The Democratic Function of the Public Sphere in Europe

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A. Introduction

Democratically legitimized European integration calls for developments in culture and society—which arise naturally in the scope of on-going political, economic and institutional European Union (EU) integration—to be publically debated so they may be politically processed. The space where this happens is the public sphere, or, in the context of the EU, the European public sphere. The latter complements national public spheres. Successful integration among EU Member States is made possible by adhering to a common set of values at the same time as respecting the national identities of the Member States and fostering cultural diversity. By way of Union citizenship rights, individuals are able to make use of and actively promote the Europeanization of societies and cultures. Yet citizens are affected by Europeanization to differing degrees, with only a minority of citizens actively partaking in transnational exchange. In order to account for European integration democratically, the EU treaties hold provisions allowing for a close institutional interdependence of national and European democracy.

Democratic legitimacy in any polity may not be attained on mere institutional terms. Rather, a space is needed where issues of general public interest may be openly debated and in which individuals and intermediaries such as civil society organizations and political parties may identify issues of *political* relevance. This public sphere is also the one where citizens' democratically elected representatives are held to account for their political actions. As such, the public sphere is an essential element to democracy—on both the national and the European levels. Within the context of the European Union, a public sphere, in order to convey democratic legitimacy, would need to reflect European issues in a political context in such a way that European citizenship becomes apparent and is reflected in citizens' expectations towards political institutions. Public opinion of citizens on the European Union reveals a mixed picture—leading to the observation that the *political* public sphere in the EU is only insufficiently developed. The missing link may lie in political institutions' effectiveness to observe not only the established public sphere in the national context, but also to explicitly take into account in how far citizens' communication and information flows are changing both online and offline, and how the public sphere is being increasingly touched by issues of European concern. Whether these issues have a

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political or social character, the public sphere should provide the instruments to potentially reflect these in a national context, and to allow for these issues to be democratically addressed in the political public sphere.

The complexity of the European public sphere may be tackled by intermediaries between "established" political actors, as well as by online tools and newly emerging publics—with particular regard to the diverse actual and potential influences of European integration on the lives of the Union's citizens. Essentially, in light of the complementary character of European to national democracy, and due to the close interdependence of the two levels, the national public sphere should be open to incorporating European elements, and to debating issues of EU integration under additional consideration of the emerging transnational public sphere.

B. The Cultural Element of European Integration

In ascribing to the EU treaties, the Member States commit to an "ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen."[1] The ability to promote political and economic integration at the same time as promoting cultural diversity within the Union is one of the Union's greatest strengths—and it is made possible by the Union adhering to a set of core values[2] at the same time as respecting the national identities of its Member States.[3] Before this backdrop, European integration is explicitly intended.[4] The implications of developments and changes this integration may have on culture and society within the Member States become relevant for the Union's democratic legitimacy insofar as citizens' ability to partake in the political life of the Union is touched.

In being part of or joining the European Union, its Member States ascribe to a set of common values set out in Article 2 of the Treaty on European Union (TEU). These values, on which the Union is founded, include the respect for human dignity, freedom, democracy, equality, the rule of law, and respect for human rights, including the rights of persons belonging to minorities.[5] In stating that "these rights are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and

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[1] Consolidated Version of the Treaty on European Union art. 1(2), Mar. 30, 2010, 2010 O.J. (C 83) 15 [hereinafter TEU].

[2] *Id*. art. 2.

[3] *Id*. art. 4(2).

[4] Christian Calliess, *Art. 1 EUV*, *in* KOMMENTAR ZUM EUV/AEUV 11 (Christian Calliess & Matthias Ruffert eds., 4th ed. 2011).

[5] TEU art. 2.

equality between women and men prevail,"[6] the treaty underlines that the Union's core values can only exist in societies in which these latter features are prevalent.[7] As a consequence, the Union's core values hold implications not only with regard to the sovereign relations between states and citizens, or between the Union and its citizens, but to the relations between private individuals and their social interactions.[8] The way in which states organize their relations to their citizens is an aspect of national identity and is thus respected according to Article 4(2) of the TEU.

Under these premises, Europeanization is fostered and intended—in political, economic, legal, and cultural terms.[9] With regard to culture, Union citizenship is a potential driving force, bringing with it the right "to move and reside freely within the territory of any EU Member State," subject only to the limitations and conditions contained in the treaties and secondary legislation.[10] Secondary legislation holds that "the free movement of persons constitutes one of the fundamental freedoms of the internal market, which comprises an area without internal frontiers, in which freedom is ensured in accordance with the provisions of the Treaty."[11] Before the context of EU integration, social interactions are intended and encouraged to prevail in a transnational context, promoting Europeanization.

As a result, EU integration may have cultural and social implications as well as political and economic ones. The respect for cultural diversity, which can be—in line with its open and dynamic character—understood as "the manifold ways in which the cultures of groups and societies find expression,"[12] lies at the center of European integration.[13] It has been recognized by the council as being "strengthened by the free flow of ideas, and . . . nurtured by constant exchanges and interaction between cultures."[14] The cultural

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[6] *Id.* art. 2.

[7] *See* Wolff Heintschel von Heinegg, *Art. I-2*, *in* Europäischer Verfassungsvertrag 1 (Christoph Vedder & Wolff Heintschel von Heinegg eds., 2007).

[8] Rudolf Streinz, Christoph Ohler & Christoph Herrmann, Der Vertrag von Lissabon zur Reform der EU: Einführung mit Synopse 64 (2d ed. 2008).

[9] Commission of the European Communities, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: On a European Agenda for Culture in a Globalizing World*, at 2, COM (2007) 242 final (May 10, 2007).

[10] Consolidated Version of The Treaty on the Functioning of the European Union art. 21, Mar. 30, 2010, 2010 O.J. (C 83) 171 [hereinafter TFEU].

[11] Council Directive 2004/58, 2004 O.J. (L 158) 77 (EC).

[12] Council Decision of 18 May 2006, Annex 1(a), 2006 O.J. (L 201) 15, 19 (EU).

[13] *See* Commission Decision 2008/708, 2008 O.J. (L 236) 10 (EC).

[14] Council Decision of 18 May 2006, Annex 1(a), 2006 O.J. (L 201) 15, 19 (EU).

landscape within the EU is also generally influenced by the emergence and on-going development of the information society in the context of globalization.[15] EU integration has therefore rightly been recognized by the European Commission as a factor in the changing cultural landscape within the Union,[16] just as the EU has been described as a cultural space founded on a common European cultural heritage.[17] The way in which institutionally triggered cultural developments touch on cultural aspects of national identity is of utmost relevance also to the EU integration debate—not least because political support in Member States may easily be organized around fears of identity loss.

A brief view towards the reality of cultural exchanges and the freedom of movement within the Union shows that not all Europeans are directly affected by European integration and that different socio-economic groups are affected to differing degrees. In a 2007 Special Eurobarometer survey, the free movement of people, along with that of goods and services, was considered to be the most positive result of European integration,[18] and in 2010, 60% of citizens believed mobility to be good for European integration.[19] In reality, the proportion of the European citizenry making actual use of rights to free movement within the Union remains limited as obstacles to the freedom of movement remain:[20] In 2009, only slightly more than 2% of Union citizens lived in another EU Member State.[21]

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[15] *See* Council Resolution of 20 November 1995, 1995 O.J. (C 327) 1 (EU); Council Conclusions of 20 November 2008, 2008 O.J. (C 319) 15 (EU); Council Directive 2007/65, 2007 O.J. (L 332) 27 (EC).

[16] *See* Commission of the European Communities, *supra* note 9, at 3:

> The European Union is not just an economic process or a trading power, it is already widely—and accurately—perceived as an unprecedented and successful social and cultural project. The EU is, and must aspire to become even more, an example of a 'soft power' founded on norms and values such as human dignity, solidarity, tolerance, freedom of expression, respect for diversity and intercultural dialogue, values which, provided they are upheld and promoted, can be of inspiration for the world of tomorrow.

[17] *See* Council Decision 1903/2006, 2006 O.J. (L 378) 22 (EC).

[18] European Commission, *Standard Eurobarometer 67: Public Opinion in the European Union* 70 (Nov. 2007).

[19] European Commission, *Special Eurobarometer 337: Geographical and Labour Market Mobility* 4 (June 2010).

[20] European Commission, *Eurobarometer Qualitative Studies: Obstacles Citizens Face in the Internal Market* 50-83 (Sept. 2011).

[21] European Commission, *Geographic Labour Mobility in the Context of EU Enlargement*, *in* EMPLOYMENT IN EUROPE 2008 116 (Oct. 2008), *available at* http://ec.europa.eu/social/main.jsp?langId=en&catId=113&newsId=415&furtherNews=yes.

In terms of socio-economic characteristics, a transnational element seems to be prevalent especially among younger—and higher educated—Europeans: The index measuring openness to other European countries, though being rather low overall,[22] shows that, whereas 19% of 15–24 year-olds and 17% of 25–39 year-olds have a high openness index, the same is true for 14% of 40–54 year-olds and only 7% of those aged 55 or over.[23] Younger Europeans are also more likely to socialize with citizens from other EU member states, just like they are more likely to travel or read newspapers in another European language.[24] Perhaps not surprisingly, therefore, young Europeans are also more likely to speak a second language: In 2006, 40% of those aged 15–24 knew at least two languages, compared to 32% of those aged 25–39, 27% of those aged 40–54, and 19% of those aged 55 and over.[25] Education plays a similar role as age, with citizens of higher education (University level or similar) far more likely to speak more than one language than people with lower education.[26]

While European integration in cultural terms may thus be taking place, different groups of citizens seem to be actors in this game to differing degrees. Significantly, cultural integration within the European Union may be seen as a natural side effect of EU integration. Citizens may be affected by European integration to differing degrees; yet with regard to the European democracy debate, the issue of whether citizens who leave their home Member State are able to participate in democratic life within the Union affects the state of European democracy as a whole.

As European integration proceeds, citizens should be able to take part in political life and to develop and contribute to informed decision-making processes within the geographical context of their daily lives—subject to the unique democratic surroundings of the respective Member State. As much as the primarily economic notion of European Community has evolved to a declaredly political project of European Union, the need to cater politically for a potential Europeanization of citizenship within the democratic framework of the Union becomes eminent. Promoting European integration at the same time as fostering the "unity in diversity" principle, living up to the Union's core values and promoting cultural diversity at the same time as respecting national identities, thus becomes one of the Union's greatest challenges—one calling for public debate.

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[22] European Commission, *Standard Eurobarometer 77: European Citizenship* 36 (July 2012).

[23] *Id.* at 39.

[24] European Commission, *Special Eurobarometer 243: Europeans and their Languages* 18 (Feb. 2006).

[25] *Id*. at 11.

[26] *Id*. at 26.

C. European Democracy and the Public Sphere

Democracy within the EU is instrumental to a concept of European integration that remains true to the Union's core values and diversity. It lies at the center of EU integration—with European and national levels deeply intertwined. Of the Union's core values, democracy is the one most directly ensuring citizens' voices to be heard, as its institutional construction is based on translating the will of the people into the political decision-making system—thus directly linking the realm of society and cultural life to the political. The space where such translation takes place is the public sphere. With regard to EU integration, the institutional democratic framework within the Union is such that both national and transnational citizenship-related issues should find resonance in public formation of political will and political decision-making processes. Institutions alone cannot ensure democratic legitimacy; rather, a public space is needed in which citizens can freely make use of their rights, thereby contributing to a society in which the values and characteristics laid out in Article 2 of the TEU prevail, yet in which relevant intermediaries and political institutions also allow for issues of political significance to be identified and debated. With regard to the EU, the challenge lies in creating a democratic space within which the Member States' citizens of diverse cultural, political and historical backgrounds and identities may see themselves as part of the same supranational democracy.[27]

I. Democracy in the Treaties

Democracy entails all state action to be grounded on the will of the people.[28] The value of democracy—its principles substantiated by the TEU—pertains to both the member states as well as the Union itself and is the latter's necessary basis of legitimacy.[29] Both the EU and the member states are committed to the principle of democracy,[30] whereas it must be differentiated between a national and a European understanding of the latter.[31]

The democratic principles of the Union are laid down in Title II of the TEU. According to Article 10 of the TEU, the functioning of the Union is founded on representative

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[27] Dimitris Chryssochoou, *Europe's Contested Democracy*, *in* EUROPEAN UNION POLITICS 377, 379 (Michelle Cini & Nieves Pérez-Solórzano Borragán eds., 2010); Mark Bovens, Deirdre Curtin & Paul 't Hart, *The EU's Accountability Deficit: Reality or Myth?*, *in* THE REAL WORLD OF EU ACCOUNTABILITY: WHICH DEFICIT? 1, 5 (Mark Bovens, Deirdre Curtin & Paul 't Hart eds., 2010).

[28] Rudolf Geiger, *Art. 6 EUV*, *in* KOMMENTAR ZUM EUV/EGV 5 (Rudolf Geiger ed., 4th ed. 2004).

[29] Cordula Stumpf, *Art. 6 EUV*, *in* EU-KOMMENTAR 5 (Jürgen Schwarze ed., 2d ed. 2009); *see also* WINFRIED KLUTH, DIE DEMOKRATISCHE LEGITIMATION DER EUROPÄISCHEN UNION: EINE ANALYSE DER THESE VOM DEMOKRATIEDEFIZIT DER EUROPÄISCHEN UNION AUS GEMEINEUROPÄISCHER VERFASSUNGSPERSPEKTIVE 44 (1995).

[30] Calliess, *supra* note 4, at 13.

[31] Heintschel von Heinegg, *supra* note 7, at 6.

democracy,[32] and the citizens are directly represented at Union level in the European Parliament.[33] Parliamentary representation is complemented by Member States' representation in the European Council through Heads of State or Government, and in the Council by their governments, "themselves democratically accountable either to their national Parliaments, or to their citizens."[34] The extent to which European citizens are able to hold their representatives at the national and European levels to account for decisions affecting them directly is of central importance to the concept of democratic legitimacy within the context of the EU.

Citizen involvement is also detailed via Article 9 of the TEU, which holds that "every national of a Member State shall be a citizen of the union," Union citizenship being "additional to," yet not replacing national citizenship. According to Article 10(3) of the TEU, "every citizen shall have the right to participate in the democratic life of the Union," just as "decisions shall be taken as openly and as closely as possible to the citizen." This is facilitated by political parties at the European level, which, according to Article 10(4) of the TEU, "contribute to forming European political awareness and to expressing the will of citizens of the Union." Members of Parliament are representatives of the Unions' citizens,[35] for whom the right to vote in elections to the European Parliament, granted in Article 19(2)(b) of the Treaty on the Functioning of the European Union (TFEU), is a direct institutionalized expression of political will available at the European level.

While the TEU prescribes the principle of representative democracy for the Union itself,[36] it does not do so with regard to the Member States.[37] This is appropriate regarding the obligation of the Union to respect its Member States' national identities. Yet all Member States have a parliamentary system of government. Therefore, Article 12 of the TEU posits that national parliaments "contribute actively" to the EU's "good functioning,"[38] and remain key institutions as the democratic processes of the EU's Member States continue to provide the main democratic "roots" of the EU.[39] The transnational and diverse character

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[32] TEU art. 10(1).

[33] *Id*. art. 10(2).

[34] *Id*.

[35] *Id*. art. 14(2).

[36] *Id*. art. 10(1).

[37] *See* Heintschel von Heinegg, *supra* note 7, at 7.

[38] TEU art. 12.

[39] Christian Tomuschat, *The Ruling of the German Constitutional Court on the Treaty of Lisbon*, 10 GERMAN L.J. 1259, 1261 (2009); Rudolf Hrbek, *The Role of National Parliaments in the EU*, *in* THE EUROPEAN UNION AFTER LISBON: CONSTITUTIONAL BASIS, ECONOMIC ORDER AND EXTERNAL ACTION 129, 147 (Hermann-Josef Blanke & Stelio Mangiameli eds., 2012).

of EU politics finds expression in the work of national parliaments through stronger inter-parliamentarian cooperation within the Union, whereas it is left to the European Parliament and the national parliaments to "determine the organization and promotion of effective and regular inter-parliamentary cooperation within the union."[40] The diversity of the Union's political cultures is taken into account in that "the way in which national parliaments scrutinize their governments in relation to the activities of the Union is a matter for the particular constitutional organization and practice of each Member State."[41]

National parliaments are thus involved in European decision-making, adequately reflecting the fact that decisions taken at the EU level are not simply instated from above, but rather at least in part legitimized through the influence of national political decision. The degree to which this legitimacy is sufficient is subject to many debates regarding the Union's democratic deficit. Regardless of the degree of such involvement, national parliaments *are* involved at the European level. European issues should therefore be included also in national parliamentarians' and political parties' accountability portfolios. The degree to which this accountability is exerted in the national contexts of EU Member States is of significance to the degree to which the EU as a whole may be perceived as democratically legitimate.

II. The Public Aspect of Democracy

A merely functional parliamentary framework within a constitutional setting does not by itself ensure democratic legitimacy.[42] Rather, the permanent and recurring dispute between differing social forces, interests and ideas is a fundamental condition for democracy.[43] The continuing dialogue between parliament and the public can be said to be as important for democratic legitimacy as the act of voting itself.[44] Democratically legitimized governmental authority being based on the will of the people,[45] the state of democracy must be measured, in part, by the effectiveness of translating the will of the people into political decisions affecting governmental authority. A democratically legitimized environment needs to translate the social realm shaped by citizens making use of their rights and freedoms, exercised within the boundaries set by the law, into a political will. The space in which this translation can be said to take place is the public sphere.

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[40] TEU Protocol 1 (describing the role of national parliaments in the European Union).

[41] *Id.*

[42] Dieter Grimm, *Braucht Europa eine Verfassung?,* 1995 JURISTENZEITUNG [JZ] 581, 587.

[43] Bundesverfassungsgericht [BVerfG - Federal Constitutional Court], Case No. 2 BvR 1877/97, Mar. 31, 1998, 97 BVERFGE 350, 369 (Ger.)[hereinafter *Euro Case*].

[44] Horst Dreier, *Art. 20, in* 2 GRUNDGESETZ-KOMMENTAR 83 (Horst Dreier ed., 2d ed. 2006).

[45] *Cf.* MARCEL KAUFMANN, EUROPÄISCHE INTEGRATION UND DEMOKRATIEPRINZIP 43 (1997).

Individuals are both citizens and participants of cultural life at the same time; as such, they carry out these two functions simultaneously. The political relevance of the public sphere arises from its ability to touch both the political and private realms of citizens.[46] It allows for a differentiation between society and the state,[47] and for a bridging of the distance between citizens and the political system.[48] In Germany, for instance, according to the German Federal Constitutional Court, the public sphere should be structured such that public opinion can unfold in a "free, open, unregulated and fundamentally 'state-free' "[49] manner before being picked up by political institutions and flowing into the formation of a political will.

In order for public opinion to unfold in such a way, citizens need to have the means available to them to shape an informed opinion around the political decisions affecting their daily lives. Only an informed public opinion may regularly recall political alternatives, influence political decisions, and partake in the formation of political will, which in the national context will occur via political parties that are open to all for participation.[50] Public institutions and political actors should take the provisions necessary for citizens to be able to access relevant information needed for them to shape an informed political opinion. Nevertheless, the public sphere should remain essentially *state-free*. Whether citizens choose to use the means available to them should be up to them: Not all citizens will be equally inclined or able to make use of the information available to them, to devote the necessary time or to invest the necessary energy and attention.[51] Yet it is a basic element

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[46] JÜRGEN HABERMAS, FAKTIZITÄT UND GELTUNG 442 (1998).

[47] *See generally* ERNST-WOLFGANG BÖCKENFÖRDE, DIE VERFASSUNGSTHEORETISCHE UNTERSCHEIDUNG VON STAAT UND GESELLSCHAFT ALS BEDINGUNG DER INDIVIDUELLEN FREIHEIT (1973); Ernst-Wolfgang Böckenförde, *Die Bedeutung der Unterscheidung von Staat und Gesellschaft im demokratischen Sozialstaat der Gegenwart*, *in* RECHT, STAAT, FREIHEIT 209 (Ernst-Wolfgang Böckenförde ed., 1991); JOSEF ISENSEE, SUBSIDIARITÄT UND VERFASSUNGSRECHT: EINE STUDIE ÜBER DAS REGULATIV DES VERHÄLTNISSES VON STAAT UND GESELLSCHAFT 149 (2001); Hans Heinrich Rupp, *Die Unterscheidung von Staat und Gesellschaft*, *in* HANDBUCH DES STAATSRECHTS [HStR] II, § 31 (Josef Isensee & Paul Kirchhof eds., 3d ed. 2004).

[48] Klaus Eder, Kai-Uwe Hellmann & Hans-Jörg Trenz, *Regieren in Europa jenseits öffentlicher Legitimation? Eine Untersuchung zur Rolle von politischer Öffentlichkeit in Europa*, *in* 29 REGIEREN IN ENTGRENZTEN RÄUMEN, POLITISCHE VIERTELJAHRESSCHRIFT, SONDERHEFT 321, 327 (Beate Kohler-Koch ed., 1998).

[49] *See* Bundesverfassungsgericht [BVerfG - Federal Constitutional Court], Case No. 2 BvF 1/65, July 19, 1966, 20 BVERFGE 56, 98 (quoting "[f]rei, offen, unreglementiert und grundsätzlich 'staatsfrei,' "); *see also* Bundesverfassungsgericht [BVerfG - Federal Constitutional Court], Case No. 1 BvR 233, 341/81, May 14, 1985, 69 BVERFGE 315, 346.

[50] *See* Bundesverfassungsgericht [BVerfG - Federal Constitutional Court], Case No. 2 BvE 2, 5/08, 2 BvR 1010, 1022, 1259/08, 2 BvR 182/09, June 30, 2009, 123 BVERFGE 267, ¶ 250 [hereinafter *Lisbon Judgment Case*].

[51] JOHAN P. OLSEN, EUROPE IN SEARCH OF POLITICAL ORDER: AN INSTITUTIONAL PERSPECTIVE ON UNITY/DIVERSITY, CITIZENS/THEIR HELPERS, DEMOCRATIC DESIGN/HISTORICAL DRIFT AND THE CO-EXISTENCE OF ORDERS 119 (2007).

of a democratically understood political public sphere that it should, in principle, be open to any and every citizen to partake in this forum.[52]

A further democratic function of the public sphere is that of accountability. The path of delegation and responsibility that leads from the citizens to state institutions exerting political power should be made transparent, allow for permeability, and be kept rational and controlled.[53] The members of national parliaments and governments in the EU, for instance, are democratically elected by their citizenry and accountable to them. As such, they represent the views of their electorate in parliament before political opposition, and carry their will into the political decision-making process. Being under close scrutiny of the public, they compete for citizens' votes in the scope of elections. Though political actors have to answer to public scrutiny only as much as they want to be re-elected,[54] the on-going dialogue between competing political positions is a fundamental aspect of democracy.

The actors by which political actors are thus observed are individuals and intermediaries such as civil society organizations or the media. The latter are instrumental in bridging the gap between the citizenry and a highly specialized political center in which parliaments and governments play an instrumental role. They contribute to making political actions and options known and allow for an orientation of political actors on information disseminated.[55] The media fulfill their democratically relevant role by contributing to the stimulation and orientation necessary for the citizens' opinion-shaping and will-formation

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[52] *See* Michael Greven, *Mitgliedschaft, Grenzen und politischer Raum: Problemdimensionen der Demokratisierung der Europäischen Union, in* REGIEREN IN ENTGRENZTEN RÄUMEN 249, 257 (Beate Kohler-Koch ed., 1998); Marianne van de Steeg, *Bedingungen für die Entstehung von Öffentlichkeit in der EU, in* BÜRGERSCHAFT, ÖFFENTLICHKEIT UND DEMOKRATIE IN EUROPA 169, 179 (Ansgar Klein et al. eds., 2003); Jürgen Habermas, *Medien, Märkte und Konsumenten, in* ACH, EUROPA 131, 134 (Jürgen Habermas ed., 2008); *see also* CARL COHEN, DEMOCRACY 7 (1971) (stating, "[d]emocracy is that system of community government in which, by and large, the members of the community participate, or may participate, directly or indirectly, in the making of decisions which affect them all"); Kai-Uwe Hellmann, *Integration durch Öffentlichkeit. Zur Selbstbeobachtung der modernen Gesellschaft*, 7 BERLINER JOURNAL FÜR SOZIOLOGIE [BJS] 37, 59 (1997); Bernhard Peters, *Der Sinn von Öffentlichkeit, in* ÖFFENTLICHKEIT, ÖFFENTLICHE MEINUNG, SOZIALE BEWEGUNGEN 42 (Friedhelm Neidhardt ed., 1994).

[53] *See* Peter Häberle, *Struktur und Funktion der Öffentlichkeit im demokratischen Staat, in* DIE VERFASSUNG DES PLURALISMUS: STUDIEN ZUR VERFASSUNGSTHEORIE DER OFFENEN GESELLSCHAFT 126, 130 (Peter Häberle ed., 1980).

[54] Bernd Holznagel, *Erosion demokratischer Öffentlichkeit?*, 68 VEREINIGUNG DER DEUTSCHEN STAATSRECHTSLEHRER [VVDStRL] 381, 386 (2008).

[55] HANS-JÖRG TRENZ, EUROPA IN DEN MEDIEN: DIE EUROPÄISCHE INTEGRATION IM SPIEGEL NATIONALER ÖFFENTLICHKEIT 392 (2005); *see also* Dieter Fuchs & Barbara Pfetsch, *Die Beobachtung der öffentlichen Meinung durch das Regierungssystem in* KOMMUNIKATION UND ENTSCHEIDUNG: POLITISCHE FUNKTIONEN ÖFFENTLICHER MEINUNGSBILDUNG UND DISKURSIVER VERFAHREN 103, 125 (Wolfgang van den Daele & Friedhelm Neidhardt eds., 1996).

processes, while at the same time pressing the political system towards transparency and adaption.[56]

Citizens are not only consumers of the media, but also have a right to cultural participation, to observe political events, and to participate in the formation of political will.[57] It is the function of the *political* public sphere to select those issues that are significant in terms of political decision-making, to digest specific problems and to channel information into more or less informed and well-founded competing public opinions.[58] Differing interests and ideas should be able to enter into a free and open dialogue so that political goals can be communicated, debated, and eventually adapted to the public opinion—at the same time as citizens are able to partake in this discussion and feel that their voices are being heard.[59] As such, the political public sphere, understood as the space where political discussions evolve discursively, is a fundamental aspect of democracy,[60] and the democratic quality of a political system depends just as much on its plurality, quality and degree of representation, and ability to compromise at the level of intermediaries such as political parties, unions, associations, civil society, and media.[61]

D. European Union and the Public Sphere

The emergence of a European public sphere is rightly considered a key component on the road towards democratic legitimacy of the Union, and a constructive factor with regard to transnational notions of citizenship.[62] National and European elements of democracy being closely intertwined, the national public sphere may be complemented by a European element, analogous to the complementary character of Union citizenship to national

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[56] *See* Habermas, *supra* note 52, at 135; *see also* Juan Díez Medrano, *Qualitätspresse und europäische Integration*, *in* BÜRGERSCHAFT, ÖFFENTLICHKEIT UND DEMOKRATIE IN EUROPA 191, 192 (Ansgar Klein et al. eds., 2003).

[57] Habermas, *supra* note 52, at 134.

[58] Habermas, *supra* note 52, at 136; *see* HABERMAS, *supra* note 46, at 436.

[59] *See* Jürgen Gerhards, *Westeuropäische Integration und die Schwierigkeiten der Entstehung einer europäischen Öffentlichkeit*, 22 ZEITSCHRIFT FÜR SOZIOLOGIE [ZFS] 96, 98 (1993).

[60] *See* Bundesverfassungsgericht [BVerfG - Federal Constitutional Court], Case No. 2 BvR 2134, 2159/92, Oct. 12, 1993, 89 BVERFGE 155, 185 (Ger.); *Euro Case* at 369; *Lisbon Judgment Case* at ¶ 268; Holznagel, *supra* note 54, at 384; Grimm, *supra* note 42, at 587; Habermas, *supra* note 52, at 136; Wolfgang van den Daele & Friedhelm Neidhardt, *"Regierung durch Diskussion"—über Versuche, mit Argumenten Politik zu machen*, *in* KOMMUNIKATION UND ENTSCHEIDUNG: POLITISCHE FUNKTIONEN ÖFFENTLICHER MEINUNGSBILDUNG UND DISKURSIVER VERFAHREN 9, 10 (Wolfgang van den Daele & Friedhelm Neidhardt eds., 1996); Greven, *supra* note 52, at 257.

[61] Grimm, *supra* note 42, at 588.

[62] Bart Cammaerts & Leo Van Audenhove, *Online Political Debate, Unbounded Citizenship, and the Problematic Nature of a Transnational Public Sphere*, 22 POL. COMM. 179, 183 (2005).

citizenship. The public sphere becomes subject to a transnational frame of reference; it is also the space where cultural manifestations of European integration may be addressed.

When operating in the public sphere of their own Member State, citizens should be placed in a position to make informed decisions within the scope of rights granted them by institutions of national *and* Union citizenship; correspondingly, the public sphere should allow union citizens taking part in the political life of the Union the scope of rights granted to them by *Union* citizenship, specifically when they participate in the context of a Member State *other* than their own. National public spheres should thus be able to account for both, with a European public sphere being grounded in the public spheres of the EU's Member States, yet allowing for transnational communication and information flows at the same time as observing the European political space.

In its current phase of development, the European public sphere is as complex and heterogeneous as the effect of Europeanization on the Union's citizens. With regard to the public sphere's effectiveness in providing an adequate framework for the formation of EU-related political will, public opinion reveals a mixed picture; the Union's institutional democratic framework does not seem to be reflected in citizens' notions of Europe and the EU. The current structure of the public sphere seems to only partially provide for an effective intermediation between free communication flows and institutionalized political debates.

I. The Complexity of the European Public Sphere

The European public sphere is highly complex and views on the degree of its emergence differ. If *a* European public sphere exists, it exists both online and offline, has many facets, and is no single space. It is framed around issues and gives way to a multiplicity of networks, incorporating actors across all levels of government specific to their needs.[63] It is also greatly influenced by the Internet, which changes communication patterns as well as citizens' expectations regarding political participation in both national and European contexts.

A European public sphere may be seen to be emerging in that civic engagement can be increasingly observed beyond the nation-state, and civil society organizations are becoming involved at EU level.[64] Actors have in the past succeeded at political mobilization out of perceived necessity, specifically targeting European institutions and showing that a

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[63] *See* Lance Bennett, *Grounding the European Public Sphere: Looking Beyond the Mass Media to Digitally Mediated Issue Publics*, 43 KOLLEG-FORSCHERGRUPPE: WORKING PAPER SERIES [KFG] 7 (2012); Cammaerts & Van Audenhove, *supra* note 62, at 193.

[64] *See* Eva G. Heidbreder, *Civil Society Participation in EU Governance*, 7 LIVING REVS. EUR. GOVERNANCE [LREG] 2 (2012); Bennett, *supra* note 63, at 7; Cammaerts & Van Audenhove, *supra* note 62, at 182.

transnational, genuinely *political* public sphere in the Union may emerge at least around single issues. The effective protests against the Anti-Counterfeiting Trade Agreement (ACTA), which took place online[65] as well as on Europe's streets, mobilizing thousands of citizens across Europe,[66] are only one example for successful organization of the public sphere around a specific issue. The Internet played a decisive role both in terms of the policy in question and as the tool used for mobilization of citizens and civil society actors across borders.

What is significant to note is that in the case of ACTA, for instance, cultural, and specifically language, diversity did *not* inhibit the formation of a political public space around an issue being discussed at the European level. A European communicative space across language barriers, called a "constitutional illusion" by one of Germany's former constitutional lawyers only a few years ago,[67] may thus already be emerging. Moreover, the multiplicity of languages may be seen as a strength of the European Union, and the ability to account for this difference democratically as a measure of the successful implementation of unity in diversity.[68] Institutional efforts to tackle the language diversity of the Union include the translation of official documents and the recognition of 23 official and working languages.[69] Also, the Commission's funding efforts reflect an awareness for the necessity of a transnational public sphere across language barriers, as expressed through the Commission's support for such portals as presseurop.eu, a multi-language news website, or euractiv.eu, for instance. Other services and initiatives carried by civil society or national institutions complement the field—cafebabel.com (available in six languages) or eurotopics.net (available in three languages) are only examples of efforts to transcend language barriers. The prospects for the emergence of a European communicative space across language barriers are therefore there.

This process is certainly facilitated by the Internet, which fosters de-localized information and communication flows. Importantly, changing communication cultures are bringing forth a multitude of communication media, content and spaces, thereby rapidly changing

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[65] *E.g.*, Pirate Party of Switzerland, Stop ACTA (Anti-Counterfeiting Trade Agreement), http://www.stopp-acta.info/ (last accessed May 9, 2013).

[66] Dave Lee, *ACTA Protests: Thousands Take to Streets Across Europe*, BBC News (Feb. 11, 2012), http://www.bbc.co.uk/news/technology-16999497.

[67] Grimm, *supra* note 42, at 590.

[68] Jan Erik Grindheim & Terje Lohndal, *Lost in Translation? European Integration and Language Diversity*, 9 Persp. on Eur. Pol. & Soc'y 451, 453 (2008).

[69] *See* European Commission, *Official EU Languages*, http://ec.europa.eu/languages/languages-of-europe/eu-languages_en.htm (last accessed May 9, 2013).

the way politics are communicated and discussed in the process.[70] The Internet also provides the instruments for citizens to not only to consume information, but also to voice opinions and organize around political issues flexibly and fast. Political actors and organizations are consequently feeling the pressure of heightened calls for transparency and participation on the part of the people. This adds to the complexity of the European public sphere in the sense that European integration is taking place at the same time as national public spheres are themselves subject to fundamental changes regarding digitization. Thus the Internet is influencing political parties; For instance, while some are increasingly discovering Internet regulation and governance as issues of concern to their electorate, others are experimenting with new tools for collective decision-making, i.e. using liquid democracy.[71]

In terms of the European *political* public sphere, one may take election campaigns as an example of the complex relationship between national and European levels of public politics. In Germany, for instance, Europe played a negligible role in parties' electoral programs during the federal elections of 2009, just as much as European elections have tended to be framed predominantly around national issues:[72] While the Christian Democratic Union (CDU) featured Angela Merkel on its campaign posters, the Social Democratic Party (SPD) placed their chancellor candidate of 2009, Frank-Walter Steinmeier, next to Martin Schulz—now president of the European Parliament. The claims towards citizens held a decidedly national note. Perhaps also as a consequence of such nationalized European electoral campaigns, political citizen participation at the European level is rather low, as underlined by a voter-turnout of only 43% at the European Parliamentary elections of 2009.[73] It is to be hoped—and expected—that both the election years 2013 (German federal elections) and 2014 (European elections) will bring a stronger focus on European issues. Ideally, the European public sphere should enable and call for open debate around opposing public opinions on *European* issues for which the elected parties or officials are held to account. Interestingly enough, Germany holds the Member State record for both least people to have heard of the term "citizen of the European

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[70] *See* Jürgen Habermas, *Hat die Demokratie noch eine epistemische Dimension? Empirische Forschung und normative Theorie, in* ACH, EUROPA 138, 156 (Jürgen Habermas ed., 2008); Karl-Heinz Ladeur, *Verfassungsrechtliche Fragen regierungsamtlicher Öffentlichkeitsarbeit und öffentlicher Wirtschaftstätigkeit im Internet,* 2002 DIE ÖFFENTLICHE VERWALTUNG [DÖV] 1, 3 (stating "*[d]as Internet ist ein 'hybrides' Medium, das verschiedene Kommunikationsformen miteinander verknüpft und vor allem den Unterschied zwischen Massen- und Individualkommunikation, aber auch zwischen Information der Bürger durch die Medien und der unmittelbaren öffentlichen Adressierung der Bürger durch die Regierung aufhebt.*").

[71] *See* Liquid Democracy e.V., Liquid Democracy, https://liqd.net/en/schwerpunkte/theoretische-grundlagen/liquid-democracy/ (last accessed May 18, 2013); *Piratenpartei,* http://wiki.piratenpartei.de/Liquid_Democracy (last accessed May 9, 2013).

[72] European Commission, *Standard Eurobarometer 77: Public Opinion in the European Union* 39, 46 (July 2012).

[73] European Commission, *Standard Eurobarometer 71: Standard Report*, 92 (Sept. 2009).

Union" and to know its meaning (19% in 2012, 27 percentage points below EU average), and most people who had never heard of the term (43%, or 24 percentage points above the EU average).[74] Under these circumstances, the probability of the public exerting a pull towards greater Europeanization of debates may be assumed lower than if more citizens were aware of the significance of the European political realm for their lives as citizens of the Union.

No doubt, European institutions are making a significant amount of information readily available; anyone who wants to can access the information needed to form a reasonably informed opinion around European politics. A range of intermediaries—from civil society, media, foundations, bloggers, etc.—are processing this information and contributing to an informed debate around European politics. As such, they encourage open exchange among political decision-makers and an interested public, forming an essential part of the European political public sphere. Regarding the specialized nature of these debates, the participation barrier is nevertheless often rather high; at the same time, established national media coverage of EU issues is influenced not only by an interest to uncover the facts, but also by increasing financial pressure on home editorial offices and a limited number of editorial staff in Brussels. Perhaps as a consequence, the debate around European politics has not reached the same level of saturation as the one centered around national politics, particularly with regard to the impact of political decisions taken at European level on citizens' lives.

The complexity of the European public sphere may be seen to stem from a difficult relationship to the national level. As it stands, European integration is not adequately reflected in the national public sphere, whereas the spaces where a European public sphere is emerging seem to be framed predominantly around single issues. Publically, democracy is largely shaped through national actors. The focus on competing political opinions lies in the national political contexts even when the issue of relevance has a European frame of reference.

II. The Paradox of Public Opinion on the European Union

The current inability of the public sphere to adequately broker between the national and the European political realms is reflected in conflicting public opinions on the European Union: Though the institutional democratic dimension of the EU was last strengthened with the implementation of the Treaty of Lisbon[75] in 2009, and though innovations such as the European Citizens' Initiative,[76] introduced in April 2012, are a valuable addition to the

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[74] European Commission, *Flash Eurobarometer 365: European Union Citizenship* 6-7 (Feb. 2013).

[75] Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community, Dec. 13, 2007, 2007 O.J. (C 306) 1.

[76] TEU art. 11(4); Council Regulation No. 211/2011, 2011 O.J. (L 65) 1 (EU).

participatory realm of Union citizens, none of these efforts have succeeded in bridging the gap between relevance and the legitimacy crisis of European politics. Still, public opinion points towards greater European integration particularly in light of the crisis.

Neither European nor national institutions seem to have profited from an increase in democracy in institutional terms: Trust levels in both national and EU institutions are low and have fallen significantly in the last few years. Whereas trust in EU institutions fell from a high of 57% in Spring of 2007 to 33% in Autumn of 2012, trust in national parliaments fell from 43% to 28%, trust in national governments from 41% to 27%.[77] Though subjective, these indicators point towards institutional improvements of the Union being inadequately reflected in citizens' perceptions of the Union. Citizens have only recently ceased—for the first time in history—to see the way democracy works in the European Union as something predominantly positive;[78] in 2012, only 31% of EU citizens believed that their voice counts in the EU, as opposed to 51% of citizens believing that their voice counts in their own country.[79]

At the same time, public opinion points towards stronger European integration in light of the crisis: In late 2012, 85% of EU citizens believed that EU countries will have to work more closely together as a result to the crisis, 61% believed the EU to have sufficient power and tools to defend the economic interests of Europe in the global economy, 53% thought the EU will be stronger in the long term (as opposed to 35% of citizens who believed the opposite), and 44% of citizens felt closer to citizens in other European countries (whereas 50% did not) as a result of the crisis.[80] Nearly a quarter of Europeans hold the view that the EU has strengthened its position as the actor best placed to take effective action against the effects of the economic and financial crisis.[81]

Public opinion thus seems to point slightly towards more EU integration out of necessity, with the EU being perceived as less democratic than the national level. The reasons for the low democratic perception of the European Union may lie in its institutional set-up; yet it is likely that the democratic potential of the Union is underestimated in light of an insufficiently developed public sphere. The fact that citizens are not particularly well-informed about their citizenship rights implies that citizens may underestimate their potential effect on the European political space: In October 2010, a mere average of 32% of EU citizens considered themselves well-informed about their citizenship rights—with

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[77] European Commission, *Standard Eurobarometer 78: Public Opinion in the European Union* 14 (Dec. 2012).

[78] *Standard Eurobarometer 77, supra* note 72, at 63.

[79] *Standard Eurobarometer 77, supra* note 72, at 63.

[80] *Standard Eurobarometer 78, supra* note 77, at 20.

[81] *Standard Eurobarometer 78, supra* note 77, at 21.

younger and more educated citizens attaining slightly higher values.[82] Incidentally, young Europeans are also slightly less pessimistic regarding the direction in which things are going in the European Union: Whereas 56% in the 40–54 age group think that things are going in the wrong direction, only a "mere" 47% of 15–24 year olds (and 45% of students) think so.[83] Yet generally, the European public sphere seems unable to transfer improvements of the institutional democratic framework into greater democratic legitimacy in the eyes of the Union's citizens. A democratically understood European public sphere should be able to account for the ambivalence in citizens' opinions towards the EU by addressing the underlying issues before Member States' audiences.

E. The Missing Link

In light of the European public sphere's complexity and emerging spaces of communication online, the requirements of the *political* public sphere are changed. Europe in general and the EU in particular are clearly recognized by the Union's citizens as being politically highly relevant. What seems to be missing is the link between established political actors in democratic institutions on the one hand, and the Europe-related aspects of citizens' publically debated issues on the other hand; whereas "Europe" and the political decisions regarding the EU are clearly perceived to be of high importance to citizens' lives, the perceived degree to which citizens are able to introduce their voice into the political realm in the European context remains low. The question is therefore how a European public sphere would be able to contribute to higher democratic legitimacy under these conditions.

First of all, a European public sphere should be able to make decision-making processes at the European level more transparent. This should involve not just political decision-makers, but also intermediaries such as media and civil society, and the citizens themselves. Already, European institutions are undertaking substantial efforts to make legislative documents as well as statistical materials (Eurostat), Eurobarometer surveys, etc., readily accessible to the interested public, both online and offline. Anyone who knows where to look may find this information. Sessions of the European Parliament are also public. Yet in the past, the European legislative process, generally not subject to the same degree of media coverage and public scrutiny as its national equivalent, has allowed national politicians to delegate the political responsibility for decisions taken at the European level, under national participation, solely to the European political level.[84] As

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[82] European Commission, *Flash Eurobarometer 294: European Union Citizenship* 5 (Oct. 2010).

[83] *Standard Eurobarometer 77, supra* note 72, at 52.

[84] Gertrude Lübbe-Wolff calls the European legislative process a potential *"Verantwortungsabschiebebahnhof"* ["responsibility delegation train station," author's translation]. Gertrude Lübbe-Wolff, *Europäisches und nationales Verfassungsrecht*, 60 Vereinigung der Deutschen Staatsrechtslehrer [VVDStRL] 247, 257 (2001).

long as there is no public debate around where political responsibilities lie, political actors may be tempted to delegate responsibility to "the EU" in case of unpopular decisions, and to claim the praise for popular ones. If public opinion around European Union is mixed, therefore, this may be partly attributed to a lack of clarity with regard to the close involvement of national political actors in EU decision-making.

This leads to the second issue of relevance. The delegation of political responsibility as such may be regarded as a side-note to regular political competition in a democracy where a public sphere exists to counter-balance information deficits. Still, delegation of responsibility of national actors to the EU as such should be differentiated from regular political competition at national level.[85] The practice has been popular among political actors from parties across the entire spectrum as there is no direct competition within the same level of decision-making; when political actors who are involved in the European legislative process enter into public debate in their home Member State, they enter into direct competition with *national* politicians and political parties, whose point of reference is the national electorate composed of individuals in their function as *national* citizens.[86] For a European public sphere to consequently account for the democratic framework of the Union—the latter seeing a deep interrelation between national and European levels of democracy—national political actors representing the interests of the Member States' national citizenry should see direct opposition from European actors, representing the interests of the *Union* aspects of citizenship. Such open opposition to national political actors is not impossible under the current institutional set-up of the Union, yet it is discouraged by the current structure of political parties, with members of European Parliament depending on the support of their respective European party's corresponding national party groups. Therefore, for the European public sphere to be fostered, European political parties should be strengthened vis-à-vis their national counterparts. This could be at least partially achieved by transferring their frame of reference away from national political parties to Union citizens within a particular constituency.

Thirdly, the European public sphere should allow for a translation of the cultural and social effects of Europeanization into the political realm, without intruding into the fundamentally state-free character of the public sphere. In order for this translation to be effective, relevant political actors should closely observe the complex structure of the European public sphere. The challenges are the following: For one, the question for institutions is how to adequately observe an increasingly networked and fragmented

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[85] Christoph O. Meyer, *"Brüssel hat entschieden, dass...": Über die Schwierigkeiten einer Kontrolle der politischen Verantwortlichkeit des EU-Ministerrats durch Medienöffentlichkeit*, *in* EUROPÄISCHE UNION UND MEDIALE ÖFFENTLICHKEIT: THEORETISCHE PERSPEKTIVEN UND EMPIRISCHE BEFUNDE ZUR ROLLE DER MEDIEN IM EUROPÄISCHEN EINIGUNGSPROZESS 129, 139 (Lutz M. Hagen ed., 2004).

[86] Klaus Eder & Hans-Jörg Trenz, *Prerequisites of Transnational Democracy and Mechanisms for Sustaining It: The Case of the European Union*, *in* DEBATING THE LEGITIMACY OF THE EUROPEAN UNION 165, 175 (Beate Kohler-Koch & Berthold Rittberger eds., 2007).

public space both online and offline, whose spaces are not just public but also private—social networks such as Facebook or Twitter providing stark examples. "Adequate" in this sense refers to the ability of institutions to observe the public sphere with regard to politically relevant demands of citizens at the same time as respecting citizens' rights and allowing for such a public sphere to unfold freely and openly. The other question concerns how to allow for a Europeanization of national political debate, while at the same time allowing for a trans-nationalization of public debates on issues concerning citizens from more than one Member State without falling back into national stereotypes. The latter issue touches ideas of national identity and nationalism that, for a long time, have shaped the narratives of Europe's nation states. Media and politicians alike have referred to such stereotypes in past and present coverage of European affairs, with German media and politicians repeatedly referring to the "lazy Greeks" during the crisis, for instance, at the same time as a Greek right-wing newspaper was portraying Chancellor Merkel in a Nazi uniform. While it may be "easier" to find broader resonance in public opinion by deferring to such language, or by playing the "blame game" on Brussels, the democratic art lies elsewhere. To the extent in which European integration proceeds—in legal, cultural, political, and economic terms—European issues should be integrated into the national public sphere, and politically relevant issues within the European context should be reflected by political public opinion that is predominantly rooted in local or national contexts. This development needs political leadership more than anything else.

Fourthly, media and civil society are invaluable actors in terms of shedding light on political decision-making processes at both the national and the European levels, and should continue to play their role—both online and offline. As mentioned above, transnational debate around specific issues in Europe is emerging in niche publics as well as in mass media—as can be seen in coverage of the Euro-crisis, for instance. So far, this emergence has not led to a corresponding democratization of the Union in the eyes of its citizens. In spite of democratic improvements at the institutional level, trust in institutions has fallen, and the way democracy works in the EU is no longer seen as something predominantly positive.[87] Though this is not necessarily—or predominantly—attributable to the media or other intermediaries, the media can strengthen the democratic framework of the Union by bringing transparency and accountability to European politics through continuing coverage and scrutiny. Generally, a trans-nationalization of media coverage is to be encouraged from the perspective of fostering a European public sphere. Existing tools such as presseurop.eu make a valuable contribution to such trans-nationalization of debates already ongoing.

Fifth, the citizens themselves should shape the European public sphere. In light of the participative character of the Internet, online tools are particularly well suited for such participation. Already the public sphere offers countless forums and tools for partaking in

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[87] *Standard Eurobarometer 77*, *supra* note 72.

public debates around European integration and politics. As they are already an invaluable aspect of the European public sphere, their increased recognition would certainly be a positive development. The true challenge nevertheless lies in democratic intermediaries aggregating and filtering the large amount of publicly voiced opinion in both online and offline public spaces, and in tying these public opinions back to established institutional actors. In the case of ACTA, for instance, this was successfully achieved. A further important element with regard to citizens is trust. Trust, being an essential element in the democratization debate, should be explicitly taken into account and—if possible—fostered.[88] Information campaigns regarding the democratic institutions of the Union are no doubt invaluable in terms of making the democratic dimension of the Union more visible. Yet likely even more important is an honest debate around political responsibilities, and the formation of competing public opinions on European issues in scope of these debates.

Lastly, to complement the existing structure of the European public sphere, a platform is proposed on which opinions around a wide range of issues can freely be debated online and offline, under participation of citizens as well as intermediaries and political actors. In order for an instrument to substantially contribute to the emergence of a *politically* relevant European public sphere, such a forum should fulfill certain conditions. European democracy and Union citizenship in general call for the implementation of an instrument that can (1) identify topics of relevance for individual citizens and civil society actors in the public sphere, (2) connect this debate to either national or European political contexts—as appropriate—and across party lines, (3) function on a European scale in different languages and political systems, (4) allow for a trans-nationalization of debates, and should (5) seek to complement, not replace, already existing actors in the public sphere.[89]

F. Conclusion

The democratic significance of the public sphere arises particularly from its ability to translate between society and the state. In the EU, a European public sphere may address cultural aspects of European integration in such a way that unity in diversity is possible. The emergence of a European public sphere is warranted in light of the Union's democratic nature. Its structure is complex, and Member States continue to serve as primary frames of reference in political terms. EU integration calls for wider public debate around the cultural and social implications of Europeanization, just as the European aspect of political decision-making becomes ever more visible to the public eye and more relevant for the formation of political will. The value of the European public sphere lies in its potential to

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[88] OLSEN, *supra* note 50, at 127.

[89] The project Publixphere (operated by Publixphere e.V. and associated with the Chair for European Law and Public Law at the Free University Berlin) is an attempt towards such a forum. *See Publixphere*, www.publixphere.org (last visited May 18, 2013).

convey increased transparency and accountability around European decision-making processes, just as its structure allows for the emergence of civic mobilization around issues and a trans-nationalization of debates across language barriers. Conversely, the ability of citizens to make use of both their Union and national citizenship rights in a manner conveying democratic legitimacy depends on the degree to which European issues may be addressed by and incorporated into the national public sphere. Such translation between national and European levels may be best fostered under the current institutional set-up if public spheres allow for general open discussion to evolve around issues of local, national *or* European concern—and incorporate a European element into the public sphere as needed. All the while, the public sphere should not be structured in such a way that its state-free character is compromised. It is proposed that existing structures of the European public sphere are complemented through an instrument that facilitates dialogue around European issues among existing actors of the public sphere, online and offline, and potentially on a European scale. Essentially, the question is whether the European public sphere is able to provide the framework allowing for ongoing European integration, the free unfolding of societies embodying the Union's values, and the free formation of political will on issues of political relevance in a way that is perceived as democratically legitimate by the Union's citizens.