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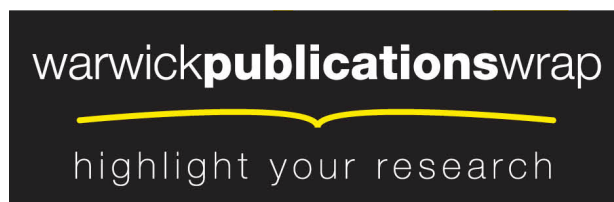
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The Limits of a Diliberative Cosmopolitanism: The Case of 'New Governance' in the EU

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The Case of ‘New Governance’ in the EU

ABSTRACT:

This paper illuminates the limits of a cosmopolitan deliberative governance via an analysis of EU practices and theories of ‘governance’. Analysing the point at which the term ‘governance’ became prominent in the institutions, via a consideration of the European Commission’s 2001 White Paper and the various proposals for ‘new governance’ produced by its in-house think-tank, the Forward Studies Unit (FSU), in the late 1990s, it detects in this turn a Habermasian discourse ethic, which has informed much contemporary social, legal and political theorising on governance and deliberative democracy. In these reports an open, pluralist and procedural rationality and practice of governance is advocated as third-way between state and market. However, the implicit *conditions* required for *consensus* or *learning* are constitutive of important closures. Turning to recent practice, the EU’s ‘Open Method of Co-ordination’ (OMC) – much vaunted by certain deliberative scholars - while ostensibly embodying an inclusive procedural rationality, is significantly circumscribed by an extant market constitution which excludes certain forms of welfare or social policy. More generally, it is suggested that advocates of a deliberative post-national governance fail to scrutinise the ways in which their key agent, civil society, has been intimately connected with dominant governing rationalities such as those which privilege the market, both historically and contemporaneously.

In an age of globalization and significant authority delegated beyond the nation state, I contend that democracy needs to be re-thought in the plural, as the rule of *demoi*. This small change of one letter has enormous normative, political and institutional significance and permits us to better understand how it is that citizenship and membership need to be transformed. Much as a cubist painting alters the given world of objects through the use of multiple perspectives, transnational democracy challenges single perspective politics and fixed jurisdictions. (Bohman, 2007:vii)

Introduction

Global governance has been repeatedly presented as *the answer* to interdependence, an answer which it became increasingly possible to implement with the end of the Cold War. In most mainstream literature, global governance is not simply a truth that disproves realism, it is also frequently conceived as *progress* from the realist realities of international relations in the aftermath of the Cold War (Hewson and Sinclair, 1999). Whereas state relations are conceptualised in terms of anarchy, self-help and coercion, literature on international organisation and global governance emphasises norms, consensus and collective action in the face of common problems (Kratochwil and Ruggie, 1986). In this sense, the notion of “governance without government” (Rosenau and Czempiel, 1992) has a positive normative edge to it, referring to the possibility for co-operation and action in the absence of an overarching authority or government. In such imaginings international regimes and institutions, international law and global civil society allow for a move beyond a potentially violent international state of nature. For instance, in 1992, the Commission on Global Governance argued that, “international developments had created a unique opportunity for strengthening global co-operation to meet the challenge of securing peace, achieving sustainable development, and *universalizing democracy*.”

Some continue to emphasise the democratic and legitimacy enhancing potentiality of extant liberal international institutions in general (Keohane et al., 2009, Moravcsik, 1997) and of the EU in particular (Majone, 1998, Moravcsik, 2002). However, even these scholars will at least recognise that a move towards post-national forms of governance is not unambiguously positive; it can also involve an undermining of forms of democracy and solidarity (in general, legitimacy) associated with traditional nation-state government. To make good the label ‘good governance’ a number of scholars – often

self identifying cosmopolitans or cosmopolitan democrats (Archibugi, 2004, Habermas, 2001a, Held and Archibugi, 1995) - and, indeed, a host of international institutions, including the EU, have attempted to think through and implement forms of transnational governance which can be regarded as legitimate. Cosmopolitan democrats have sometimes been criticised for an underlying methodological nationalism which leads them to conceive democracy in terms of defined territorial domains and potentially reinvent the ethical violences of nation-state, albeit now in terms of multiple nested territorial levels (see, in particular, Patomaki, 2003:353-4, Smith and Brassett, 2008). For instance, it is possible to conceive of Habermas's (Habermas, 2001b) and similar (Zurn, 2000) pre-occupations with the creation of a European constitution in such terms (Parker, 2009). In both practice and theory, this has led, *inter alia*, to calls for a more open, participatory and deliberative form of governance (Bohman, 2004a, 2007, Dryzek, 2006) that is not wed to delimited expert rationalities, frequently associated with state (law) or, for that matter, market (economics). As discussed in greater detail below, for scholars such as Bohman (1994), deliberation that remains true to Habermas's discourse ethic cannot be constitutionally delimited in the way that Habermas's own political theory at times attempts. In this context, a 'global' (Kaldor, 2005), 'transnational' and/or 'European' civil society is often championed as the proxy for both 'government' and 'the people' (that govern) and regarded as the actor that legitimises a deliberative governance beyond the state. As Bartelson notes, "theories of global civil society can be interpreted as a response to the problem of governance without government in International Relations" (2006:373). This theory is also practice, as reflected in moves to include civil society actors in the decision making processes of a number of institutions of global and post-national governance.

This paper sets out to assess this particularly popular normative vision of good governance, with reference to the attempts of the European Union – and, in particular, the European Commission – to both *conceive of* and *implement* such a regime. The EU has been celebrated as successful peace project, but significant legitimacy issues have been a feature of this organisation and its antecedents ever since the establishment of the European Coal and Steel Community. Concerns have been raised about the substantive *outputs* associated with prevailing market rationalities; the ways in which solidaristic conceptions of the social have been undermined by a prevalent rationality of government geared towards the sustenance and expansion of a common or single market (Habermas,

2001a, Scharpf, 1999). Relatedly, it is often thought that the agents that *input* to EU governance are excessively circumscribed such that the institution suffers from a democratic deficit. Accordingly, the institution itself has engaged in extraordinarily thoroughgoing reflections on what ‘good governance’ should look like and made some attempts to implement these (Commission, 2001, Lebešis and Paterson, 1997, 1999). This paper critically reflects, then, on some of the ways in which European institutions have identified, reflected upon and sought to address this deficit and the various *effects* of these responses in practice and in theory. In particular, it highlights and critically assesses the emergence of what I term a deliberative rationality of government in the EU’s own institutional discourse.

At one level, the case serves as a useful illustration of the emerging critical literature in International Relations on cosmopolitanism and, in particular, on a deliberative cosmopolitanism (see, *inter alia*, Bartelson, 2006, Sending and Neumann, 2006, Smith and Brassett, 2008). At the same time, it contributes something distinct to such literatures inasmuch as it explicitly highlights the co-constitutive relationship between jurisdictional spaces, governing actors and the power/knowledge of discourses associated with a (neo)-liberal political economy. In particular, it highlights that civil society participation and deliberative processes are – far from being ‘outside of power’ – delimited by the exigencies of consensus or agreement, which are inevitably bound up with a dominant governing regime. To the extent that a (neo)-liberal political economy constitutes not only the guiding principle of many contemporary post-national and global governance institutions but also their very *condition of possibility*, it is argued that it is this (neo)-liberal knowledge regime that dictates the boundaries of deliberative possibility.

The paper proceeds as follows. The first section traces the emergence of a concern with governance in the EU via the little-examined work of the Commission’s (now disbanded) internal think tank, the Forward Studies Unit (FSU), weaving this with the insights of relevant scholars of cosmopolitan deliberative democracy in order to demonstrate the affinities between these positions. In particular, it reads the FSU reports in terms of a Habermasian discourse ethic or deliberative rationality. The second section turns to consider the Commission’s 2001 White Paper on Governance and the more general promotion of ‘soft’ or ‘new’ governance in the EU via the ‘open method of co-

ordination' (OMC), which has been explicitly supported by certain political theoretical accounts of deliberative democracy for its inclusive and deliberative potentialities. It is suggested that the openness and reflexivity of this method is, in practice, constrained by a prevailing market cosmopolitan rationality. In the final section I reflect more generally on the relationship between a deliberative governance and a dominant 'market cosmopolitan' regime of truth. In particular, it is argued that its privileged actor, civil society, is disciplined into implicitly accepting the market rationalities that constituted post-national scalar sites of governance as soon as it is enjoined to participate in such governance. The paper points, then, to the potential limits of a cosmopolitan deliberative rationality, which has been vaunted in both global governance theory and practice. At the same time, in conclusion, it hints at a less idealistic form of dialogic politics.

Conceiving Deliberative Governance in the EU

Invoking the reality of globalisation, the question of sovereignty and jurisdiction are problematised by many cosmopolitan scholars and it is claimed that there is a need to rethink the very concept of democracy as it has emerged in the context of a delimited nation-state (Bohman and Rehg, 1997, Held and Archibugi, 1995, Held and McGrew, 2000). For example, Beck and Grande (2007a) advocate a 'both-and' cosmopolitanism for Europe in the face of these perceived material realities. In other words, the aim should be a *cosmopolitan Europe*, rather than an oxymoronic *European cosmopolitanism*, where *both* loyalty to nation *and* loyalty to Europe (and, indeed, globally) is possible. This may involve reconsidering both the aims and logics of the European project and the very notion of *integration*, which draws on the imaginary of the nation state in pushing for the 'harmonization' of policy by all member states. There is a sense then in which the integration process contributes to an abolition of difference through an assumption that "uniformity is a precondition for unity." (Beck and Grande, 2007a:73). But such aspirations to uniformity have in practice often led to resistance of the sort manifest in public opposition to, for example, the Constitutional and Lisbon treaties. Thus, Beck and Grande note that, "any further integration of Europe must be guided not by the traditional ideas of uniformity in a European federal state, but must take the *unalterable diversity* of Europe as its starting point" (2007a:73). There is an apparently more sociologically grounded and *realistic* cosmopolitan approach, and yet, as noted, and as I will discuss in greater detail below, we might question the assertion

that diversity, and, indeed, social complexity, are *unalterable* material features of the social world according to which governmental practices should be constructed *as well as* the ethical implications of the practices that are constructed.

The EU has shown signs of adopting a view of the social world that broadly accords with Beck et al. Consequently, governance is seen as both an immanent, necessary and – if organised properly – a *desirable* rationality of government, which corresponds with rather than resists, a prevailing social reality. More specifically, the EU has explicitly promoted a procedural or deliberative form of governance. Such moves mirror (and are informed by) the abovementioned scholarly concerns with the *unalterable* complexities associated with globalisation and the promise of global governance and corresponding normative concerns with the need to reconceive democracy. Due to the exigencies of globalisation, democracy can no longer be conceived wholly or even mainly as ‘representative’ or ‘parliamentary’. Indeed, the notion of a self-legislating demos in methodologically nationalist accounts are problematised due to an extant border defying plurality which is resistant to the potentially homogenising (and simultaneously ‘othering’) tendencies in their prescriptions for EU/Europe.

Such a deliberative or participatory governance is strongly promoted by the European Commission’s Forward Studies Unit (FSU) in a report on ‘Evolution in Governance’ (Lebessis and Paterson, 1997) and its implications for the Commission. Merged with the Group of Policy Advisors in 2001, the FSU described itself as an in-house future-regarding think-tank of the European Commission. While its reports are not entirely representative of the mainstream EU or Commission practice, its work on governance did become of relevance from 1999 when President Prodi came to office on the back of the ignominious resignation of the previous Commission and, as such, found himself immediately confronted with a legitimisation crisis affecting the Commission and EU at large. While many of the diagnostic and prescriptive insights of the early FSU reports did not find their way into the 2001 White Paper on Governance – an important culmination of Prodi’s (re)-legitimation exercise - there is, nevertheless, a clear lineage from these reports, many of which were dusted off in view of the white paper.¹ What is

¹ Thanks are owed to Dr. John Patterson (co-author of the 1997 report, who worked on the FSU governance project throughout the late 1990s) for these important insights. In discussion Dr. Patterson

particularly interesting for present purposes is the manner in which the 1997 report conceives of the social world and envisions an appropriate mode of governance – and corresponding role for EU and commission - in this context.

In its formulation of governance, the task is not so much to change perceptions of EU outputs by arguing in favour of processes of market-making, nor is it to revive the imaginary of national democracy beyond the state. The aim is, then, neither to convince the EU citizenry that the EU's decisions and policies are in its interests nor to bolster parliamentary practices. The report emphasises complexity and uncertainty in the social world - in accord with a range of contemporary social and political theory on globalisation, interdependency, 'information' and 'network' society of the sort alluded to – in order to demonstrate the limitations of *government* as rooted in a fixed constitution and parliamentary order. At the same time it also rejects the narrow expert-driven technocratic vision of the market as organising principle. Indeed, social complexity leads to a sense that reality is never definitive, but contingent. As the report states:

[A]ll models of reality must be understood to be inherently contingent and unstable. Accepting this to be the case means that there is no single universal model of reality and equally no means by which we could eventually arrive at a definitive version of reality. (Lebessis and Paterson, 1997:13)

The view that knowledge is socially constructed, 'contingent' and 'unstable' leads the authors to advocate an inclusive, discursive and reflexive mode of governance, where proposed outcomes are contingent and subject to ongoing review. In supporting the notion that there may be no reliable Archimedean point upon which government can ground itself, government itself becomes a far less grounded endeavour. This does not, according to the report, mean that legitimate government is impossible, but flexibility and a related inclusiveness become two central features of legitimacy within the vision of 'new governance' offered. It is noted that these 'new forms of governance' are immanent in the context of extant limitations on national level government – wrought by globalisation - and the associated realities of multi-level (including local and supranational) governance in situations of interdependence and complexity (1997:7). While parliamentary democracy at the national level may not be "as healthy as is often

noted that Jerome Vignon, former head of the FSU was responsible for co-ordinating the White Paper, but that this was still significantly 'watered down' as compared to the early FSU reports.

contended” (1997:9), “the emergent reality of new modes of governance” is presented as an opportunity for public actors in general and the commission in particular (1997:18). It is noted that the commission itself has been involved in promoting new forms of governance to the extent that it has co-ordinated and mobilised networks, “organised along the lines of interest rather than on the basis of territory or nationality” (1997:10), particularly since the Single European Act. However, a recognition that knowledge is contingent requires that *the procedures* via which expert opinion is mobilised and engaged become a crucial gauge of governmental legitimacy. Indeed,

In the context of complexity, of the pluralisation of explanatory models, of interdependency and of uncertainty, the centralised and *a priori* formulation of public problems (let alone solutions) as supposed by substantive rationality is rendered difficult. (1997:14)

A consequence of the emphasis on procedure is that structures of ‘norm production and application’ are enjoined to become more ‘diffuse, decentralised and flexible’ and ‘a new definition of the principle of subsidiarity’ is required (1997:12). Subsidiarity is not merely multi-level, but conceived as multi-scalar, overlapping and multi-perspectival. This requires of institutions such as the commission that they try to move beyond bureaucratic forms of functional specialisation, beyond “unilinear expert models upon which regulatory models have traditionally been based” (1997:17) and at the same time seek to construe and *enable*, ‘context-specific’ networks involving a plurality of effected actors or ‘stakeholders’. Public actors ought not then impose “a particular understanding of the problem to be tackled nor the means by which they might be resolved” (1997:18). This is not to say that the public actor has no role to play; its role is essentially to ensure the legitimacy of process through aiming at maximum inclusiveness and transparency in every case, although the means to achieve this may vary from case to case. As noted, the processes are not to be one-off, but involve ‘feedback loops’, which account for changing circumstances, actors and, in general, complexity. Public actors “take on an auditing or oversight role which seeks to ensure the ongoing adequacy of the procedures and the attainment of collective objectives by the means agreed.” They are to do this by “controlling the *contextualisation* of the production and application of rules” (1997:19).

There are affinities between the new governance identified and advocated by the Forward Studies Unit and the work of contemporary cosmopolitan political and social theorists

who highlight the interdependent, complex and plural nature of the social world. The view that governance *needs to be reformulated* in the terms described in the FSU report and that such governance is *immanent* are both in one sense borne out of a conceptualisation of a complex social reality that is common in cosmopolitan renderings of the social world (Beck, 2006, Beck and Grande, 2007a:12). At the same time, the reformulation of governance mirrors more explicitly normative endeavours in the domain of political theory geared towards reinventing democracy within the complex terrain that is highlighted as a feature of a globalising social world. In particular, proponents of cosmopolitan deliberative democracy have emphasised not only the need to justify political power from the point of view of citizens, but also to be genuinely accountable to the concerns of their constituents (for an overview see: Smith and Brassett, 2008). Many of the proponents of cosmopolitan deliberation assess the implications of these notions of globalisation and interdependence for democracy in a way not dissimilar to the FSU report. While Habermas identifies Europe as potential demos and Held tries to identify variegated political communities to which legal bureaucratic modes of government might be applied, other theorists, in accordance with the FSU report, note the difficulty or impossibility of the identification of such community and therefore the frailties of the institutional propositions for multi-level governance.

James Bohman is but one example of the latter. His view of globalisation and interdependence is one in which authority can increasingly impact upon or 'dominate' unidentifiable individuals and political spaces from great distance. In this respect he notes the profound difficulty of demarcating self-legislating communities in a radically interdependent social world (and the 'indefinite' nature of 'social interaction'), emphasising that all concerned persons should be able to contest and deliberate on the exercise of global political power over them (Bohman, 2004b:400-1). Bohman shares the FSU scepticism regarding hierarchically structured forms of government and appears to support the notion of inclusive formulation and re-formulation of processes. As he says, "[w]hile delegated authority need not be tyrannical or coercive, it easily becomes a form of domination when it fails to offer opportunities for *ex-ante* or *post-hoc* accountability" (Bohman, 2004b:346). He advocates the promotion of "multilevel institutions in which citizens are treated as having access to political influence at the inquiry stage of decision-making" and says that, "such inquiry provides a space for effective speech and action only if it is 'multiperspectival'" (2004b:346). In a similar

vein, an FSU document of 1999, reporting the conclusions of a workshop on governance, argues that, “the entire policy process from the framing of problems, through the formulation of policy, its implementation, evaluation and revision needs to be opened up and liberated from the shadowy world it currently inhabits – civil society needs to be engaged in and by European action” (Lebessis and Paterson, 1999:11-12).

Bohman (2004b:347) notes, in particular, that it is “rule by experts and their theory-driven policies that permit little in the way of contestation, especially at the second-order level of defining problems and their solutions”. In a similar move to the FSU, a deliberative or participatory understanding of democracy is thus promoted as a way in which ‘second-order’ questions might be opened up and the dominance of *particular* experts brought into question on an ongoing basis. For the FSU report (1997:15), the aim is to “ensure that democracy genuinely becomes a process of knowledge production by and with those for whom that knowledge is deployed to serve and equally involving those actors in its deployment.”

The point of these comparisons is to highlight that this FSU vision of governance for public actors in general and the European commission in particular, both draws from and promotes a sociological and normative lexicon or rationality which presents the social reality of globalisation as complexity and uncertainty regarding substantive and formal rationalities in the Weberian sense. It is a lexicon, in other words, which offers a twin problematisation of the formal rationality of the market and the narrow expertise upon which it rests and also of the substantive rationality of the bureaucratic nation-state. Habermas – a central influence for so many legal and political deliberative scholars - epitomises this empirical or sociological awareness. As Bohman (1994:898) says, “[h]e has a deepening appreciation of the historical trends toward greater and ‘unavoidable’ social complexity.” At the same time, he has a longstanding normative concern with the technocratic tendencies of the rationalities associated with both liberal capitalism and bureaucratic socialism. In theoretical terms, he promotes his discourse ethic as the ideal response to such a technocracy. In practice, however, as intimated above, he sometimes seems keen to revive something of the substantive rationality of the welfare state in his own interventions in/for constitutional politics in general and EU/ European politics in particular (Habermas, 1996, 2001a, 2001b, Parker, 2009). He adopts a methodological nationalism at odds with Beck et al.’s methodological cosmopolitanism and, arguably, at

odds with the implications of his own discourse ethic. As Bohman (1994:897) puts it, “many faithful readers of Habermas may find his approach to legal and political legitimacy ...somewhat surprising. Rather than defending participatory democracy directly he instead embeds these radical democratic principles in a complex account of the political and legal institutions of constitutional democracies.” This move is explicable, *inter alia*, in terms of his pragmatic concern with sociology or the ‘facts’ of social reality; a concern, in other words, about the possibility of realising anything close to his discourse ethic globally in a social world characterised above all in terms of complexity, without the active drawing of certain boundaries – cognitive and spatial – which, for him, are constituted in law (Habermas, 1996). The discourse ethic, for Habermas, is then an ideal via which institutions might be assessed, rather than the basis from which institutional proposals should be proffered, as he makes clear in his critiques of Rousseau and those who would follow him in promoting the ideal of direct democracy (Bohman, 1994:903). To promote such an ideal is, for Habermas, to adopt a naïve and even irresponsible perspective on social complexity.

Conversely, the possibility of delineating discrete political communities of fate – a European community in Habermas’s conception - is problematised in/by many such as Bohman whose similar view of the complex social world renders such boundary drawing itself democratically or ethically problematic. Reading between the lines it seems that Habermas is regarded within such accounts as swimming against the tide of an ever more complex social reality in an effort at simplification. Such accounts are apparently less sceptical about the impact of such complexity on the normative potentialities of a discourse ethic. Examples of immanent forms of participatory modes of governance are presented as evidence and the result of such understandings/ social forces. Normatively the response to such understandings/ social forces is to emphasise the importance of ongoing inclusiveness and deliberation in processes which establish rules and reach contingent policy decisions. Even accepting these stories and the prescriptions that they precipitate, the question still arises, however, as to whether conflict can be averted via deliberation in the context of the plural realities that these scholars identify.

Theoretically, the contention of the FSU and Bohman, is that deliberation can lead to contingent consensus, to intersubjective understandings, if not to truth. As the FSU report (1997:13-14) states,

From experience, it is clear that agreement and shared meanings are possible. But a mutual acceptance of the contingency of models and a mutual striving to understand the models upon which others operate improves the value of reality constructions.... [T]he emphasis shifts away from improving information and action based on a dominant model, as in formal and substantive rationality, and towards a concern with the adequacy of the procedures by which different models are exposed to each other, that is confronted with their own contingency and encouraged into a posture of collective learning. In this way, what is universal is less the content of models than the procedures which develop this understanding of contingency and the need for learning.

We see here the trace of a Habermasian discourse ethic; the notion that consensus or agreement is immanent in language or communicative action and that it is this possibility and the procedures permitting its emergence to which we should aspire. As Bohman (1994:903) says, with reference to Habermas,

The core of democratic legitimacy is thus not some metaphysical foundation in 'objective reason' but the creation of discursive conditions under which all can shape those decisions that affect them. The validity of a decision would be related to 'rational consensus' to the extent that it passes a test of intersubjective universalisation: A norm is justified only if all could agree to it under ideal conditions. In his moral and legal theory, Habermas calls this test 'the discourse principle'.

Relating this to the FSU insights, it seems that the rationality of consensus is dependent upon the discursive conditions or the procedures adopted. It is not then some substantive conception of social justice or the formal calculative market (which, as we have highlighted, is itself based in a substantive conception of rationality), but the *quality* or *rationality* of deliberation which becomes the aim of government, its *raison d'être*, and that according to which government is to assess itself. A discourse ethic serves as a third way between these substantive rationalities.

But, we might wonder, is there something substantive in this 'third way'? In other words, what exactly do we mean by the *quality* of a procedure or a discussion? What is meant in the FSU report is the extent to which procedures enable participants to understand contingency, the views of others and, indeed, the importance of this multi-perspectivity and therefore, the importance of learning. This *quality* has been described variously by deliberative democrats (and, indeed, other liberal theorists) as reflexivity,

public reason or public justification (Smith and Brassett, 2008). The ability of humans for self-reflection and reasonableness – which might be equated with the above concept of mutual learning - represents a necessary *condition* which enables deliberation to lead to decisions grounded in a genuine consensus. Public reason or justification is postulated as the universal category in a plural, uncertain world, which makes deliberative consensus and, ultimately, government, possible. But this, of course, is government *as governance*.

We might, however, wonder whether it really is as clear cut as is claimed that ‘agreement and shared meanings are possible’. Indeed, we might consider the endeavours of the FSU and deliberative theorists themselves in terms of a Foucauldian analysis of power in order to assess the ethical implications of their *universal condition*. Given that such accounts are grounded in an empirical conception which accepts the unalterable reality of *inter alia*, the global, globalisation and complexity, we might wonder how subjectivities which do not accept the ‘given-ness’ of such categories (empirically and/or normatively) fit into the discursive schema and the notion of reason advocated by such theorists. We might wonder, indeed, the extent to which the notion of ‘public’ or ‘civil society’ – the privileged agents in a deliberative governance - is always-already framed or enjoined to operate within a pre-determined social reality or even co-constitutive of that reality.

In order to explore such questions further, I turn in the following section to an assessment of EU governance in practice. In particular, I focus on a governance mode which in much recent literature has been variously considered as ‘new’, participatory and deliberative - the so-called open method of co-ordination – and assess it both in terms of deliberative, pluralist governance and as a test of that ideal.

Realising a Deliberative Governance: OMC as ‘New Governance’ in Practice

As we have seen, the apparently ethical character and cosmopolitan appeal of governance in general and particularly softer modes of governance has not been lost on the EU and its institutions. Governance is not only considered in abstract terms by an internal Commission think tank. In 2001 the Commission produced its White Paper on Governance - after lengthy consultations with a range of scholarly and institutional expertise - which laid out the principles according to which EU governance should

operate (for a detailed discussion, see: Joerges et al., 2001). These were: openness, participation, accountability, effectiveness and coherence. It makes, among others, the following points:

- “The Union must renew the Community method by following a less top-down approach and complementing its policy tools more effectively with non-legislative instruments.”
- “There needs to be a stronger interaction with regional and local governments and civil society.”
- “[The Commission must].... [e]stablish a more systematic dialogue with representatives of regional and local governments through national and European associations at an early stage in shaping policy.”
- “..[b]ring greater flexibility into how Community legislation can be implemented in a way which takes account of regional and local conditions.” (Commission, 2001:4-6)

While such sentiments demonstrate the ways in which the White Paper picks up much of the rhetoric of deliberative democracy, it, perhaps unsurprisingly, falls short of the radicalism of the FSU think-piece. Nevertheless, the White Paper does mark a shift away from the view that EU legitimacy is to be regarded entirely in terms of outputs; in the jargon of regulatory governance, in terms of the efficiency of regulatory policies (Majone, 1996). More generally, EU government is not to be assessed entirely on the basis of its market-making and correcting functions. Dialogue, flexibility and participation are all the order of the day, at least in the rhetoric of this White Paper and, in a similar fashion to the FSU report, such features of governance are directly linked to its effectiveness and quality (although how these things are judged is not really specified) (Commission, 2001:10).

The Commission’s follow-up to the white paper included the development of consultation procedures permitting civil society access to policy making processes and a transparency initiative which sought to ensure that the inclusion of civil society – broadly conceived to include an array of lobbyists – remains conditional on their public declaration of interests (Commission 2005, 2007, 2008, 2009, 2006a, 2002). However, the Commission’s vision of consultation is de-limited because it operates within the

constraints of the so-called Community method, which grants the Commission a monopoly on the right of initiative in so-called first-pillar areas, which includes the 'economic constitution'. The extent to which *ex ante* consultation is either possible or meaningful in such areas is therefore highly questionable. Moreover, the Community method, at least in traditional guise, tends to involve the establishment of a 'hard law' and in the White Paper, the Commission is clear that 'regulations' – the 'hardest' legislative instrument - ought to be more widely used where legal certainty and uniformity *are needed*; notably, in areas relating to the internal market (Commission, 2001:20). Consequently, policy in such areas can tend towards a uniformity in policy output; there is no room for localised *ex post* flexibility in implementation. This is a uniformity of which, as noted above, some cosmopolitan scholars such as Beck and Grande (2007a) are critical because it is thought that insufficient respect is granted to extant difference. The key point for present purposes is that deliberation is certainly delimited in the context of a community method that the Commission continues to promote.

That said, the Community method is no longer the only governance mode in operation at EU level. Indeed, in the light of its aforementioned limitations, it has been argued by some, that a governance mode which more closely fits with the cosmopolitan deliberative ideal is the EU's 'open method of co-ordination' (OMC). To the extent that pluralist cosmopolitan visions of the social world and governance of the sort expressed and promoted by the likes of Beck, Bohman and others have engaged with concrete practices of EU-level government, they have often noted the normative potentialities contained in this mode (Beck and Grande, 2007b, Bohman, 2004a, Cohen and Sabel, 1997, 2003). The open method in a sense offers *more governance*; it provides a way of integrating networks – prevalent and often celebrated in orthodox approaches to local and national level public policy – into supranational level governance. Such ideals accord with the cosmopolitan global democracy literature, which, as noted, advocates the inclusion of civil society in deliberative governance processes. These open methods are seen as including all relevant representatives from government and non-government in a deliberative learning process.

This method involves the establishment of general and relatively loose strategic guidelines at EU-level, which member states are encouraged to follow, but in their own

particular way and without legal coercion. As stated in the EU Lisbon Council Presidency Conclusions (2000):

This method, which is designed to help Member States progressively develop *their own* policies, involves: *fixing guidelines* for the Union combined with specific timetables for achieving the goals which they set in the short, medium and long terms; establishing, where appropriate, *quantitative and qualitative indicators and benchmarks against the best in the world* and tailored to the needs of different Member States and sectors as a *means of comparing good practice*; translating these European guidelines into national and regional policies by setting specific targets and adopting measures, *taking into account national and regional differences*; *periodic monitoring, evaluation and peer review*.

While the White Paper unsurprisingly notes the continued important role of hard legal instruments such as regulations it also notes the increased importance of softer, more flexible instruments such as ‘framework directives’, co-regulation *and the OMC*. While the OMC is not, therefore, absolutely privileged in EU discourse, it has nevertheless been vaunted in this context for its adherence, or *potential to adhere*, to something like a transnational deliberative vision of governance, or, in the FSU’s discourse, ‘new governance’. For Beck and Grande (2007b:75) “this method is extremely hospitable to national, regional and local differences because it places them under the protection of the sovereign member states” and, going much further than the Commission White Paper, they argue that the OMC offers one way “out of the dead end of the Community Method” (2007a:248). Bohman similarly notes that “[m]ultiperspectival inquiry could be taken a step further in the EU beyond comitology in creatively employing its ‘Open Method of Coordination’ (OMC)” (2004a:332). Moreover, given its flexibility, the method is deployed in areas where member states have traditionally found it difficult to reach agreement – most notably areas of employment and social policy. It has, therefore, been vaunted as a method which might address not only the EU’s democratic deficit, but also its social deficit and drive the construction of the elusive ‘European Social Model’ (Trubek and Mosher, 2001).

Assessments of the OMC which set out to describe it in terms of its actuality have not always been as positive as these theoretical reflections on its potential. For example, Offe (2003:2) notes of the OMC that, ‘[t]he key phrases are “best practice”,

“benchmarking”, and “management by objective”, “peer control” and “temporal standardization and disciplining”. As we can see, the method borrows from the lexicon of management and accountancy which is intended to provide a wieldier basis for trans-EU co-operation than a traditional legal directive and yet it is underpinned by a disciplining intent. Indeed, the ostensibly open method may be less open than the institutional rhetoric and its proponents would claim. As the Commission White Paper (2001:22) says, “the use of the method must not upset the institutional balance nor dilute *the achievement of common objectives in the Treaty.*” These common objectives have emerged via, *inter alia*, an economic constitutionalisation of policy, which contemporaneously has promoted a mode of government geared towards the expansion of market rationalities. Consequently, it can be argued that the domain in which deliberation is possible within the OMC is delimited by a neo-liberal economic constitution which consists, *inter alia*, of a constitutionalised monetary policy at EU level (Gill, 1998) which accords with, in particular, German ‘ordo’-liberal austerity principles (Joerges, 2004). Thus, in the arena of employment policy - the original arena in which the OMC was used as a governance method – the discussion is not open to the extent that it can scrutinise the full range of economic policy that could be utilised in this area. As Scharpf (2002:655) notes,

If unemployment rises in the Euro area generally, Luxembourg EES guidelines could not recommend lower ECB interest rates; if unemployment rises nationally, EES recommendations could neither relax the deficit rules of the stability and growth pact nor the competition rules on state aid to depressed regions or industries.

More generally, the very weakness of the OMC in the face of a constitutionalised market cosmopolitanism – its inability to counter an ordo-liberal-inspired monetarism and its unveiling in the context of the Lisbon competitiveness agenda - means that those social policy areas where it has been deployed have been reconceived in terms of this rationality. While it is true, then, that the method has allowed European level government to say something about social policy, it is important to reflect on what precisely it has said; what kind of social policy has it promoted? As noted in relation to employment, it seems clear that social policies are already in some sense enjoined to march to the tune of a neo-liberal monetarist agenda (Schafer, 2004:8). There is here a mirroring of a more general trend where, increasingly ‘new welfare’ regimes privilege a ‘third way’ politics (in the specific sense of an Anthony Giddens or New Labour, rather

than in the general sense of a deliberative governance discussed above).² As Jayasuriya (2005:2) says, “to see this new welfare governance as a part of a movement back from economic to social policy is to miss the fact that this new policy strategy seeks to entrench a form of ‘market citizenship’ that differs from that reflected in the political grammar of post war social democracy.” Confirming this rationality in the European context, third-way advocate Tony Blair stated in 2005 that, “the purpose of our social model should be to enhance our ability to compete, to help our people cope with globalisation, to let them embrace its opportunities and avoid its dangers. Of course we need a social Europe. But it must be a social Europe that works.”

The Lisbon strategy and the ostensibly ‘open’ method for achieving this, certainly bears more than a trace of a Blairite third-way. It conflates a competitiveness agenda and austerity principle with a conception of social justice focused on equality of opportunity and thereby reduces employment and social policy to a supply-side emphasis on such initiatives as vocational training (Pollack, 2000). These initiatives, in turn, enable the attribution of individual responsibility (and culpability) for the management of the market uncertainties wrought by globalisation. ‘Security’ in the ‘welfare’ domain is thus no longer understood in terms of the collective mitigation of risk or uncertainty facing the individual, but in terms of *equipping* the individual with the opportunities which will enable them, in Blair’s words, ‘to cope with’ risk or uncertainty through improving their ‘employability’ or ‘marketability’ (Streeck, 2001:7). Such moves are motivated by the identification of a so-called ‘welfare dependency’ or a ‘dependency culture’ which has, so the story goes, sapped the enterprising spirit from the population (O’Malley, 2004). The ostensibly ‘social’ policies that have been promoted via ‘soft’ OMC technologies within the context of the Lisbon strategy have been promoted in accordance with such a rationality. The subject of entrepreneur is increasingly generalised by this neo-liberal governance; everyone is enjoined to become an entrepreneur (Audretsch, 2002, Commission, 2004a, 1998, 2003, 2004b, 2006b).

The key point of this detour is to demonstrate that the fundamental principles of European political economy are not up-for-grabs via a supposedly inclusive, democratic

² Although the use of ‘third way’ in relation to a deliberative governance is intended to denote at least some resemblance with Giddens’s more explicitly political statement. Both are presented as a middle way between the market and the (welfare) state and the rhetoric of ‘governance’ pervades both.

‘open method of co-ordination’. Indeed, the White Paper recognises the dangers of such an opening and these were palpably felt by the status quo when the EU constitutional treaty was rejected in 2005 in France and the Netherlands. With its reincarnation in the Lisbon treaty (2007) it is notable that the door was – notwithstanding the Irish case - firmly slammed on popular scrutiny. Thus, in practice, there are significant tensions between an inclusive, participatory cosmopolitan rationality of government and the exclusive, regulatory, expert driven, neo-liberal rationality.

Cosmopolitan theorists are not necessarily unaware of these practical limitations of the OMC. As Bohman (2004a:333) says, “its primary democratic deficit is insufficient transparency and openness to publics”. However, he goes on to argue that this,

...could be corrected by use of the strategy of minipublics and broadening the agenda-setting powers of institutions outside the Commission. Thus, directly deliberative polyarchy is properly distributed and decentered; but its democratic character in the EU needs to be deepened. This transformation will itself take an experimental process of collective learning.

Beck and Bohman and a number of other theoretical celebrations of the OMC hold on to its potential for deliberative governance in theory even as they acknowledge its practical limitations. However, such limitations might also be suggestive of more fundamental limitations in the assumptions of the deliberative governance advocates.

Civil Society and Market Cosmopolitanism

As noted, new, deliberative forms of governance are celebrated to the extent that truly participatory processes will produce contingent consensus as the means for conducting policy. Thus, although the OMC might, in practice, support rather than challenge a prevailing market cosmopolitan rationality, this is because it has not been extended far enough into areas designated by the economic constitution as being decided via the community method (Beck and Grande, 2007b) and, related to this, because the processes that the OMC instantiates have not, in practice, been sufficiently participatory (Bohman, 2004a).

However, even on the basis of the thin conditionality proposed by deliberative democrats a decision still has to be made about who is considered capable of deliberation; who is reasonable, self-reflexive, capable of *learning*. As with other forms of government, participatory governance is in practice *conditional* upon a particular constitution; it permits certain subjectivities while excluding others. Only if such conditionality is established can a dialogic politics or a discourse ethic manifest in a consensus, even a contingent one (Habermas, 1986, Parker, 2009). Of course, in theory, it is claimed that, via such processes as ‘feedback loops’, the fundamental normative frameworks or constitutional realities should themselves be subject to ongoing amendment. And yet, the very assertion that any contingent constitutional framework must permit a consensual outcome is itself an act of power. Despite a rhetorical openness to the reformulation of normative frameworks – reflected in the epithet, *governance* - such reformulation is itself conditioned or framed in terms of the realisation of a consensual possibility. Consensus is possible through exclusion, through government.

While such scholars alert us to the limitations of extant new governance in Europe – often in terms of its referent neo-liberal economic constitution and the limited range of actors involved in its constitution - they frequently fail to acknowledge their own act of government. Even in the most radical, pluralist, difference-respecting, deliberative accounts it is possible to detect an act of power or government; an attempt to conduct conduct; essentially to *delimit freedom*. Liberal government requires a space of uncertainty in order to constitute self-regarding, future oriented subjectivities; in other words, freedom and government might be co-constituted. As Burchell (1991:119) notes, “[t]o govern individuals is to get them to act and to align their particular wills with ends imposed on them through *constraining and facilitating models of possible actions*. Government *presupposes and requires* the activity and freedom of the governed.”

In many deliberative cosmopolitan accounts the requisite activity and freedom is supplied by civil society; civil society involvement in transnational deliberative contexts is the panacea towards a truly transnational democracy. But, as suggested in Burchell’s words, civil society becomes a subject of governance at a price: it is simultaneously rendered an object of government. Its freedom is constrained; it is ‘responsibilised’ and rule-bound both by legal frameworks and by those who it represents. It is, in short, engaged in a ‘contractual implication’ with the state, the public institution, or, more broadly, with a

dominant rationality or regime of government (Bartelson, 2006, Burchell, 1996, Sending and Neumann, 2006). In the EU context this contractual implication is sometimes explicitly clear. As the commission White Paper (2001:4) has it,

[The Commission will] [e]stablish partnership arrangements going beyond the minimum standards in selected areas committing the Commission to additional consultation *in return for* more guarantees of the openness and representativity of the organisations consulted.

Openness and representativity might seem like *reasonable* conditions for involvement in decision making, but the issue of establishing what in concrete terms constitutes these criteria is an act of considerable political power. Many who do not engage in the contractual implication – who do not to the Commission’s satisfaction demonstrate their ‘representativity’ - are left unrepresented. There is, we see here, a connection and mutual dependence between political authority and civil society; they seem to legitimise one another. Consensus then becomes possible only via government, via the exertion of political power. Indeed, it has been noted that there has been a ‘professionalization’ of civil society in response to the Commission’s embrace which means, *inter alia*, that civil society activists are increasingly drawn from professional legal and communications backgrounds (often graduates of famous European management schools) rather than specialists in their organisation’s field with grassroots experience (Saurugger, 2009). As Kohler-Koch et al. (2008:6) put it: “[t]he dominant picture [within European civil society] is that of ‘EU-level lobbying professionals’.” There may, then, be a disjuncture between grassroots civil society and their representatives at the European level, where “civil society organisations may be trapped by the need to adapt to the ‘logic of influence’ prevailing in Brussels”. Indeed,

... organising effective participation may come at the price of turning civil society organisations into a lobby group like any other, i.e. concentrating on particular interests and being – at best – a transmission-belt, instead of providing a space for reasoning and deliberation. The dangers are twofold: Efficiency calls for *elitism* and effectiveness suggests *specificity*. For the sake of efficiency positions will be defined in the inner circles of Brussels. (Kohler-Koch, et al., 2008:6)

Some deliberative scholars have argued for a refusal of this contractual implication. Dryzek, for example, has argued that civil society groups should refuse the invitation to sit at the same table as state or government authorities, instead occupying an independent

public sphere of free thought and discussion. They are to constitute, in other words, a discursive realm independent of, but indirectly impacting upon, government (Dryzek, 2006). However, Walter successfully elucidates the limitations or boundaries that are implicit in even Dryzek's *radical* deliberative proposals:

Because Dryzek conceived of discourses as linguistic frames of reference, what is passed over is that the ability to make objects seeable, or to institutionalise their existence, is the preserve of a select few expert discourses only. As a result, expert discourses must appear in Dryzek's program as coercive, since non-expert discourses can only mount challenges along the sayable, not the seeable. In addition, and as indicated, the seeable appears to sharply delimit the range of what is sayable, *as seen in the idea that what Dryzek construes as competing discourses appear from a Foucaultian perspective as only variations on a theme.* (2008:542-3; emphasis added)

As we have seen, the very discourse of deliberative democracy emerges out of a discursive framing of a prevailing 'unalterable' social reality which concurs to a large extent with a market cosmopolitan conception of the seeable. As noted, reference is made to the inexorable realities of globalisation, which, in practice have called forth a discourse and practice of governance. The description and promotion of globalisation has also been a key story in the justification and constitution of market forms of government. Indeed, "the shift towards governance was accompanied and even intensified by an 'ideological shift from politics towards the market'... epitomized by the Reagan and Thatcher administrations" (Kohler-Koch and Rittberger, 2006:31). It is in this respect that we begin to understand a deliberative governance and a market rationality as 'variations on a theme'.

Certainly most deliberative cosmopolitans seek to instil a rationality of solidarity and consensus into this story – promoting governance as that which nurtures greater and more plural inclusion – but they accept and even celebrate the basic premise of this story in which market cosmopolitan rationalities play a central constitutive role. Globalisation and, more importantly for this paper, *Europeanisation*, are conceived as inexorable realities, with certain immanent irenic possibilities and top-down bureaucratic forms of government – associated traditionally with the state and a methodological nationalism – are a constraint on these possibilities. Acceptance of these stories depends on a certain deference to *the global*, *the European* and to the market cosmopolitan rationalities which constituted such spatial conceptions and this is a deference (a conception of 'seeable')

which any civil society actor subject to a discussion of European policy would have to share. This is the flipside of Bartelson's (2006) insight that talk of a 'global civil society' is constitutive of a *global* space or scope of government; in the case under consideration, a European space of government is constitutive of a European civil society that must self identify with Europe/EU if it is to be included in decision making. Indeed, this is the core of the 'reason' from which any consensus might emerge. More concretely, it might be asked how, for all its talk of new governance, can a governing actor such as the EU – which is founded on market cosmopolitan principles - establish procedures of multi-scalar governance which both respect the truth of this story, but are also truly participatory to the extent that they include parties that do not accept this story (and perhaps not the institution itself). In the current period, as people increasingly take to the streets in protest of austerity measures - the consequence, for many, of the straight jacket of monetary union - how is it possible for those voices which criticise the very notion of such a union and its inexorable integration to be included in institutional decision making? Questions of this sort apply not only to the practicalities of EU participatory governance, but to the politics of deliberative governance itself, which, in the very assumption of the possibility of consensus – rooted in a conception of reasonableness or rationality - undermines the inclusivity that it professes to stand for. This is a politics which, perhaps contrary to its advocates' intent, can tend to the *status quo* in Europe and elsewhere.

Conclusion

This paper has engaged in a critical appraisal of cosmopolitan deliberative governance, via an analysis of the European Union's attempt to conceptualise and realise such a mode of governance. Tracing the efforts of the European Commission's Forward Studies Unit to develop its own conceptualisation of deliberative or participatory governance – a conceptualisation that concurs with certain scholarly accounts and is presaged on something like a Habermasian discourse ethic – it is shown how their prescription for governance is grounded in an ontology of heightened social complexity and a scepticism vis-a-vis expert rationalities. Attempts to develop better – more inclusive, open and participatory - governance procedures such as in the context of the 'open method of co-ordination' have not lived up to the prescriptions of the FSU and a range of deliberative scholars because they do not permit a questioning of the *status quo* of an economic

constitution and associated expert rationalities. However, it is not simply a matter of implementation not living up to ideal conceptualisation. Indeed, the final section of the paper has argued that the limitations of a cosmopolitan deliberative governance are more fundamental because a consensus is never rooted in an entirely benign discourse ethic, but is always bound up with relations of power; with conceptions of what is reasonable; what is 'seeable' and 'sayable'. In the context of the EU, which was constituted on the basis of a market cosmopolitan rationality or an economic constitution, those subject to any deliberation on EU policies, to the extent that they are bound by the imperative of consensus, must, at least implicitly approve of the liberal rationalities that constituted the EU in its current form.

This is not, however, to say that a deliberative governance in the contemporary EU is necessarily tied to a specifically *neo*-liberal mode of government. Indeed, the conception of the public sphere and a civil society *does* contain a space for/ of resistance. As Calhoun (1999:8) says, with reference to Habermas's work on the public sphere, historically "[c]apitalist market economies formed the basis of civil society but it included a good deal more than that. It included institutions of sociability and discourse only loosely related to the economy." This space for alternative rationalities may be a consequence of the very ambiguity of liberal government itself. As Burchell (1996:26) says,

Liberal government is pre-eminently economic government in the dual sense of cheap government and government geared to securing the conditions for optimum economic performance. There is a sense in which the liberal rationality of government is necessarily pegged to the optimum performance of the economy at minimum economic *and socio-political* cost. And yet *there are no universally agreed criteria for judging the success of government in this respect.*"

Indeed, there is significant room within the liberal conception of economic(al) government to disagree on the extent to which the market must be governed in order that it produces the maximum possible 'welfare' and this is reflected in tensions and disagreements, both in the discipline of political economy, broadly conceived, and within liberal governmental practices in Europe, including in relation to the common market project and its (constraining) impact on conceptions of *the social*. A deliberative or

dialogic politics is not, therefore, to be rejected outright because of its *inevitable* complicity with a prevailing market cosmopolitan rationality.

Rather, the problem arises when a deliberative governance is rooted in an ideal of consensus – in both practice and theory – that forecloses resistance to dominant frames or rationalities ('the seeable') rather than offering a space for their contestation. As a range of scholars and practitioners of global and European governance are increasingly seduced by a cosmopolitan deliberative governance, it is important to draw attention to the power relations that sit at the heart of any deliberative processes and may be conveniently concealed by those who support the status quo. In practice, this is what organisations such as the 'Alliance for Lobbying Transparency and Ethics Regulation in the EU' (ALTER-EU) have sought to do, as they highlight that - notwithstanding the efforts of the Commission to open itself to a plurality of civil society organisations - it is still very much 'business as usual' that sets the EU agenda (ALTER-EU, 2010). This is, to some extent, the case with regards to ongoing efforts to (re)-regulate finance in Europe in the wake of the global financial crisis (ALTER-EU, 2009).

The purpose of this critique is, then, not to reject the idea of a dialogic mode of decision making in post-national politics that is geared towards the inclusion of a plurality of affected parties to any particular decision or policy. It is, rather to reject the consensual ontology on which many contemporary accounts of a deliberative cosmopolitan governance seem to be grounded. Such consensus implies the existence of a public sphere 'outside of power' occupied by publically interested civil society actors. This paper has sought to demonstrate that such a space does not exist and the assumption that it does (if only those subject to dialogue could be 'reasonable') might itself be an act of power and exclusion. This paper would concur with Butler, who has hinted at a less idealistic, more modest vision of a dialogic politics which, in its acknowledgement of power relations, seeks to preserve a space for genuine dissent:

Perhaps a coalition needs to *acknowledge its contradictions and take action with those contradictions intact*. Perhaps also part of what dialogic understanding entails is the *acceptance of divergence, breakage, splinter, and fragmentation as part of the often tortuous process of democratization*. ...The power relations that condition and limit dialogic possibilities need first to be interrogated. Otherwise, *the model of dialogue risks relapsing into a liberal model that assumes that speaking agents occupy equal positions of power and*

speaking with the same presuppositions about what constitutes “agreement” and “unity” and, indeed, that those are the goals to be sought. (1990:19; emphasis added)

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