

Democratic legitimacy beyond the nation state

A normative examination of the democratic legitimacy in
transnational governance

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Abstract

In this thesis the democratic legitimacy of transnational governance arrangements is examined normatively. The ambition is to take on a pragmatic viewpoint and the democracy perspective outlined with this in mind provides us with three aspects that should be considered in order to obtain democratic legitimacy. On the normative side of democratic legitimacy we have the principle of self-determination and the principle of non-domination, however, the sociological dimension of legitimacy also has to be considered. The challenge discussed is how to assign those significantly affected, the possibility to through democratic mechanisms influence the governance. Due to the lack of identification beyond the nation state it is argued in this thesis that simply carbon copying domestic institutions into the transnational realm may be inappropriate. Instead the enhancement of public scrutiny through increased transparency and inclusion of the transnational public sphere, e.g. through the representation of NGOs, is discussed as a more feasible way for protecting the democratic values in transnational governance. Also, the significance of more honest demarcations regarding redistributive and regulatory functions of transnational governance arrangements is stressed. The final issue examined is the implications on the democratic legitimacy brought forth by the current power-biases in much of contemporary transnational governance.

Keywords: democratic legitimacy, transnational governance, non-domination, normative analysis, the all-affected principle

Words: 10 967

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1 Introduction – The globalization of politics

One of the most significant political developments in our contemporary world is the growth of governance beyond the nation state. We have since the early post world war period witnessed the emergence of a large number of highly influential international institutions like the United Nation (UN), the European Union (EU), the World Trade Organization (WTO), the World Bank (IBRD) the International Monetary Fund (IMF) and the North Atlantic Treaty Organization (NATO) (Jönsson 2008:1; Buchanan and Keohane 2006:406). In more recent developments these state-dominated organizations and international institutions are being supplemented with governance arrangements that involve public as well as private actors. The latter category may be constituted by a broad range of actors e.g. multinational corporations, party associations, non-governmental organizations (NGOs), advocacy networks and social movements (Jönsson 2008:83-84). Global governance is the term which has become the standard one denoting these complex patterns of governance. The rational source from which global governance arrangement traditionally have derived their legitimacy is the need to effectively address the increasing amount of transnational, even global, issues of continuously rising importance which emerge from an ever more interconnected and globalized reality (Bohman 2007:3, Delanty 2009:51, 120-121). Climate change, sustainable development, trade and issues concerning human rights can be mentioned as a few examples of such challenges of transnational scope (Bohman 2007:1, Jönsson 2008:83). However, solely effectiveness may not be sufficient in creating legitimacy any longer, if this ever was the case. Extensive criticism has been articulated against global governance arrangements and international institutions, pointing out democratic deficits and the threats these poses towards local self-rule and democracy (Bohman 2007:3; Jönsson 2008:83, 86). Most apparent signs of recent dissatisfaction leveled against the working order of global governance arrangement are perhaps the dramatic anti-globalization protests that have taken place in association with meetings of the WTO, G7 and the EU in e.g. Seattle, Prague, Gothenburg, and Genoa (Jönsson 2008:83). The lack of legitimacy for various global governance arrangements is an issue of major importance. As Jönsson (2008:83) puts it:

[...] limits in the perceived legitimacy of these arrangements risks undermining their potential to make a difference.” And further: “The beginning of efforts to address these legitimacy problems reflect the realization that global governance, in the long run, can only be effective to the extent that it is also perceived as legitimate by the citizens affected.’

At the center lies a shift of political authority and sovereignty from nation states to forms of governance ‘[...] that are no longer accountable to a measure of popular influence and control - one of the necessary, though not sufficient, conditions for any form of democracy.’ (Bohman 2007:3; see also Delanty 2009:120 and Jönsson 2008:83, 86). Bohman mentions powerful multinational corporations evading state power and international financial institutions dictating the terms of cooperation to weak states (2007:3; see also Cohen 2004:1). Another criticized, though related, aspect of the global governance appearance is the domination of influential states over weaker counterparts in determining terms and conditions for institutional cooperation and the uneven outcomes produced thereby (Caney 2005:110, 164). Also Buchanan and Keohane (2006:407) stress these points when writing:

‘[...] states must belong to the WTO in order to participate effectively in the world economy, yet WTO membership requires accepting a large number of quite intrusive rules, authoritatively applied by its dispute settlement system. Furthermore, individuals can be adversely affected by global rules—for example, by the blacklists maintained by the Security Council’s Sanctions Committee or the WTO’s policies on intellectual property in ‘essential medicines.’’’

Yet there certainly may be a rationale in, and even a pressing need for, regulating transnational phenomena like world trade, environmental issues and so forth as stated above. International institutions and global governance arrangements may actually as Buchanan and Keohane (2006:408) assert, provide mutual benefits and public goods through their possible capacities in e.g. reducing transaction costs and creating opportunities for states and other actors to demonstrate credibility, thereby overcoming commitment problems (see also Caney 2005:167).

1.1 Problem and purpose

I think the introductory exposé shows the relevance of a normative discussion on democratic legitimacy in regard to transnational cooperation. The normative field I want to investigate is in what ways transnational issues can be addressed within a democratic transnational political order with the ability to obtain legitimacy by its affected parties. My research question is:

- *How can democratic legitimacy in transnational governance be obtained and evaluated?*

To clarify, the question implies an evaluation of the prerequisites for legitimacy in transnational governance from a democracy perspective.

Questions of legitimacy are complex and the term legitimacy itself can hold several meanings depending on the perspectives employed. Since I will adopt a

democracy perspective in this enquiry democratic legitimacy will be in focus. Democracy, however, is also a concept of great complexness and attributed with multiple senses. Often, as will be developed later in this thesis, definitions of democracy will contain the likewise convoluted and ambiguous concepts of equality and justice. This polysemantism of the for this enquiry central concept – democratic legitimacy – open up to several sub-questions like: What qualities should a political structure of transnational scope uphold for meeting claims on justice and democracy as well as on efficiency? Is there a place for transnational or international institutions, and if so, how should these relate to the current framework of nation states? In order to accurately address the research question of this thesis there should also be an examination of these sub-questions.

The approach in this thesis will be theoretical and the concern lies in political theory. The purpose of this investigation is to on premises derived from a perspective of democracy formulate a proposition on how to address and evaluate issues with democratic legitimacy within transnational governance arrangements. My ambition is further to take on a pragmatic view i.e. to base the reasoning on contemporary circumstances and to reflect over what may actually be feasible.

1.2 Method

Since the ambition of this thesis is constructive in a way, this might be viewed as a constructive analysis. However, as Beckman points out, the distinction between normative and constructive research is not obvious and sometimes not even meaningful (Beckman 2005:69). Beckman argues in favor of letting the author end up the normative analysis on a constructive account which is a plausible outcome of the normative discussion. However the analysis leading up to this account is of normative kind and should follow a normative methodology to be valid (Beckman 2005:69). The principles of the normative methodology applied in this thesis will be further elaborated in chapter 2.

1.3 Theory and material

In this thesis the normative aspect of theory is the main concern. Theory will thus not be used primarily as a way to explain empirical phenomena of the contemporary world. Instead it is the theory that is object of investigation. Thereby the material in this thesis is constituted by literature examining theories rather than a material of empirical matters.

How then to choose which material is relevant for my enquiry? My personal reading of the conflicting theoretical arguments and approaches will of course have a considerable impact on the outcome of the analysis (see section 2.2.1 on intersubjectivity). Not only will my interpretations and examination of theories

affect the outcome, but also the specific choice of literature. My ambition is, in respect of this matter, to primarily use a selection of significant and influential literature and/or scholars, and to examine predominant and frequently employed arguments in the debate regarding democracy and legitimacy in transnational governance.

2 How to analyze theory

As the focus of this thesis is normative, the critical examination and development of normative theories and ideas, a special methodology is needed for this purpose. However, the desirability or even the possibility of scientific examination in normative matters has traditionally been regarded as a controversial subject (Badersten 2006:8-11). I will in this chapter argue *for* the desirability and possibility of scientific investigation in normative matters and then outline the methodological prerequisites for an examination of this kind.

2.1 The desirability and possibility of scientific examination in normative matters

Is it desirable or even possible to undertake an examination in normative matters on a scientific basis?

As Beckman (2005:7, 55) contends, the great political transformation, either in the shape of revolutions or reforms, have been vindicated through ideas and conceptions originated from political ideologies, philosophies or theories. I would say this serves as a plausible argument for the desirability and relevance of critical review, elaboration and deepening of notions and stances of politics contained in such accounts (compare with Beckman 2005:7). Since normative matters and conflicts lies in the very center of actual political agenda and output, I find it of pertinence to systematically investigate the coherence, plausibility and relevance of ideas and arguments in order to establish coherent and feasible accounts as foundations or guidelines for political decision-making (see also Badersten 2006:7-11; Beckman 2005:56-57). It may be important to point out that the ambition is not to reveal eternal truths or primarily to convey the personal opinions of the author, but to clarify, through logical and well underpinned argumentation, which implications should follow a certain premise in a certain question in a given way of reasoning (Badersten 2006:44-47; Beckman 2006:341).

To the latter part of the hesitation aforementioned, is it possible to do this scientifically? I find it plausible to side with Badersten (2006:8-13) when he claims this to actually be a matter dependent on scientific and axiological

benchmarks.¹ If your value-theoretical basis infers a not to far-reaching form of value relativism, I would argue that scientific examination *is* possible (see Badersten 2006:39-42, 68-71). Once again Beckman helps us providing an answer. Through the normative analysis the author gets a possibility to engage in the debate as basically an equal participator, Beckman contends (2006:333, 340; 2005:12). To go through with this on a scientific basis and avoid causeless reckon, the solution, according to Beckman, is to follow the same general principles for scientific argumentation valid in empirical enquiries, i.e. *logical and empirical validity* and *normative plausibility* (Beckman 2005: 57).

Badersten carries out a similar way of reasoning. While the normative research has been treated with some skepticism from mainstream social science accusing the normative investigation of resting on vague foundations, the basis of empirical investigation have more recently also become increasingly questioned (Badersten 2006:8-13). Are there *any* objective research options in social science or is all knowledge in some way filtered through the mind of the receptor and thereby always affected of prior notions? This is the epistemologically relativistic stance which has won significant ground in latter decades and which I find hard to reject (also see Badersten 2006:10-11, 40-41). As well as the empirical research to some degree have dissolved this dilemma through well-established methodology and the critical performance of intersubjectivity, the same should also be valid, regarding the normative analysis (Badersten 2006:8-13). The point here is that an analysis of ideas and normative matters simultaneous with the vindication and development of a separate account is possible on scientific basis as long as a certain set of principles are practiced (see Beckman 2005:69).

However, different scholars may sometime use differing terminologies denoting the same or very similar concepts. The procedure adopted in this thesis should qualify for what is called a critical idea analysis with clear normative purpose in the terminology provided by Beckman (2006:337). I will however simply use the term *normative analysis* in this thesis for denoting the very same concept.

2.2 The principles of the normative analysis

As aforementioned some principles should be adhered to for the normative analysis to be undertaken on a scientifically basis and to not give in to causeless reckon. If you in any respect believe in the possibility of deriving knowledge that have at least some magnitude for others than only the knowledge-producing subject itself, then the common ground for scientific examination that most scholars actually can gather around is the principle of intersubjectivity (Badersten 2006:74-75).

¹ There is unfortunately not space enough for a more exhaustive elaboration of these matters here. For a further discussion please see Badersten 2006:55-71.

2.2.1 Intersubjectivity

Intersubjectivity may in a general sense be viewed as something made accessible intellectually to more than one person (Badersten 2006:75). Intersubjective deriving of knowledge should thereby be made understandable to more than the author itself. More specific, intersubjectivity is constituted by the two requisites: *possibility of critical evaluation* and *reproducibility* (Badersten 2006: 74-76). The possibility of critical evaluation is the superior criteria and implies that the reasoning in the scientific examination should not be arbitrary or personal but rest on explicitly declared principles and the scientific process should be as transparent and easy to follow as possible for an outside reader. *Reproducibility* means that the steps, choices and conclusions in the scientific examination should be explicit explained and possible to follow and reconstruct for outside parties. Badersten (2006:76) also reckons one more important aspect of intersubjectivity which is to acknowledge the influence of the scholar oneself in the outcome of an examination. Of course this aspect may be very subtle and hard to distinguish, but is, I believe, always present and affect every choice throughout the complete research from the formulation of research question to choices and interpretations of the material and so forth. Therefore the principle of intersubjectivity, i.e. to explicitly expose the reasoning behind all aspects of the scientific enquiry, is of utter importance, especially in normative research.

2.2.2 The dual principles of normative examination

The criterions that the normative analysis should adhere to are also the same that will be used as evaluative principles accounts in the analysis which gives these principles a dual purpose (see Badersten 2006:70 and Beckman 2005:55-79). The principles recognized by Beckman are *logical validity*, *empirical validity* and *normative plausibility* (Beckman 2005:57). I will elaborate these below in order to outline what activity is actually undertaken in the analysis and which principles are set out to be followed.

Logical validity refers to the state of the logical qualities in the argumentation regarding *consistency* and *logical validity in inferences*. To examine *consistency* is to search for contradictions inherent in a specific argumentation, either contrarian or contradictory. A contrarian inconsistency is when two specific assertions both can't be true but both can on the other hand be false. When two assertions are inconsistent in a contradictory sense, one assertion has to be true and the other has to be false (ibid.).

To investigate *the logical validity in inferences* is to test whether a conclusion rests on a sufficient and appropriate argumentation or if such is absent. E.g. a consistent argumentation does not guarantee a valid inference, but is, as Beckman (2005:59-64) points out, often followed by logically invalid inferences as is the case with the circular argument where argumentation for the inference is absent (ibid.)

When examining the logical validity in inferences it is thus the logic that is examined and not the empirical plausibility. An assertion can be perfectly logical but totally false and the other way around (Beckman 2005:61-62). As Caney (2005:2) reckons however: *'any defensible global political theory must rely on factual statements about the world.'* While many theoretical propositions may be coherent and logic, it is important in order to understand the applicability of the accounts to the "real" world to actually examine the empirical validity that the arguments are claimed to rest on, this both in order to review the feasibility of an account and to avoid the common accusation of political philosophy being utopian. What is the point of an account, coherent and plausible albeit, if there is no feasible options of realization in an appropriate way to it? Therefore it is also important to test *the empirical validity* of an account.

To examine *the empirical validity* implies the review of three questions (see Beckman 2005:65-68). *First*, are there any empirical findings presented in support of actual statements of how things are constituted or are the assertions lacking empirical foundation? *Second*, are the empirical facts presented valid? To address this issue does not require us to undertake separate investigations of the validity of every empirical assertion. Instead we can rely on existent research on relevant areas when encountering the empirical claims of a certain account (Beckman 2005:66-67). The *third* question to be examined is whether the empirical claims are testable empirically. E.g. claims of metaphysical kind like *'there are such things as natural rights'* or *'god exist'* etc. are often impossible to evaluate empirically and that may be a problem for the validity of an account, especially in scientific respect i.e. in respect of intersubjectivity (ibid.).

The final purpose of the normative analysis is to examine *the normative plausibility*. When the political debate to a great extent is a conflict of which values, ideas and principles that seems plausible, how these relate to each other and what implications they may have on the factual political outcome, Beckman (2005:68-69) argues that the scholar in order to really provide an answer on such questions should also be able to provide constructive proposals of what is plausible in a given way of reasoning. The critical point here is that the investigation of the normative plausibility in a certain argumentation shall be carried out on the basis of one or more explicit value(s) and not be arbitrary.

When performing review of the normative plausibility there are two possible approaches, which is either *internal* or *external review*.

Internal review means that no other than values internal in accounts investigated are used as basis for the examination. There are two strategies for this matter. *The first* way is to point out incoherencies. Incoherencies should not be confused with inconsistencies which imply that some assertions cannot be valid simultaneously. An account is incoherent, however as Beckman (2005:71-72) puts it, when the normative claims it produces does not explicit follow from a common foundational principle i.e. there can be deeper contradictions inherent. *The second* kind of internal review is to point out possible implications of a specific policy, that would be present if the policy was realized and that are actually conflicting the values claimed to be secured by the same account (Beckman 2005:72-73).

External review is at hand when the principles used for the evaluation are derived independent of the accounts examined.

Though focus in this thesis lies upon external review, internal review will be undertaken as well.

2.3 The conceptual analysis

As both Badersten and Beckman points out the foundation for any normative analysis is the clarifying of core concepts and a conceptual analysis should therefore be an integrated part of every normative research (Badersten 2006:49; Beckman 2005:31). Without clearly defined and demarcated concepts to relate the discussion upon, the normative analysis will be impossible or at least arbitrary and of low scientific relevance (see section 2.2). To discuss which definitions of core concepts such as democracy and legitimacy, that will be used in this examination, and why, is crucial in order to meet the requirement of intersubjectivity i.e. this will make it possible for the reader to understand and criticize the choices of terms and concepts throughout the thesis and the impact they will have on the analysis. Conceptual specifications also open up for the possibility of potential criticism on arbitrary conceptual use, so called conceptual stretching (see Badersten 2006:91-92).

While an exhaustive conceptual analysis could be a purpose on its own this is not the case in this thesis. The conceptual clarification performed below should preferably be viewed as the foundation of the normative analysis where I clarify the conceptual contents of core concepts and where I explain why I have chosen a specific definition of a certain concept as more suitable than others for the further examination.

3 Building benchmarks

To undertake an evaluation of democratic legitimacy in transnational cooperation we first need to provide a definition of what transnational governance, legitimacy and a democratic perspective is? These concepts are not unambiguous and a discussion of my choices of senses of core concepts is therefore required to make the analysis meaningful.

3.1 Global, transnational or international?

The standard term denoting transnational governance arrangements (TGAs) of different kinds have become global governance (Jönsson 2008:83). Though many of the issues addressed through these arrangements may be of global scope, this is not always the case and the cooperation is not always global. The ambition of this thesis is to, on a high level of abstraction, cover what ought to be the normative basis for TGAs generally seen from a democracy perspective, and thus also regional governance arrangements of transnational scope as the EU will be regarded. When the common feature of these phenomena is cooperative governance on a transnational scale rather than of global scope, this type of phenomena will here be denoted as transnational governance.

What then is the difference between the international and the transnational scope? Well, as Caney (2005:1-2) points out, the term international refers to the relation *between* states and thereby misleadingly equates nations with states which we will also see in section 3.4 is inappropriate. Secondly the international focus upon how states should treat other states and thus excludes individuals or non-state entities from being objects of analysis. An international perspective thereby also restrains the discussion on how international institutions, and transnational arrangements including other actors than the nations-states, should act or function (ibid.). Therefore the scope of this thesis is rather transnational than international since these kinds of questions are examined.

3.2 What is legitimacy?

The classic definition of legitimacy, originating from Max Weber and which has been the predominant throughout the 20th century social science, is that certain power relations are regarded legitimate if those involved in them believe them to

be so (Beetham 1991:6). However, Beetham argues convincingly for the insufficiency of the Weberian approach (Johansson 2005:8-9). Instead Beetham in his book *The legitimation of power* provides us with three ways to look at legitimacy (Beetham 1991:3-41). *The first* view is what Beetham denotes legal validity which means that the rulers ought to comply with the *established* rules (Beetham 1991:4; see also Buchanan and Keohane 2006:405). *The second* way to look at legitimacy is normative. Are the rules themselves legitimate? This approach evaluates the rules established according to what they ought to prescribe, what a power relation ought to look like to be legitimate, from a certain moral viewpoint. This is what is called *moral justifiability* by Beetham (1991:5).

Beetham (1991:5-8) also recognizes a *third* aspect of legitimacy which is social scientific. The purpose of this third viewpoint is to *explain* why legitimacy *is* or *is not* obtained in specific cases on the basis of intern premises. Beetham (1991:15-20) recognizes three dimensions of legitimacy to this viewpoint. The first dimension is equal to the notion of legal validity. The second dimension is sociological and implies that the rules themselves, to be legitimate, should correspond with shared beliefs among both the dominant and the subordinate groups in a specific society. The final level, which is also sociological, is about expression of consent or discontent with a specific power relation through for a specific entity, e.g. a society, for this matter relevant actions (ibid.).

How will these notions of legitimacy appear in this examination? Since the limitations of this thesis, there cannot be an exhaustive examination of the social scientific dimension of legitimacy, i.e. of what beliefs and notions people all over the world nourish and to what extent certain governance arrangements measure up to these. The scope of this examination is theoretical and therefore the main concern will be to evaluate the normative aspect of legitimacy on the basis of the democracy perspective outlined in the following sections of this chapter, and where the legal validity will be presupposed. However, the sociological aspect *will* have a significant role in this examination due to the pragmatic ambition of this thesis. As claimed by Binmore (2005), every social arrangement that prescribes involved actors to act contra their interest will be unstable and hinder the possibility of worthwhile actions for the individuals embraced.

3.2.1 Democratic legitimacy

We now briefly know what legitimacy is about but what is democratic legitimacy? An easy way to put it would be to say that to evaluate democratic legitimacy is to evaluate to which extent a power relation is legitimate according to democratic principles. The set of principles that makes up democratic legitimacy in this thesis are the ones necessary for the liberal democracy, outlined below in section 3.3 and 3.5. The contribution of the legitimacy concept to the general examination is the way it provides channels through which TGAs can be investigated, e.g. are the present procedures in accordance with the democratic principles?

3.3 *One perspective of democracy*

To outline an analytical perspective of democracy to be used in this analysis, I first have to answer the question *what is democracy?* Though one of the core concepts of political science, what it should imply is still contested (Dahl 1989:11-19; Näsström 2011:116). To be able to provide *one* perspective of democracy as an analytical benchmark I will start off in the term democracy itself.

The word democracy originates from Greek and is constituted of the two parts: *demos*, which is Greek for people, and *kratos*, which means rule or governance (www.ne.se). The word is thus commonly translated as the rule of the people (Lively 1975:9). There are actually two dimensions to this sense. First, what constitutes the demos? Second, what does it mean to rule, to govern, democratically?

3.3.1 What is the *rule* of the people?

Let us turn to the conception of governance first. Without a closer precision of how governance should be constituted within a democratic system there are several options ranging from systems of direct democracy where everyone should participate in the active governance, to systems built on the idea of enlightened despotism where the rulers are said to act in the interest of the ruled (Lively 1975:29-42). When the first option often is regarded as too costly and ineffective, the latter alternative may not seem democratic at all (Dahl 1989:239-241; Lively 1975:29-42, 50). Today the predominant and most widely accepted form of democratic governance is the liberal democracy, what Robert Dahl terms polyarchy, which with more or less features of direct democracy rests on the principle of representation (Dahl 1989:242-249; Lively 1975:127-128). The liberal democracy has also turned out to be a relatively stable and functional political system, probably due to its high degree of obtained legitimacy (ibid.). I will therefore, for the purpose of practical applicability and to obtain broad relevance, use the liberal democracy model as a benchmark for this analysis.

What representation implies in the liberal democracy is that the members of the demos are entitled the equal right to in free, regularly recurring, suffrage choose their representatives in the governance of a given political system. The crucial feature here is that there are alternatives, more than two when just the option to change the ins for the outs is not sufficient (Lively 1975:42-49). This way the government will be under popular control and scrutiny by the possibility of either being consented to or dismissed in recurring elections (Bexell et. al. 2010:83). However, for the suffrage to be free in practice, and for the alternatives to be independently developed, it is critical that everyone constituting the demos is entitled equal access to some basic freedoms as freedom of expression, freedom of information and freedom of association (Dahl 1989:245-248; Lively 1975:42-49). These *institutions* are, as both Dahl and Lively recognize, together with the free and universal elections of representatives for the final responsibility of the

governance, necessary for any liberal democracy (ibid.). Especially these features are essential in facilitating civil society and the public sphere, significant for the public scrutiny of the governance (Steffek 2010).

The procedure of decision making in a democracy proceeds from the feature of vote between different alternatives (Lively 1975:12-14). The most common way through which to reach a decision is the majority principle which can figure in some different shapes. Which decision rule that should be regarded most appropriate, may as Dahl (1989:181) claims, vary between different kinds of arrangements, scopes and issues. The predominant principle used in national parliaments is the *absolute majority* (Lively 1975:12-14). However both *the Qualified majority*, which implies that the threshold to be obtained for a decision to be passed can be set from half the votes to up to close unanimity, and *the unanimity principle*, are usually regarded too ineffective in the scope of polyarchy but have been recognized in the scope of transnational decision-making when greater sensitivity is demanded (Dahl 1989:172; Follesdal and Hix 2006:540-541).

However, there may be issues associated with *majority rule* i.e. the risk for what is usually called *the tyranny of the majority*. The tyranny of the majority implies that the will of the majority work oppressing on the interests of minorities (Dahl 1989:172-181, 187-95; Lively 1975:25-27). Therefore it is in the liberal democracy model incorporated a set of rights whose aggregated purpose is to defend the individual from oppression and warrant ones individual autonomy, thereby the liberal dimension in *liberal* democracy (ibid.).² The actual formulation of those rights can vary in practice but there is a question of equality and of what is a just order inherent in this discussion. The concept of *equality* in democracy may be regarded as contested, but what is contested, I believe, is rather what equality should imply than the place of the concept itself in any definition of the liberal democracy (see also Held 1995a:304). The neoclassic liberal conception of equality in this respect is to grant everyone within the given political system the same juridical rights and freedoms and thereby ensure the personal autonomy and equal access to the democracy (Held 1995a:291-303). But how extensive should such a set of rights be in order to deliver its objectives? A more radical concept of equality may also demand, besides juridical equality, some equality in the distribution of resources (Dahl 1989:130-131; Held 1995a:303-315). In order to be able to access and participate in the democracy on equal terms, there is from this viewpoint a need for equality in resources and thus implies some form of not only political democracy but also economic democracy (ibid.). Nevertheless, it is when it comes to distributive justice things get complicated and especially so in transnational governance as we will see in chapter 4. It can though be argued that some distributive justice is needed for a democracy to meet the ambition of political equality (Held 1995a:303-315). This discussion will be further elaborated in section 3.5.

² See also Tully 2002:205-208.

3.3.2 What constitutes the demos?

The predominant principle in contemporary democratic thought is to in the demos include every adult subject to a certain political system “[...] *unless very strong evidence of personal incapacity is produced.*” (Lively 1975:12). I think this is a plausible principle and it extends the electorate to better further the general interest within a society, than the interest of the few (see Dahl 1989). The question remains, how should the boundaries of demos be drawn? When the “*natural*” scope in the development of the modern democracy has been the citizens of a nation state, this may not always be the most feasible solution. For one part, political issues of contemporary world in some cases transcend the scope of the nation state. To address these kinds of issues in a democratic manner, a different scale of operation is plausibly required. Also to address issues regarding the aforementioned tyranny of the majority, even smaller units of cooperation than the nation state may be adequate to secure local or regional interests which may differ from e.g. aggregated national opinion (Caney 2005:151-164; Dahl 1989).

What principles are then appropriate to guide us toward feasible constitutions of demos? The proposition that a people ought to be self-constructing, which can be found by e.g. Schumpeter, is inappropriate because of the circularity in the reasoning. For a people to be self-constructing requires the existence of an already constituted people (Näsström 2011:116, 118). This leaves us with two main alternatives frequently discussed in the political-theoretic debate. Those are *the all-subjected principle* and *the all-affected principle* (see Näsström 2011).

The all-subjected principle implies that those subjected to laws ought to be their authors, though with the exception for transients. (Näsström 2011:119, 121).³ This is to say that according to the all-subjected principle the adequate demos for having a legitimate voice in the Swedish legislative process includes those who will be subjected by those laws, i.e. all adult citizens - and others permanently living there some would like to add - of Sweden. The demos of EU-legislation would thus plausibly be all adult citizens of the EU.

However, especially in the wake of globalization, not being subjected does not imply that you're not affected (Näsström 2011:122-124). Hidden in the all subjected principle is the presupposition of the nation state but this construction may today have serious limitations in addressing various issues that are significantly affecting its citizens⁴. A proposed solution is the all-affected principle which implies that those *affected* by a decision, or in any case whose life chances are *significantly* affected as Held puts it, should constitute the demos in the settlement of that issue (Held 2005:372-376; Näsström 2011:124). How the demos actually should be demarcated by this boundless principle is though a question far from resolved and many theorists are skeptical of its practical

³ Näsström (2011:118-122) discusses also other thinkable takes on the all-subjected principle. I will however adopt the interpretation outlined above which is also the predominant in contemporary political praxis.

⁴ See the introduction of this thesis.

usability (Näsström 2011:125). Goodin (2007:68) notes that the all-affected principle would infer *'giving virtually everyone everywhere a vote in virtually anything decided anywhere'*. This, however, may be to paint a straw man when the crucial contribution of the all-affected principle to be considered here is the challenge it poses to our presumptions of already existing peoples and of the sovereign nation state as the most plausible arena for self-determination (see Näsström 2011:131). When a dynamic principle of changing temporal demos regarding of the issue under consideration may seem undoable, the solution – which I will also pursue in this thesis and which have earned significant recognition through the recent developments of the EU – is to think of a range of overlapping levels of cooperation constituted by different scopes and where a particular issue can be addressed on the most feasible level of cooperation as close as possible to those most significantly concerned which is what is implied by the subsidiarity principle. Thereby those subjected can be extended to better follow the contours of those significantly affected (Held 2005). In this thesis this synthesis of the two principles will be called *the revised all-affected principle*. To decide which impacts should be regarded significant lies outside the scope of this thesis however, and I will accept the formulation by Held (2005:376) that *'[...] those whose life expectancy and life chances are significantly affected by social forces and processes ought to have a stake in the determination of the conditions and regulation of these, either directly or indirectly through political representatives.'*⁵

To avoid the 'everyone will have a say in everything' dilemma there are two questions to examine. First, for example, even if the harvesting of rainforests may significantly affect the conditions of life for everyone in the long run this issue lies within a certain jurisdiction and can only be affected externally through international pressure, deliberation and through the work of NGOs. This also highlights the importance of the transnational public sphere which will be discussed in section 4.2. However, when the question is instead about policies regulating some phenomena as international trade, the impingement is direct and those affected by this policy should have a say in its formulation in some way. In addition, there could be thought of regional bodies collectively regulating the policies regarding e.g. rainforests or nuclear power among those peoples with immediate access or bordering to the certain issue but then it will be an issue of those subjected of the particular arrangement's decisions and thus in accordance with the revised all-affected principle.

⁵ For a more exhaustive examination of who should be regarded as significantly affected or not, see Held 2005.

3.4 The role of the nation state

When deciding the feasible demarcations, however, there need to be a point of take-off. The first of the two predominant strands in this debate advocates to entitle the whole humanity to be constituting the demos in a global democracy and to design the system of overlapping levels of cooperation consisting of different scopes, from that viewpoint (see Bartelson 2008:171 and Held 1995b:236). While this idea may seem sympathetic at first sight it also could be accused of being both utopian and illegitimate. A global democracy in some form, I would say, is a great vision to reach out for rather than a feasible starting point. There should be considered both a sociological aspect to legitimacy and peoplehood, and a historical aspect as well, to the development of the nation states. Both these aspects are somewhat neglected in this first account. I will argue therefore in favor of the other alternative which is to start off with the nation state as the core unit wherefrom other levels of cooperation should derive their legitimacy. I find this alternative the most feasible not because the nation state would be the outstanding unit of cooperation per definition, but because this is where history has left us as Dahl reckons, and therefore we have to begin reformation from here (Näsström 2011:128). This is not to say that the nation state is the natural functional political unit which would be to mistake a feature of the contemporary world as an unchanging feature of the world for all time. Nations are on the contrary quite new creations and the way in which they are often taken for granted today and linked together with the concept of states is an example of how our worldviews and conceptions are changeable and this can be used as an argument in defense of that reformation of political structures actually may be possible (Caney 2005:175; Linklater 2008:545-547). However, if reconsidering the argument above, one can actually use the same line of reason the other way around. The appearance of the nation states and their widely accounted legitimacy today – both in the normative and sociological sense – is in fact the result of an often tyrannical and violent project of enforced authority (Linklater 2008:545-547). To enable a transformation of political structures without turning out imperialistic, dominative or tyrannical, I believe one have to consider the current pattern and start off the reformation from here.

3.5 The principle of non-domination

Now it is time to revisit the discussion regarding the outlining and extension of distributive justice and an appropriate set of rights discussed in section 3.3.1. These are issues, I would argue, that are basically a matter of political concern and thus should be settled democratically. However, the outcome has to be kept within some demarcation in order to provide the prerequisites of the liberal democracy rather than threaten it (Dahl:204-205 and Held 1995a:303-315). One method of

how to determine a plausible demarcation of this kind is through a thought construction provided by John Rawls in *A Theory of Justice* (1996). The theoretical enquiry here is to decide what *the original position* in a hypothetical contract would be if determined by parties whose properties would be hidden behind *a veil of ignorance*, i.e. what principles would be chosen by rational and independent individuals lacking knowledge of their own abilities and conceptions of the good (Badersten 2006:156; Caney 2005:108). This way, the principles chosen would be fair and impartial since one has to consider each and everyone's hypothetical position as possibly your own (Caney 2005:108). The justifiable rational outcome hereby, Rawls suggest, would be the most extensive set of rights which is compatible with freedom credited to everyone (Badersten 2006:156). A justifiable system derived this way would recognize each and everyone's equal opportunities to pursue and develop one's special abilities as long as one does not interfere on others basic rights. Some distributive justice would thereby be justifiable but also some dynamics and inequality as long as the aggregated utility in the system of cooperation will thereby increase and the worst off will be better off than they would have been otherwise (Badersten 2006:156). Bohman concludes this way of reasoning in the equal right to non-domination.⁶

As Beetham (1991:5) reckons however, there is always a strain of universalism to this kind of principles and human rights accounts have in this respect been accused of being imperialistic and repressive of cultural differences. However, the right to non-domination as outlined above I find hard to accuse being of a repressive nature, more likely the opposite. Through such a set of rights, individuals would have the possibility to determine by themselves what cultural practices they prefer as long as no harm is enforced on others. One can also this way be rescued from oppression enforced in the name of tolerance on cultural diversity or right to national self-determination etc. (Caney 2005:53, 91-92, 173-181). If people are not free to express their opinion and determine the society they are living in, then how can someone really be able to claim that the current way of order, the current culture, are in accordance with the will of the people or that any individual is not being dominated? The same dilemma is, however, also apparent the other way around. We cannot know for sure if a people in a societal system where a set of rights like these earlier mentioned are not in place, want to be rescued from their state of affairs by external intervention or if this is not the case, because there is no way for them to consent as noticed by Cohen (2004:1-11).

In respect of democratic legitimacy in transnational governance, the touchstone is that this kind of governance arrangements should not act dominative on its subordinated i.e. strong states should not dominate weaker counterparts or individuals. Political pressure can and should be directed at illiberal entities to entitle it's subordinated the democratic freedoms and the rights to non-domination, but the central concern here is the impact of transnational governance downwards and not the internal practices in certain states. Is the effect of TGAs

⁶ For a further discussion on this matter please see Bohman 2007, Caney 2005 and Rawls 1996.

on regions, states, individuals, legitimate from a democratic point of view? In the perspective outlined in this thesis the source of legitimacy should be derived in a bottom-up manner, from the individuals in certain states, regions etc. to the higher levels of governance and not the other way around.

4 How can democratic legitimacy be obtained in transnational governance?

The discussion above has left us with a set of aspects to consider when discussing the democratic legitimacy in transnational governance from a normative point of view. There are two main dimensions of democratic legitimacy to take into account here, the normative and the sociological. The normative dimension can be further subdivided into two features. First we have the public self-determination, i.e. that those significantly affected by a policy should also be able to affect its tendency. Second, we have the personal autonomy, the rights to non-domination. These normative guidelines should be reflected when outlining the constitution of any governance with the ambition to obtain democratic legitimacy in a normative sense.⁷ In addition we have to take into account the sociological dimension of legitimacy since a system of justice, to be successful, must be one of which the participants identify (Caney 2005:131).

When discussing legitimacy in transnational governance there should be noticed that these governance arrangements vary significantly in the way they figure. Different arrangements may have dissimilar purposes and derive their rationality and legitimacy from different sources and should thereby also be constituted differently (Follesdal and Hix 2006:537-543). With respect to that matter we need to encounter the varied kinds of arrangements somewhat differently when examining the democratic legitimacy. The first step is to provide a classification of what types of transnational governance arrangements are to be considered and then to outline the varying qualities attached to the different categories.

4.1 Types of transnational governance

In the classification of transnational governance arrangements I will categorize along two features. The first depends on whether the governance is predominantly intergovernmental or if the governance is supranational. The other dimension refers to the purpose and function of an arrangement. Is the capacity of the arrangement *only* to produce *Pareto-efficient* outcomes or does the cooperation arrangement in question also has redistributive properties? In the figure below I have sketched a scheme illustrating the sample space of this classification.

⁷ See sections 3.2, 3.3, 3.4 and 3.5.

	Pareto-efficiency producing	Redistributive and/or value-allocative
Inter-governmental	E.g. the purely trade regulatory parts of the WTO	E.g. the European Council
Supra-National	E.g. the European Court	E.g. the European Parliament

Figure 1. The different types of TGAs

4.1.1 Intergovernmental governance

When a cooperation arrangement is intergovernmental the activity is undertaken between states. In respect of democratic legitimacy this category can be divided into two subgroups. First we have the cases where the policy outcome is mainly an issue of the involved parties. The European Council can be viewed as an example of this since the decisions made within this body are about policies regarding the states involved. On the other hand we have e.g. the G8 which is a constellation of eight of the most powerful governments in the world but which pursues policies with significant impact far beyond the jurisdiction of just these eight governments as in the case with governance of cyberspace (Hart 2005). I will, in lack of better denominations, call these patterns *internal* respectively *external* intergovernmentalism.

The fact that legitimacy issues are present in external intergovernmentalism is quite obvious. G8 for example may be one of the most contested bodies in transnational governance whatsoever. Policies performed here have significant impact on countries and peoples that are not represented in this arrangement and thus challenge the revised all-affected principle (see Hart 2005).⁸ Action has been taken to address the extensive criticism aimed at this kind of bodies. G8 in the treatment of cyberspace regulations has tried to increase transparency and include significant NGOs in the process (Hart 2005). Increasing transparency and involving NGOs in order to maintain public accountability is important in transnational governance as we will see in section 4.2 but these actions cannot solely solve the deficits of democratic legitimacy in external intergovernmental

⁸ See also section 3.3.2.

governance. Different actors can of course discuss important questions and coordinate their policies, but are the decisions treated in a governance arrangement significantly affecting the life chances and self-determination of individuals, peoples and societies, those must have a say in the settlement or otherwise the democratic principles presented in chapter 3 will be violated.

A prerequisite for governance to be legitimate is thus that the policies performed are internal. However the solution to the deficits of democratic legitimacy is not that simple. Two issues in contemporary intergovernmental governance have to be encountered, the principle of political equality inherent in the liberal democracy concept and the public accountability.

The principle of political equality acknowledges in the context of transnational governance that equal representation should be at hand by actors entitled equal status, like citizenry or statehood, rendering similar possibilities to self-determination and non-domination despite of origin as formulated in chapter 3 (see also Held 2005:370, 384). This is though rarely the case in contemporary IGOs. For example, in the executive board of IMF 2005, 24 industrial countries were holding ten to eleven seats contra 42 African countries holding only two seats (ibid.). The differences in effective power are however often rather of informal than of formal art. As Held (2005:370) asserts it is often the case that developed states come with *'[...] large delegations equipped with extensive negotiating and technical expertise, while poorer developing countries often depend on one person delegations, or have even to rely on the sharing of a delegate.'* This plausibly aggravates the self-determination and non-domination of less powerful regions.

One common defense towards the democratic deficit criticism leveled towards intergovernmental arrangements is that the decision-makers in these contexts are government representatives and thus democratically elected and subordinated public and legislative scrutiny (Hix 2003:7). However, the monitoring provided through domestic public spheres and legislatures have turned out to be insufficient (Follesdal and Hix 2006: 534-537). The interest of domestic actors in 'foreign' matters has been weak and the focus has been on domestic politics mainly. Moreover the often informal and 'clubbish' art of those arrangements has invited to exclusion and made monitoring and participation by non-state actors and other government officials difficult (Raustila 2002:24). *'As a consequence, the origins of political choices in transnational governance networks are often unclear, and responsibility for them is hard to establish.'* (Steffek 2010:46). The need of increased public accountability can be reasserted as the need for increased transparency and inclusiveness in the decision making process and the invitation of the transnational public sphere. These latter topics will be further developed in sections 4.2 and 4.3.

4.1.2 Supranational governance

The distinction between supranational and intergovernmental governance may not be crystal clear. However, ideal-typologically intergovernmental governance

implies cooperation between governments and supranational governance infers governance above the state.

Distinctions can further be made between two kinds of supranational governance. On the one hand there is the technocratic regulatory bodies as the European Court or the ECB with clearly formulated functions and purposes which are however determined politically (see Follesdal and Hix 2006).⁹ The interesting aspect is therefore how these rules or regulators have been settled. They can be put in place by intergovernmental mediation or by supranational governance arrangements of political nature. This latter category is the other kind of supranational governance which is still a very rare feature (Bexell et. al 2010:88).

The most prominent, and maybe the only real, example of this latter phenomenon today is the European Parliament. One of the main motivations behind the creation of this institution – mimicking the parliaments of the domestic level – and for the EP gains in subsequent treaty reforms, have been to maintain the legitimacy deficits of the intergovernmental institutions dominating the EU as the council of ministers, and the supranational regulatory institutions as the commission (Benedetto and Hix 2007:17; Hix 2003:6). However, critics of the EP-development have recognized two elements making the institution function unintended. First, as claimed by Benedetto and Hix (2007:119-120), the parliament may use its current powers to maximize further influence in subsequent treaty reforms and thereby turn out more powerful than intended which is what happened following the Maastricht treaty (ibid.). Second, the elections of the parliament have shown not to be about the direction and agenda of European politics but mainly determined by domestic issues (Hix 2003:9). Hix provides two explanations to this matter. On the one hand, European politics seem too distant and complicated for most European voters rendering an apathetic attitude. This is manifested by the low participation rate in the elections to the EP together with the limited focus on European issues in the related political debate (ibid.). On the other hand, the institutional architecture behind the composition of the EP has a role to play in this outcome. The elections are fought between domestic parties and not between the European party groups and thereby the contestations are carried out on the domestic level rather than on the European (Hix 2003:9; 2006:235-237). Those factors have turned out the EP elections to be more of a second order national contestation where voters show their dissatisfaction with the domestic governance and a greater sympathy with small parties in an election where the result is not regarded very important either way (ibid.). This situation may indicate that the sociological identification beyond the nation state may not yet be thick enough to motivate and obtain legitimacy in political supranational governance bodies and also that voters are less engaged in matters settled too distant from their own sphere (Bexell et. al. 2010:88-89).

⁹ See also section 4.1.3.

4.1.3 Regulatory or redistributive functionality?

One commonly asserted defense of the exclusiveness of international organizations (IO:s) traditionally is that these bodies provide regulatory functions producing pareto-efficient outcomes and that this kind of institutions, like courts or central banks in the domestic field, are best functioning independently, left out of political competition and majoritarian influence or the political business cycle as Majone puts it (Follesdal et. al. 2006:537).¹⁰ Pareto-efficiency is present when aggregated gains are produced and no one is made worse off (ibid.).

In many TGAs however, the solely pareto-efficiency functioning can be questioned. First there is the factor that gains produced by TGAs have been distributed unevenly in different parts of the world (Caney 2005:110; Kahn 2007; Lombardi and Woods 2006:497-502). The terms and conditions of IOs as e.g. WTO and IMF have been articulated by the western world which is problematic from a democratic perspective especially when the gains produced have been relatively biased to greater benefit the developed world than developing countries though this latter category *may* however have been better off than if these arrangements were not in place (ibid.). Further it can be said that terms and conditions of such institutions as the WTO significantly affect and constrain the political options available for partaking parts and thus constraining the public self-determinations as well as the personal autonomy when standing outside these arrangements may not be a plausible option (Buchanan and Keohane 2006:407; Kahn 2007). Another arrangement where democratic deficits have been defended by its regulatory function but where redistributive effects are clearly apparent is the EU (Follesdal and Hix 2006: 542-544). Hix (2003:9-10) reckons the constraining effect of EU regulation on national policies options for the political left and right respectively. Furthermore, the EU expenditure policies are clearly redistributive features rather than pareto-optimizing ones (Follesdal et. al. 2006:542-544).

For democratic legitimacy to be obtained in transnational governance the point to be stressed from the discussion above is that redistributive and policy determining qualities should not be hidden behind claims of pareto-efficiency when this is not simply the case. Regarding institutions that are primarily regulatory like a court or a central bank these *should* be independently operating in order to not be politically and majoritarian influenced and risk ceasing to be pareto-optimizing (Follesdal and Hix 2006:538, 542; see also Majone 1998). However, there can be inherent biases in the formulation of this kind of arrangements as traditionally the case with WTO and IMF. Therefore it is crucial for the democratic legitimacy in these arrangements that the terms and conditions are questioned and revised when necessary and determined unbiased and non-dominative (Held 2005). For this matter there is also a need for transparency in

¹⁰ Though the purely pareto-efficiency functioning of market failure correcting institutions like central banks and competition regulators are actually less universally claimed than in the case with legal and technical standards (Follesdal and Hix 2006:542-543).

the process of these institutions enabling public scrutiny which will be elaborated below. There is also a need for a constitutional framework, and possibilities to ex post review, protecting societies and individuals from domination by these arrangements (Follesdal and Hix 2006:538).

When it comes to political, value-allocative and redistributive arrangements, the demands for obtaining democratic legitimacy increases. This is a question of issues that may impact the choices available for public policy and societal self-determination. In accordance with the democracy principles presented earlier in this thesis there is in these cases a need for a democratic input to the process, the possibility of popular choice and influence on the output (Hix 2003:4-12). This could be obtained both through intergovernmental and supranational arrangements. The features of accountability on the one hand and inclusiveness and subsidiarity on the other are significant in the process of democratic legitimation in both cases which will be the subjects of the following examination.

4.2 Accountability, transparency and the public sphere

The possibility of public monitoring of the power and to hold decisions makers accountable is necessary for the democratic status of any political system (Follesdal and Hix 2006:545). This capacity can be summarized in the conception of democratic accountability which is made up by three mechanisms: legal, electoral and public accountability (Steffek 2010:55).

The purpose of legal accountability is to through the function of independent courts protect the rights of citizens as aforementioned, and the electoral mechanism has been examined earlier in section 3.3 (see also Steffek 2010:53-56). Though democratic accountability is optimized by these different dimensions working synergistically, Steffek highlights the importance of public accountability for the democratic legitimacy in transnational governance and for reinforcing the electoral and legal accountability (ibid.). Public accountability implies that the work of office holders and decision makers should be open for public scrutiny as a way to continuously be able to review the power and hold these actors accountable to the wider public (Steffek 2010). This is significant for the contestatory dimension of democracy and complementary to the legal and electoral aspects of democratic accountability (Steffek 2010:54-60). It is complementary to the legal accountability so to speak that the laws or functions of the courts themselves may not work appropriate in a certain matter and would need reformulation which can be highlighted through the feature of public monitoring. Further, the electoral mechanism for judging officeholders is insufficient since what is expressed in the recurrent approvals is rather consent or discontent regarding the overarching political agenda than individual cases which however can be better reviewed through public scrutiny and discussion. Also for the electoral mechanism to serve its purpose there is a need for a way for citizens

to communicate and review what is happening in the governance in order to properly be able to shape rational conceptions on which to base ones notions (ibid.).

Since recognizing the importance of public accountability for the democratic legitimacy we need to examine what the features instrumental for public monitoring are. Steffek (2010:60, 62) reckons the significance of transparency and the public sphere for this matter.

Transparency and accessibility of the official power is of course necessary in order to deliver public monitoring. Without enough transparency it would be hard to shape an adequate picture of what is really going on in a certain process. However, there need to be something in place to provide the monitoring. In the context of the nation state this function has been delivered by the national public sphere constituted by national media and civil society (Steffek 2010:56-60). As asserted in the previous analysis however, the interest of the public and the media weakens as a policy area transcends further from the core. A question that thereby has to be asked is if there is a transnational public sphere sufficient developed to provide transnational public scrutiny (Steffek 2010:57). The monitoring does not need to be provided by a single public sphere however, but may as claimed by Habermas, be carried out by the interlocking of different public spheres as e.g. by the national public spheres of the states of the EU (Eriksen 2005:345). Often the coverings on transnational matters offered by national media are not extensive or detailed enough due to the more general-interest approach of professional journalism (Steffek 2010:58-60). Therefore the role played by NGO:s in monitoring transnational phenomenon and communicating the often technocratic substance in a, for the general citizen, understandable way is recognized in recent research (ibid.). What however is critical when it comes to civil society is who gets their voices heard and who does not. Today most of the predominant NGO:s are western based and run (Bexell et. al. 87, 92-93; Smith and Wiest 2005: 624) For broad democratic legitimacy to be obtained through transnational public accountability, the function of NGO:s and a transnational public sphere, the increased inclusion and participation of developing world actors in global civil society is of critical significance (ibid.).

4.3 Inclusiveness, subsidiarity and unanimity revisited

Inclusiveness and subsidiarity have been discussed earlier in this thesis resulting in the formulation of the revised all-affected principle.¹¹ In this section I want to stress the role to be played by inclusiveness and subsidiarity for the sociological

¹¹ See section 3.3.2.

component of democratic legitimacy and for facilitating public accountability. The demarcation of policy areas by the subsidiarity principle to put the settlement of a decision as close to the affected as possible may also work facilitating in deciding issues of different character and sensitiveness to be treated through different procedures. As aforementioned, the unanimity principle is often regarded too ineffective to be feasible in the everyday domestic politics. However, in questions of transnational scope, the lack of identification across borders and cultures and the fear of losing in national self-determination may render the absolute majority principle a too rough tool for decision making and risk undermining the sociological legitimacy. In these circumstances, as is often the case in the adoption of EU policies, the qualified majority or unanimity principles may therefore be more feasible procedures depending on the sensitivity of the matter (Follesdal and Hix 2006:540). This way national preferences in sensitive cases will not as likely be over-run in transnational negotiations and the legitimacy may be easier to uphold, but to the cost of greater ineffectiveness (see Moravcski 2002:611-619). However, the deliberation that follows from inclusiveness and the unanimity procedure may be a feasible way to increase mutual understanding across borders and to develop the transnational public sphere and the sociological dimension of legitimacy (see Held 2005 and Steffek 2010).

5 Conclusion – A pragmatic proposal

This thesis has examined how to obtain and evaluate democratic legitimacy in transnational governance. I have argued in favor of the possibility to carry out such an examination scientifically if intersubjectivity is pursued and if undertaken in accordance to a certain set of outlined principles.¹² A perspective of democracy has to be presented as a benchmark for the legitimacy investigation and since a pragmatic ambition is adopted the democracy perspective outlined in this thesis emanates from the liberal democracy model which is the predominant in contemporary democratic world. The features that are derived through this perspective and used as baselines for the analysis are the principles of non-domination and self-determination together with the recognizing of the sociological dimension of identification. There is also argued that some form of distributive justice is needed for political democracy to be possible in substantive terms.

When extracting these principles from the domestic realm into the transnational, some significant implications are caused. In the globalized contemporary world, not only domestic matters are affecting individuals and societies but so are also issues transcending the domestic sphere. For not losing societal self-determination or being dominated by external forces there is a need for models of governance beyond the nation-states that are also recognizing the democratic principles. The proposed tool in this thesis of deciding the plausible demarcation of policy areas is the revised all-affected principle, implying that the contours of those subjected by a decision should better adapt to include those actually significantly affected. To enhance self-determination and sociological legitimacy, add to this the principle of subsidiarity which says that a decision should be settled as close as possible to those most significantly affected. To further not risk turning imperialistic or dominative, a bottom up-approach of legitimacy derivation is suggested. Since it is the democratic legitimacy of transnational governance arrangements and not of particular states that are examined, the central point to be made here is that TGAs should not act dominative and undemocratic downwards. For the same reasons the current patterns of contemporary world should be considered when deciding the core unit of cooperation. The formulation of governance arrangements should thus take off where history has left us which happens to be in a system of sovereign nation-states.

¹² See chapter 2 in this thesis.

Further it is claimed in this thesis that there are diverse kinds of TGAs which due to its differing functions should be evaluated somewhat differently. The main divide lies between political and regulatory arrangements.

Political arrangements need a democratic legitimate input as well as output. When it comes to settling a policy agenda it is thus necessary that those significantly affected by a decision have a say in the process. The cooperation should also not be biased so to speak that equal participators are not entitled similar possibilities of formal influence which would be a violation of the non-domination principle. A critical point for the legitimacy of political TGAs is that the agenda actually is able to be influenced by the rightful demos, i.e. there need to be improved channels through which influence of political agenda of TGAs by those affected is possible and independently of domestic concerns. One proposed solution to this problem in the EU has been the enhancement of the EP. The architecture behind the constitution of the EP together with low interest in European issues domestically however obstructs the democratic legitimacy of this institution. Since popular support of supranational bodies with value-allocative functions often is limited, a more feasible solution may be the enhancement of transparency and the invitation of public scrutiny to intergovernmental arrangements so that the behavior by officials can be reviewed and judged by the wider public through domestic democratic mechanisms. Here NGOs may play an important role complementing the dispersed covering by transnationally uncoordinated domestic media.

Also when it comes to regulatory arrangements, public scrutiny plays a principal part in enhancing the democratic legitimacy. These types of arrangements should be operating independently securing that long term goals are pursued and not affected by short term shifting opinions of the majority. However, the terms of these arrangements must be formulated through a democratic process and able to reformulate if inherent power-biases are found to be present. Also a constitutional framework of rights and freedoms as well as extensive transparency is needed to protect individuals and societies from domination. Such a framework makes possible the public monitoring through which misbehavior can be highlighted.

The limited identification beyond the nation states may in sensitive matters, if sociological legitimacy is to be maintained in relation to the decisions made transnationally, motivate the adoption of 'harder to pass' decision-rules like qualified majority or unanimity. Together with the increased need for deliberation these procedures provoke, these features may work as safeguards against domination of significant national preferences and as promoters of political integration across borders.

The final point made in this thesis is that there is often a need for increased inclusion in contemporary transnational governance. There is to a significant extent in TGAs a representative deficit of the developing world which has to be adjusted if wider democratic legitimacy is to be obtained.

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Information acquired 2011-07-27