU or its Member States. The progressive deterritorialization of European democracy may be said to take place, first, within the EU, and then, second, between the EU and the rest of the world.

Deterritorialized deliberation within the EU The EU transcends the statist model of democracy in enabling extensive transnational communication among national *demoi* in the Union that is unknown outside federal super-states, which have a single overarching *demoi*. This takes place at many different levels of governance: first, national, second, European and third, transnational.³¹ These constitute a network of national, transnational and international agencies and assemblies that cut across spatially delimited locales (Held, 1995a, p. 237; Dryzek, 1999). Deterritorialized democracy is not only about being multi-layered, but also multi-centered and imbricated at all levels (Nicolaidis, 2003, p. 6); it is not about taking decisions at different places and multiplying deliberation fora, but about taking them together in those same places (Schmidt, 2004).

National deterritorialized deliberation. The first forum of deterritorialized deliberation one may think of is that of national deliberations. Non-citizens of a national *demoi* are included in the deliberations of that *demoi* in those domains in which they constitute with other non-national European citizens a further functional European *demoi*. Multiplying transnational or international decision-making authorities to further transnational deliberation may be necessary, but it also tends to undermine democratic accountability within national democratic processes themselves. It is thus central to start by enhancing the representation of foreign interests in national deliberations. This may take place through special tribunals or fora in which all affected foreign interests are discussed (Thompson, 1999, pp. 121–22). In the long run, however, the aim should be to include these deliberations in ordinary democratic deliberations.

One may distinguish two correlative elements of the progressive deterritorialization of national democratic processes in the EU. First of all, and most importantly, the European Other has become part of the European *demoi* that is a functional layer of all national *demoi*. As such, she is a true functional citizen of each territorially-bound national *demoi*. For instance, every single

³¹ *Demoi*-cracy cannot therefore be limited to the transnational level, but also applies to supranational and national governance in the EU. Contra: Nicolaidis (2004).

³⁰ Thus, the idea of "*sympoliteia*" can be said to contribute to "*isopoliteia*".

European citizen may vote and be eligible in local and European elections in any other European country. There is, in other words, a right to choose one's polity in the EU. Of course, this is *per se* a territorial membership linked to residence on the territory of any of the Member States; as such, the European citizen, who is also a non-citizen of the Member State in which she resides, has at least a territorial link to that polity. This ability to choose one's polity, and the advantages this generates for the chosen polities,³² should lead, secondly, to the preventive *internalization* of the interests of members of other European *demoi* potentially affected by national decisions in the national political processes at stake. This is the case in particular in the increasing number of areas where national decisions affect European ones and thus eventually all other national decisions. Interestingly, this may occur even without the territorial and electoral presence of European non-national citizens. One may hope that gradually the inclusion of non-citizens' interests in national deliberations will result in the mutual internalization of those interests, thus leading to a certain emulation among national democratic processes (Poitares Maduro, 2002). Of course, this is easier in some countries than in others (Schmidt, 2004, p. 978). For instance, in countries with a strong federal tradition of subsidiarity, the representation of external interests is common and a further layer of externalization or deterritorialization will come more naturally than in strongly centralized polities. First of all, however, this potential enhancement of national democracy needs to be conscientized and then institutionalized (Schmidt, 2002 and 2004).

European deterritorialized deliberation. There is another European forum in whose deliberations non-citizens may easily be included: supranational and international deliberations in which different national *demoi* are represented and in which most affected non-citizens will thus be represented by their respective national *demoi*.

International fora of deliberation group global or at least regional *demoi* that are as territorially delineated as national *demoi* and allow therefore for an overall representation of affected interests. This is a straightforward way in which foreigners who cannot actually participate in national deliberations, may still exercise some influence over national decisions, since public officials are often to some degree more accountable to those foreigners in international fora (Gutmann and Thompson, 2004, p. 39). The difficulty here lies in the modalities of such deliberations, although they are technically easier to overcome than in national deliberations. Most of the time, indeed, intergovernmental organizations are dominated by government officials rather than by stakeholders. *Supranational* fora may correct these shortcomings of international deliberation in representing non-territorial interests. Like international fora, supranational fora of governance are clearly territorial. Overlapping all territorial polities in Europe, they allow

³² One may think, for instance, of taxes or other economic benefits derived from trans-European migration.

for the representation of the interests of all citizens residing in the polities they gather. They are more directly democratic, however, through deliberation in the European Parliament in particular, which functions like a national Parliament in representing the interests of all European citizens.

The European public sphere need not, however, be understood only on the model of a national and territorially-bound public sphere. It should be seen as the trans-European network constituted of national public spheres and a European functional public sphere that goes deeper than the surface of parliamentary deliberations at EU level (Blichner, 2000; Eriksen and Fossum, 2000a). In fact, there is growing evidence of the deterritorialization of democracy even at the supranational level of governance in the EU. This takes place through the modalities of defense of European interests which are no longer grouped and represented along territorial lines and national polities, but increasingly across transnational groupings of interests. The representation of functionally organized interests is something that new trans-European political parties can enhance, for instance. Similarly, the representation in the European Parliament of Europeans by any Europeans and hence by European Others can contribute to the desegregation of public spheres in Europe.

Transnational deterritorialized deliberation. The deterritorialization of democracy also occurs at the transnational level, whether it is at an organized infranational level of governance in the EU or simply across national borders. Transnational and infranational governance is indeed by definition trans-territorial. One may mention two examples of organized infranational democratic deliberation. The difficulty here lies in the modalities of such deliberations given that the locus of deliberation does not match any of the territorial boundaries of existing polities (Schlesinger and Kevin, 2000).

First of all, the deliberations generated by the *open method of coordination* (OMC). The increasingly prevalent OMC aims at addressing problems created by European integration in Member States (Joerges, 2002; Scott, 2002, p. 71). OMC is in essence a form of community-based control as between Member States (Scott, 2002, p. 71). There are many ways of implementing this procedure, but one of the most promising ones puts the emphasis on the cooperation among national authorities' decisions. These have to focus on a common problem and to consider their own policy choices in relation to this problem by comparison to other Member States' choices. European infranational cooperation in the OMC context might even be a way to redeem the latter's democratic legitimacy in a space devoid of legal and political constraints apart from the Treaty itself (Gerstenberg and Sabel, 2002, p. 570). It will indeed lead Member States' authorities to account for their decisions a second time at the national level through the publicity gained at the European level, as well as to account for them before the European authorities that take part in the OMC. Thus, even though the OMC does not directly associate legislative authorities, it has an impact on them. More importantly, it will constrain Member States' authorities to account

to each other for the lack of European coherence of their decisions overall, thus generating a form of transnational democratic practice in Europe (Eriksen and Fossum, 2002).

Secondly, the deliberations generated by *transnational interparliamentary cooperation*. This other key illustration of democratic deterritorialization in Europe lies in the competition and cooperation that prevail among democratic authorities.³³ The importance of dialogue between parliaments throughout Europe has been emphasized a lot in recent years (Blichner, 2000, p. 142 ff.). A Protocol to the 2004 Treaty establishing a Constitution for Europe actually establishes a series of measures to strengthen the involvement of national parliaments in EU decision-making. The benefits of the creation of this trans-European parliamentary public sphere could be measured in terms of both national and European democratic legitimacy. Transnational legislative dialogue and mutual comparison could add onto national standards of democratic legitimacy; they contribute to enhancing the democratic quality of national legislation by introducing a form of double representation of the European *demoi* and hence of double checking on national legislation (Blichner, 2000, p. 162). National decisions in Europe are indeed increasingly affected by European, but also by other national decisions in which they have no democratic representation (Poiare Maduro, 2002 and 2003). Of course, more work remains to be done to ensure the cooperation among national and European democratic authorities in practice.

Deterritorialized deliberation beyond the EU The EU also transcends the statist model of democracy in enabling, as a consequence of sharing a political community with the European Other (Nicolaidis and Lacroix, 2003, p. 136), post-national communication with the non-European Other and other *demoi* outside the Union. The deterritorialization of democracy within the EU necessarily has an impact on the representation of interests external to the EU within European democratic processes. This is the case for interests that belong to non-EU citizens residing in the EU and outside the EU. This deterritorialized deliberation takes place through purely transnational, infranational or European channels of governance and I will not distinguish among them here.

First of all, the interests of *third country nationals residing in the EU*. It is a consequence of European integration and the inclusion of European citizens in other European polities than theirs that the social and political rights of third country nationals residing in the EU are currently being gradually extended. Of course, the link of these non-national citizens to national polities in the EU remains eventually territorial, since it is dependent on residence in a Member State. However, the tendency is to grant the same political rights to third country

nationals residing in the EU as to non-national EU citizens and hence to allow them the same possibilities of "democratic forum-shopping" in all national polities as EU citizens (Davis, 2002). This implies as a consequence that national deliberations should internalize the interests of those non-EU citizens affected by them, just as they internalize the interests of EU citizens who are nationals of other Member States and this whether these third country nationals reside in the Member State in question or not.

Secondly, the interests of *third country nationals outside the EU*. If the political rights of EU citizens in national polities is about to give rise to more political rights for third country nationals residing in the EU, the next step in deterritorializing national democracies in the EU is to factor in the interests of third country nationals residing outside the EU and whose interests are affected by EU decisions. This can already be illustrated in the field of human rights protection in which the EU exports human rights standards to third countries and hence develops external policies that comply with its internal standards (Besson, 2006). This implies in return taking the interests of those countries, which the EU asks to respect its own democratic standards, into account in European deliberations (Alston and Weiler, 1999, pp. 21–23). It is therefore as if democratic arrangements and the related responsibilities in the EU had been, first, concentrated at the transnational level and then shifted one rung up the ladder of the global institutional framework in Member States' relationship to third countries. The EU provides a magnified picture of what the institutionalization of a deterritorialized and transnational democracy could look like beyond Europe; the relevant subjects of EU democracy are no longer only national *demoi* and maybe a pan-European *demoi*, which are all territorially defined, but also the many functional *demoi* which overlap existing national ones grouping European national and non-national citizens, as well as non-European citizens along the lines delineated by the issues addressed (Nicolaidis and Lacroix, 2003, p. 127).

The Modes of Representation of Deterritorialized Deliberation

Even if one accepts the principle of having non-citizens as moral-political constituents of democratic deliberation, it remains to be seen how this can be transposed into practice. This requires explaining why democratic representation matters most, how it can be made more reflexive and, finally, what this means for *demoi*-cratic representation in the EU.

From equal participation to equal representation Not all stakeholders can participate equally in the democratic processes in which the decisions that affect them will be taken. Since direct participation has already become secondary in most democratic deliberations at the national level, representative deliberation seems the most realistic mode of communication among the different *demoi* (Besson, 2005a, ch. 10, and 2005b).

³³ According to Poiare Maduro (2002), this democratic reinforcement function of cooperative sovereignty is actually constitutive of the legitimacy of the European polity itself.

In fact, democratic representation may even be seen as an enhancer of democratic *participation* and deliberation thanks to the distance it creates between deliberation and decision-making and to the relationship of election and accountability between representatives and their constituencies (Besson, 2005b). The relationship of representation is indeed best described as a process (Young, 1997, p. 358 ff.; Kuper, 2004; Urbinati, 2000 and 2002). Representatives and their constituency should be in constant dialogue about the deferred political decision from the moment of authorization to the moment of accountability (Young, 1997, pp. 355–57). This explains the importance of the impulse to political participation and the development of an extensive public sphere which, in sufficient deliberative conditions, should be triggered by the spatial and temporal gap opened by representation between deliberation and decision (Urbinati, 2000 by reference to Mill, 1991, p. 413; Mansbridge, 1999, pp. 227–28; Parkinson, 2003, pp. 190–91). Not only can representation enhance democratic participation, but it can also increase the protection of political equality not only primarily among citizens and non-citizens who are equally affected, but indirectly also among citizens themselves (Urbinati, 2000 and 2002). Simple majorities cannot exclude minorities as easily as in a direct democracy; it takes a majority to elect and authorize representatives, another for these to act and still another to make them accountable. The deferred nature of the decision and the increased scope of deliberation also leave more time and space to diverging opinions and perspectives to make themselves heard and maybe to convince and change majorities until the decision-making stage. Although the representation of non-citizens' interests cannot be as inclusive as the direct participation of all, this incomplete inclusion is compensated by the correctives representation provides to the excesses of majoritarianism and hence of the majority in the electoral constituency.

Of course, the representation of moral-political constituents differs from that of electoral constituents in that the relationship of representation is not punctuated by the election and accountability of representatives. There is a form of representation, however, that has been developed for diverse and divided societies where not all citizens can be represented descriptively and which might contribute to the representation of non-citizens' interests: reflexive representation. This institution may help represent moral-political constituents despite their electoral absence and conceptualize reflexive representation in the EU.

Reflexive representation in general Reflexive representation requires from each representative that she project herself into the place of others in her own internal deliberation (Arendt, 2001, pp. 19–20), rather than leave the confrontation with diversity to external and interactive deliberation (Goodin, 2003b, p. 169 ff.). It corresponds to Kant's idea of "enlarged mentality" (Kant, 2001, p. 216) and to Arendt's idea of "representative thinking" (Arendt, 1970 and 2001). This implies, in particular, taking into account the diverging opinions and perspectives of others when deliberating and taking decisions, even when those people are not represented. The problem with this approach, however, is that, without minimal

representation or means of asserting a voice in the making of the decision, it is too easy to assume that a decision will benefit non-citizens simply because our representatives use reflexive means of deliberation. There are two ways of ensuring an effective representation of non-citizens' interests through reflexive representation.

First of all, *diverse representation*. Without some kind of minimal descriptive representation, reflexive representation cannot be as diversified as required by the representation of non-citizens. It is necessary to give representatives the incentive to make other perspectives imaginatively present (Goodin, 2003b, p. 171; Gargarella, 1998, p. 262; Eckersley, 2000, p. 128). Ideally, therefore, it is a mixture of both the descriptive and reflexive forms of representation which should be used to represent the views of non-citizens affected by our decisions. This is what Eckersley calls diverse representation (Eckersley, 2000, pp. 128–29). Although minimal descriptive deliberation would be ideally required, it is very unlikely that moral-political constituents be represented as fairly as electoral constituents in national deliberations except by foreigners' tribunes. As Goodin argues, it might actually be better for the quality of deliberations not to have a full descriptive representation of non-citizens as people tend to cut deals in such circumstances (Goodin, 2003a; Phillips, 1995, pp. 24–25). If, on the contrary, they realize the existence of moral-political constituents who are not citizens through their descriptive representation, but also understand at the same time that not all perspectives in conflict are represented, they might be more inclined to be cautious and respectful of others' interests (Goodin, 2003a).

A second and more realistic way of ensuring the effective reflexive representation of non-citizens' interests lies paradoxically in the *electoral sanction*. The success of democratic accountability greatly depends on the moral capacities of citizens and public officials (Gutmann and Thompson, 2004, p. 39). As such, the support of elected representatives by their electoral constituents will in principle follow their championing the cause of moral-political constituents and this should encourage the former to keep those interests in mind when deliberating. In fact, it is also a consequence of the proposed model of diverse representation that the relationship of representation is enhanced in quality the more affected interests it encompasses; these can indeed be discussed in deliberations with electoral constituents and trigger disagreement and further deliberation both among representatives and among representatives and constituents (Kateb, 1981, p. 368; Mill, 1991; Urbinati, 2000 and 2002; Besson, 2005b).

Demoi-cratic representation in the EU There are many specific reasons for the relevance of reflexive *demoi-cratic* representation in the European context and I will limit myself to examining four of them here.

First of all, *the fear of elitism*. This concern is so important that an account of representation based on diversity and inclusion of all affected interests could convince many of those who see the future of European democracy in more participatory and inclusive modes of governance (Mény, 2003; Moravcsik,

2003; Magnette, 2003a; Curtin, 2003). By creating sufficient contestation and deliberation among representatives, among citizens and among citizens and representatives, European reflexive representation may contribute to politicizing the European Union and hence to legitimizing it (Magnette, 2003a; Lord and Magnette, 2004). Second, the difficulty of *citizens' apathy*. The proposed account could also help solve the European "passive citizenry" problem; it relies on and encourages active and responsive citizenry and a permanent dialogue and questioning between citizens and their representatives (Kuper, 2004). This is particularly important in a complex representative configuration like Europe's in which two levels of representation are operating; once the dialogue between representatives and represented has been launched at the national level, it can only enrich and be enriched in return by the European relationship of representation thanks to the deliberation-generative nature of the proposed model (Besson, 2005b; Kuper, 2004). This phenomenon will actually be enhanced by the reflexive representation of non-citizens' interests.

Thirdly, *the possibility of differerity*. As this model of representation is grounded in *diversity* and the inclusion of external interests, representation through difference is vested with a civilizing role in the context of different and often clashing national identities.³⁴ Representation could help create unity in Europe without negating diversity thanks to the differentiated relationship it constitutes between citizens and representatives (Young, 1997, p. 357; Urbinati, 2000 and 2002). Being represented by a European Other can contribute to a civilizing and educating form of citizenship through which Europeans can learn more about each other without, however, losing their own national identities and references. Finally, the issue of *popular sovereignty*. The constitutive and cultural role of representation can explain how European *demoi*-cracy can dispense with having to find a pre-existing and territorially-bound European *demos* (Lindahl, 1998); representatives help constitute but also differentiate the represented constituency and vice-versa (Young, 1997, pp. 354–58, and 2000; Plotke, 1997, p. 30; Ankersmit, 2002). On this account of representation, therefore, popular sovereignty no longer has to be considered as lost in the European context; European functional sovereignty adds itself onto national territorial sovereignties without negating them, and all of them can remain popular in a more or less direct sense (Lindahl, 1998; Walker, 2003, pp. 22–23; Besson, 2004b).

Conclusion

The idea of *demoi*-cracy has now become an inescapable part of recent proposals attempting to remedy the democratic deficit in the EU. It emphasizes the deliberation among many European *demoi* rather than within either one European *demos* or many national *demoi*. Seductive as it is, the idea challenges

³⁴ See Lindahl (1998) on "xenoromy" and Weiler (1999) on "differerity."

the territorial boundaries of democracy and raises the famous paradox of the democratic polity that is both constituted and limited by territorial boundaries. If the many European *demoi* are to include the interests of all affected non-citizens in their deliberations or even to deliberate transnationally, this implies breaking the mould not only of traditional territorial fora of deliberation, but also of their territorial constituency.

The purpose of this chapter was to unpack the normative requirements and practical implications of the idea of *demoi*-cracy and to assess the justification and modalities of the progressive deterritorialization of democracy both generally and in the EU. The European Union indeed provides prime empirical evidence of what one may refer to as the gradual deterritorialization of democracy at the national, transnational, international and supranational levels of European governance and this to include non-citizens' interests both within and beyond Europe. This in turn explains the particular relevance of the deliberative model of democracy in Europe. It recenters attention on European citizens and the many functional *demoi* in which they may participate depending on the issue, rather than only focusing on each single national or European territorially-bound *demos*. Based on that model, this chapter ventured different institutional proposals aiming at making the best of Europe's deterritorialized democracy in terms of the forum of deliberation and forms of representation. The proposed model may in turn be transposed to other non-European post-national political processes where transnational and deterritorialized democratic deliberation may prove crucial to successful legal and political integration. The cosmopolitan democracy project is "still in its infancy" (Archibugi, 2004), and it is through institutional achievements like that of European deliberative *demoi*-cracy that it can be further developed both in theory and in practice.³⁵

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³⁵ See on the "third transformation of democracy," Dahl (1989, p. 224) and most recently Bohman (2005).

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