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The Idea of European Demoicracy

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Introduction

How can an 'ever-closer union' between distinct democratic peoples be democratically legitimate? The idea of European 'demoicracy' provides a deceptively simple answer: one is not to cross the Rubicon which separates a European Union ruled by and for multiple *demoi* from a Europe ruled by and for one single *demos*.[1] By crossing the Rubicon in 49 BC, a shallow and red river in northern Italy, Caesar violated the old constitutional rules concerning his own 'imperium' and dramatically changed Rome and his own place within it. There has been a strong temptation for Europe to cross its own Rubicon, the point of no return on the road to integration, in search of its own glorious destiny. But this temptation should be resisted.

To be sure, the idea of a notional barrier between a Europe of demoi and that grounded on the assumption of a single European demos should not be seen as the familiar story about sovereignty and its denial. Instead, there is enough space to enter

[1] The term 'demoicracy' is derived from demoi ($\delta\acute{\eta}\mu o\iota$ in ancient Greek is the plural form of $\delta\acute{\eta}\mu o s$), meaning peoples, and kratos ($\kappa\rho\acute{\alpha}\tau o s$), meaning power—or to govern oneself with strength. Peoples here are understood both individually, as citizens who happen to be born or reside in the territory of the Union, and collectively as states, that is the separate political units under popular sovereignty which constitute the Union. For previous discussions of the term see K Nicolaïdis, 'We The Peoples of Europe' (2004) 83 *Foreign Affairs* 97; S Besson 'Deliberative Demoi-cracy in the EU: Towards the Deterritorialisation of Democracy' in S Besson and JL Marti (eds), *Deliberative Democracy and its Discontents* (Farnham: Ashgate, 2006); K Nicolaïdis and J Pelabay, 'One Union, One Story? In Praise of Europe's Narrative Diversity' in A Warleigh-Lack (ed) *Reflections on European Integration* (London/New York: Palgrave, 2008); F Cheneval, *The Government of the Peoples: On the idea and Principles of Multilateral Democracy* (New York: Palgrave MacMillan, 2011); J-W Mueller, 'The Promise of Demoi-cracy: Diversity and Domination in the European Public Order' in J Neyer and A Wiener, *The Political Theory of the European Union* (Oxford: Oxford University Press, 2010), 187–205.

and navigate this Rubicon, away from the safe shores of classic nation-statehood or public international law on one side and federal statehood on the other.[2] As a 'demoicracy', the European Union requires its many peoples not only to open up to one another but to recognize mutually their respective polities and all that constitutes them: their respective pasts, their social pacts, their political systems, their cultural traditions, their democratic practices. Such mutual recognition is highly demanding. Today's EU is both a demoicracy-in-the-making and is prey to many age-old anti-democratic demons standing in the way.

If this Rubicon of ours is a narrow and turbulent third way between the two familiar alternatives, the challenge is to resist landing on these two state-centric shores. That we need to deploy new understandings of European constitutionalism, cosmopolitanism, or federalism short of their 'statist' connotation as 'state-writ-large' is not an in itself original position. So for instance, Neil McCormick's advocacy in favour of a pluralist philosophy which sought to resolve or at least address the tensions of a multiplicity of competing legal orders with overlapping supremacy claims has inspired a growing corpus of thought on constitutional pluralism.[3] Others, starting with Pavlos Eleftheriadis in Chapter 7 in this volume, seek to demonstrate that the EU has not lost its 'international' law pedigree even while at the same time pushing the frontier of what is meant by 'obligation' in this inter-state realm.[4] And others have built on the insight that the EU can be understood as a federal union, not a federal state.[5] Perhaps the most wide-ranging and consistent inspiration for such a third way can be found in the writings of Joseph Weiler and his long-standing vision of the EU at its best as aspiring to community rather than unity, a community of others committed to a philosophy of constitutional tolerance.[6]

All these approaches share a concern with preserving the boundary between a non-statist and a statist reading of the EU's legal order: not crossing the Rubicon. The idea of demoicracy builds on these insights to better connect the sophisticated world of legal philosophy and its controversies with the simpler world of politics, that is the political imagination, discourses, and practices which make up the EU polity.

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[2] On the ubiquity of the image of the EU as a ship of states, see the wonderfully illustrated paper by S Leibfried, S Gaines, and L Frisina (eds), *Through the Funhouse Looking Glass: Europe's Ship of States,* (TransState Working Papers 90, Bremen, 2009). For a playful and insightful use of the ship metaphor for political theory purposes see also 'Introduction' and 'Conclusion' in J Neyer and A Wiener (eds), *Political Theory of the European Union* (Oxford: Oxford University Press, 2010).

[3] See Kumm 'The Idea of Constitutional Pluralism' (2002) 65 *Modern Law Review* 317–59; M Maduro, 'Contrapunctual Law: Europe's Constitutional Pluralism in Action', in Neil Walker (ed), *Sovereignty in Transition: Essays in European Law* (Oxford: Hart Publishing, 2003), 3–32; N Krisch, *Beyond Constitutionalism: The Pluralist Structure of Postnational Law* (Oxford: Oxford University Press, 2010).

[4] Chapter 7 in this volume.

[5] R Howse and K Nicolaïdis (eds), *The Federal Vision: Legitimacy and Levels of Governance in the US and the EU,* (Oxford: Oxford University Press, 2001). See also O Beaud, *Fédéralisme et fédération en France: histoire d'un concept impossible?* (Strasbourg: Presses universitaires de Strasbourg, 1999).

[6] See J Weiler, 'The Transformation of Europe' (1991) 100 *Yale Law Journal* 2403–83. See also J Weiler, *The Constitution of Europe: 'Do the New Clothes Have an Emperor?' and Other Essays on European Integration.* (Cambridge: Cambridge University Press, 1998).

In this chapter, I stop short from offering a 'demoicratic theory' for Europe. Indeed, the general concept of demoicracy can accommodate many contending conceptions on how it can be achieved and it would be presumptuous at this stage to offer more than the broad parameters for discussion. Such a conversation can bring into relief the meeting points, lines of convergence, and perhaps more crucially, misunderstandings between the many traditions and fields which are relevant to the endeavour, from legal theory to philosophy, sociology, and normative theories of international relations. Among contentious points, I would suggest the following.

First, when are neologisms justified? Indeed, demoicracy could be but another word for what others have explored as multilateral democracy,[7] transnational democracy,[8] compound democracy,[9] directly deliberative polyarchy,[10] agonistic democracy,[11] or for that matter the numerous variants on federal democracy.[12] I hope to make the case, however, that words matter and that the idea of a 'European demoicracy' has the potential to ground normative claims about the EU which encapsulate intuitions that analysts and protagonists actually share.

There are, secondly, methodological questions. We may disagree on the relationship between making the case for describing or understanding the EU as a demoicracy-in-the-making in a positive sense, and deploying the concept of demoicracy as a normative benchmark by which to assess developments of the EU's legal, political, and economic order. We may also disagree on what kind of practices fall short of the normative benchmark in question. And we may disagree on how such a descriptive-cum-normative concept may also render unable to *explain* the evolution of the enterprise. In short, what should be the relationship between the 'ought', the 'what', and the 'why' of European demoicracy?

A third issue is the vexed question of the *sui generis* nature of the Union. It has become something of a commonplace to discuss the EU—understood as some version of the international, cosmopolitan, constitutional, Kantian, or otherwise federal—as an instantiation of more general theories of democracy beyond the state, of global law or global governance. And so with European democracy. For my part, I have long argued against constitutionalism as an appropriate analytical or prescriptive take on global governance.[13] One need not deny that there may be realms where the 'international'

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[7] F Cheneval, see n 1.

[8] J Bohman, *Democracy Across Borders: From Demos to Demoi* (Cambridge: MIT Press, 2007).

[9] S Fabbrini, *Compound Democracy* (Oxford: Oxford University Press, 2010).

[10] C Sabel and J Zeitlin (eds), *Experimentalist Governance in the European Union: Towards a New Architecture* (Oxford: Oxford University Press, 2010).

[11] C Mouffe, *The Democracy Paradox* (London: Verso, 2000).

[12] Conversely, and somewhat confusedly for our purposes the philosopher Philippe van Parijs used the compound term *demoi*-cracy to refer precisely to what we do not mean by demoicracy, eg *merely* a nation-state-centric view of indirect democracy in the EU which he thought ought to be transcended by European demos-cracy. See P van Parijs, 'Should the European Union become More Democratic?' in A Follesdal and P Koslowski (eds), *Democracy and the European Union* (Berlin: Springer-Verlag, 1998), 32.

[13] Nicolaïdis, 'Legitimacy through "Higher Law?" Why Constitutionalizing the WTO is a Step Too Far,' in T Cottier, P Mavroidis, and P Blatter (eds), *The Role of the Judge: Lessons for the WTO* (Bern: The World Trade Forum, 2002).

meets bits of the 'constitutional'. This does not make the constitutionalization of global institutions a plausible or desirable prospect.

Last but not least, we may disagree on what our theories on the nature of the EU have to say about the likely aftershocks of its greatest crisis yet. If the EU is a demoicracy-in-the-making, which stage are we at, and how fragile and incipient is it still? Here, those who are seduced by the idea of demoicracy itself may disagree with the more speculative part of my argument. That is that because Europeans have generally failed to see their political construct as a demoicracy they have allowed their political space to be monopolized by two antagonists integrationist and anti-integrationist camps. This in turn has made the European demoicratic construct vulnerable to functionally driven calls for fusion and the unavoidable backlash into fission. So the same third-way character which makes it attractive also makes highly demanding. As a tragic political animal, our demoicracy may very well be an unstable and temporary equilibrium.

1 Ontology: On the Possibility of Demoicracy as a Third Way

The diagnosis of the EU's democratic deficit usually revolves around questions of representation and accountability. Who is to be accountable to whom? If the focus is on parliamentarianism, what parliaments should there be, and by what kind of representation should they come about? Whose interests ought to be aggregated and at which level of government? But all these questions, which belong to the *story of governance*, cannot be addressed appropriately without *a story of the polity*. What does it mean for citizens to 'belong to the Union,' as individuals, as groups of individuals, or as constituted states? The force of the German Constitutional Court in its famous 1993 Maastricht judgment, was to connect these two questions of belonging: how the Union may come to belong to its citizens will depend on how citizens feel they belong to this Union.[14] The 'no-demos' thesis was an empirical statement meant to justify caution about unchecked integration *for the time being*. Paradoxically, since ultimately the Court looked forward to the eventual emergence of a 'European demos', the no-demos thesis has come to be restated as the empirical grounds for sovereignist arguments ever since.

The idea of demoicracy was put forth as a way to appropriate and subvert the no-demos thesis, as a response to proposals for creating the missing 'demos'.[15] These proposals were uttered by a majority of those attending the initial convention to establish the EU, and said to motivate their quest for a Europe Constitution. Jurgen Habermas and the former German foreign minister Joschka Fischer sought to weigh in

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[14] *Brunner*, 89 BVerfGE 155, [1994] 1 CMLR 57.

[15] Nicolaidis, (2004), see n 1; K Nicolaidis, 'Our European Demoicracy: Is this Constitution a Third Way for Europe?' (2003) in Nicolaidis and Weatherill (eds), *Whose Europe? National Models and the Constitution of the European Union*, European Studies at Oxford Series, Oxford University Press.

the Constitutional debates by arguing that a European demos could and should be 'forged' as the foundation for formal constitutionalization of European integration: there may be no European demos quite yet, but there is a European demos in the making.[16]

The demoicratic response to both sides was this: the Court was right in its *no-demos* diagnosis, but so what? This does not mean that the EU cannot be democratically legitimated by a plural *pouvoir constituant*. A Constitutional moment need not wait for Frenchmen (and Dutch and Portuguese) to be turned into 'Euromen', as peasants were turned into Frenchmen two hundred years ago. Instead we have actually been inventing a different kind of democracy at the European level which does not need to reinvent the state-centric model.

(A) A Philosophical Triangle

The EU as a political entity failed to capture the imagination of philosophers and other intellectuals during its first three decades.[17] But they were, finally, awakened by the turbulent events surrounding the end of the Cold War, German reunification, and the debates about the Maastricht Treaty. And while national debates were mostly conducted in intellectual silos, a similar pattern, a kind of 'EU philosophical triangle' can be found across countries.[18]

At one end we find what we may call theories of national sovereignty, or 'national-civic' approaches which essentially criticize the idea of democracy at the European level in the name of the primacy of the nation-state.[19] At its most general, this school of thought is based on the idea that the cradle of both modern democracy and the welfare state is the nation-state, which cannot be reproduced at the European level. As democracy presupposes a polity with a common language and common representations, which originates in a shared history and exists thanks to its very differences from other communities, and as Europe cannot meet such prerequisites, the idea of a European democracy is at best an illusion.[20]

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[16] Indeed for Habermas and Derrida, such European demos was thankfully born on 21 February 2003 with the pan-European demonstrations against the Iraq war. J Habermas and J Derrida, *Le Monde,* February 2003.

[17] For possible explanations, see 'Introduction' in J Lacroix and K Nicolaïdis, *European Stories: Intellectual Debates on Europe in National Contexts* (Oxford: Oxford University Press, 2010).

[18] For a discussion see Lacroix and Nicolaidis, see n 17.

[19] Proponents are myriad, including, David Miller in the UK or Pierre Manent in France. See David Miller, *On Nationality* (Oxford University Press, 1995); Justine Lacroix, *La pensée française à l'épreuve de l'Europe* (Cerf, 2009). In Central Europe, we find the many who reject what they see as a 'moral hazard', a one size-fits-all EU-led hegemonic interpretation of European modernity (such as Roman Dmowski in Poland or the followers of Nocia's calling for the revival of metaphysics in Romania). In Southern Europe, we find all the variants of what Nikiforos Diamandouros has termed 'the culture of the underdog'. For a discussion across twelve member states, see *European Stories,* see n 17.

[20] This school of thought could itself be divided into two strands—a conservative strand which sees Europe as a threat to national identity and cultural values, and a progressive strand which sees it as a threat to self-government and social justice. For both, the mutual sacrifices required by fiscal solidarity as we are discussing today in the EU suppose the kind of mutual trust and identification found within bound political communities.

In contrast and at the other end of the spectrum are all those who equate more (supra-national) Europe with the promise of economic, social, moral, and eventually political progress. This side often calls for variants of a 'Federal Europe' which would also be the only way to 'rescue' the achievements of the national welfare state—achievements that are threatened by the pace of globalization. If a common language and shared values are necessary to consolidate a democratic political community, these have been the result of a long historical process at the nation-state level: a similar process should and could take place at the European level.[21] Jürgen Habermas has come to embrace this belief in both the desirability and possibility of a European federal state.[22]

The third philosophical family—to which the idea of demoicracy belongs—can be referred to as 'transnational' for its stress on the horizontal and mutual opening between peoples in a shared polity.[23] It assumes that Europe is not constituted by separate demoi nor demoi-made-into-one but by distinct political demoi progressively opening to each other and to each other's democratic systems. This openness can be seen as, in a way, asymptotic: it is sharing, pooling, enmeshing, but not unifying. Thus, the third way approach sees as its brief to analyse the uneasy coexistence between peoples, both peoples-as-states and peoples-as-citizens. It is translating in democratic language what legal theorists see as the duality of Member States and Community legitimacy.[24] This third school includes many thinkers in the 'post-national' constellation[25] as well as those

[21] Clearly there are many disagreements within this school itself, including on the necessary conditions for the emergence of a true continental democracy (whatever this may mean), or the development of a European public space underpinning and ultimately embodying European political identity. But all seem to agree that these developments are desirable to the furthering of the European cause. Conceived as a supranational project, the ideal-type Europe of this school of thought would potentially be a multinational federal state or a consociational polity.

[22] J Habermas, 'Why Europe Needs a Constitution' (2001) New Left Review 11. For a critical discussion see J Lacroix, 'Does Europe Need Common Values: Habermas against Habermas' (2009) 8 European Journal of Political Theory 141–56.

[23] See inter alia, J Weiler, 'The Transformation of Europe' (1991) 100, 8 Yale Law Journal 2403 83 and The Constitution of Europe, above; See also R Bellamy and D Castiglione, 'Between Cosmopolis and Community: Three Models of Rights and Democracy within the European Union' in D Archibugi, D Held, and K Koehler, (eds), Re-Imagining Political Community (Cambridge: Polity, 1998); D Castiglione, R Bellamy, and J Shaw, Making European Citizens: Civic Inclusion in a Transnational Context (London: Palgrave-MacMillan, 2006); M Maduro, 'Contrapunctual Law: Europe's Constitutional Pluralism in Action' in Neil Walker (ed), Sovereignty in Transition, (Oxford: Hart Publishing, 2003), 502–37; Joerges (2011) Unity in Diversity as Europe's Vocation and Conflicts Law as Europe's Constitutional Form in Joerges (ed), After Globalisation, RECON Report No 15, Oslo, August 2011; P Eleftheriadis, 'The Moral Distinctiveness of the European Union' (2011) International Journal of Constitutional Law 43; Nicholas Aroney, 'Federal Constitutionalism/European Constitutionalism in Comparative Perspective,' The Federal Trust, March 2009; A Menon, The State of the Union (Atlantic, 2008); See also the three democratic orders discussed in E Eriksen and J Fossum (eds), Rethinking Democracy and the European Union (New York: Routledge, 2012); S Fabbrini, see n 9; C Mouffe, see n 11; Nicolaïdis and Pelabay, see n 1.

[24] And therefore to transform reigning legal paradigms, as the constellation of constitutional pluralist would argue and as opposed to those who believe that we can infer from either domestic or from municipal law the broad features of European law.

[25] See inter alia, Habermas, The Post-National Constellation (1998); and discussion in J-W Müller, Constitutional Patriotism (Princeton: Princeton University Press, 2007).

who chose to describe the EU through the lens of 'empire'[26]—although in my view these labels are ultimately misleading both descriptively or normatively.[27] I prefer the evocative label of 'borderland' suggested by the philosopher Etienne Balibar.[28] Yet those who could be identified with this school of thought do not always recognize its character as a *third way* because they are focused on steering away from one or the other side of the Rubicon.

This is an amorphous constellation regrouping those who oppose *both* other camps which, while seeming to stand at the two ends of the normative spectrum, equally maintain that democratic ideals and practices require equating the boundary of the democratic polity with that of *a* single demos (whether national or European). It seems symptomatic of the pervasiveness of such an equation which demoicracy seeks to escape that some thinkers may ultimately support both camps, such as the German jurist Carl Schmitt, usually associated with the most radical version of our first school of thought.[29] Similarly, Lacroix shows how French national-republican thinking, while criticizing communitarianism at home, tends to promote a similar 'closed' vision of the European polity.[30]

While the strength of a demoicratic third way rests on the plausibility of lumping together its two opponents as part of the same cognitive straightjacket, it does share traits with both sides. It shares with the champions of the 'national-civic' credo the idea that representative democracy within the Member States, and therefore indirect accountability, ought to remain at the very centre of the EU construct. In contrast, however, it considers that the European 'constraint' as a body of laws destined to 'tame' the national (or empower constituencies within it) including through the

[26] U Beck and E Grande, *Cosmopolitan Europe*, (London: Polity Press, 2007) and U Beck and E Grand, 'Empire Europe' in J Neyer and A Wiener (eds) above; J Zielonka, *Europe as Empire: The Nature of the Enlarged European Union.* (Oxford: Oxford University Press, 2006). See also Gary Marks, 'Europe and its Empires' (January 2012) *Journal of Common Market Studies.*

[27] While I find fundamental affinities between Europe-as-demoicracy and as-Empire, including on the issue of enlargement, the 'Empire' lens lacks a normative benchmark against which to pit the realities of domination, subjugation, and Eurocentrism which Empire connotes. As for the 'post-national' label it is unfortunate in suggesting the obsolescence of the 'national', even if in theory the 'post' only applies beyond the state. This flirtation with the second, supra-national school of thought is reinforced by the attempts to export the concept of 'constitutional patriotism,' from the German to the European level. See Nicolaidis, 'Notre Demoï-cratie européenne: La Constellation post-nationale à l'horizon Patriotisme Constitutionnel' (Spring 2006) in *Politique européenne*, No 19.

[28] See E Balibar, *Europe Constitution Frontieres* (Paris: Editions du Passant, 2005).

[29] For Schmitt, sovereignty was always associated with the unshakable conceptual triad of 'demos-state-constitution' which justified his call for states to remain unitary and sovereign within the European space. But he also came to accept the alternative of a continental State, with his 'theory of the federation (*Bund*)' which would be based on a 'pact' and would unite many peoples, with the political conservation of all members of the federation as a 'common goal'. Crucially, Schmitt believed that such a federation would not be here to stay as such but would lead to a unitary state and a single people. Note that Schmitt's position had a significant posterity, including authors such as Ernst-Wolfgang Böckenförde. For a discussion see Tristan Storme, *Carl Schmitt, Europe and Universal Democracy. The question of Schmitt's Europe and its impact on the current French debate about the European construction* (PhD thesis, Université libre de Bruxelles, Brussels, May 2011). See also *inter alia*, J-W Müller, 'Carl Schmitt and the Constitution of Europe' (2000) 21(6) *Cardozo Law Review* 1780.

[30] J Lacroix, *Communautarisme versus libéralisme. Quel modèle d'intégration politique ?* (Bruxelles, Editions de l'Université libre de Bruxelles, collection Philosophie et société, 2003).

promotion of human rights, is not the source of dissolution of national democracies, but rather a potential means of perfecting them. Such constitutional discipline which rests on degrees of supra-nationality—and the partial cessions of sovereignty which ensue—can be seen as a commitment shared with traditional federalists, but with one crucial caveats: supra-nationality (eg non-veto and delegation) follows an instrumental logic not an ontological one, and it can be (at least theoretically) withdrawn.[31] In this spirit, proponents of a demoicratic approach welcome the right to exit and its actual possibility which 'federalists' decry.

Crucially, such a third way may look like the traditional 'in-between' (international organization v federal state) and empirically borrows from both sides, but contrary to a *via media,* it is also normatively opposed to both. As with every third way, the idea of demoicracy holds the promise of escape from an entrapping dialectic—the tyranny of dichotomies which dominates EU debates, from champions of the European Council v European Parliament, all the way down the path of ascription in the war between 'nationalists' and 'federalists'. It is its own thing, as it were.

In summary, European demoicracy can be defined as follows:

> European demoicracy is a Union of peoples, understood both as states and as citizens, who govern together but not as one. It represents a third way against two alternatives which both equate democracy with a single demos: as a demoicracy-in-the-making, the EU is neither a Union of democratic states as 'sovereigntists' would have it, nor a Union-as-a-democratic state *to be* as 'federalists' would have it. A Union-as-demoicracy should remain an open-ended process of transformation which seeks to accommodate the tensions inherent in the pursuit of radical mutual opening between separate peoples.[32]

(B) Debating European Demoicracy

If we analyse European demoicracy through the lens of democratic theory, we may see it as having acquired a truly 'transformative' character in the sense of Robert Dahl's 'transformation of democracy'—as opposed to a 'mimetic' logic leading to a continental state.[33] In this intellectual tradition, we need to stretch the background theories of domestic democracy (eg liberal, republican) to accommodate the kind of mutual opening involved and analyse the radical nature of demoicracy.

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[31] A logic Joseph Weiler described as 'Constitutional tolerance'. J Weiler, 'Federalism and Constitutionalism: Europe's Sonderweg', in K Nicolaïdis and R Howse (eds), *The Federal Vision* (Oxford: Oxford University Press, 2001).

[32] I would like to thank participants in the Zurich workshop on demoicracy for their feedback on this definition. See acknowledgements, above.

[33] Dahl's 'transformations of democracy' (initially from direct to representative democracy) in R Dahl, (1989) *Democracy and its Critics* (New Haven: Yale University Press); R Dahl, *A Preface to Democratic Theory* (Chicago: University of Chicago Press, 2006). See also Cheneval, see n 1. Bohman (see n 8) speaks of a gradualist logic, but the term is misleading to describe the obsolescence of the national/state level of jurisdiction. On the mimetic logic in EU national discourse, see also Nicolaidis and Weatherill, see n 15.

More generally, the broad idea of demoicracy as a radically transformative process raises a number of questions to which I now turn.

Why should we narrow our geographical scope to 'European' demoicracy? Are we in fact discussing demoicracy *tout court?* In probing the philosophical foundations of EU law, we are inevitably confronted with the tendency among scholars to apprehend the EU as a particular instantiation of a broader universal form of integration between states short of statism writ-large.[34] If we follow Rawls's constructivist method, for instance, where this universal vision itself can be deduced from first principles, European demoicracy could be fruitfully 'deduced' from more abstract characterizations of justice or democracy beyond the state as potentially universally valid, at least among liberal democracies.[35] But while universalizing and deductive viewpoints are often illuminating—in my view Rawls understood 'European peoples' better than many Europeans—should our normative beliefs about the EU be held hostage to our normative beliefs regarding the potential or desirable evolution of the international system?

There might have been historically, and there might yet be, other demoicracies in the making. But the EU appears to have been the product of a unique historical context. Nowhere else and at no other time have such deeply entrenched albeit relatively recent constructs as 'nation-states' been so collectively bent on taming their own nationalism, and shielded in doing so by a hegemon's security umbrella. As a result, even while it may be possible to argue that other regions around the world as well as the global governance system may borrow from bits of EU governance, using it as an experimental tool box, this does not mean that the deeper part of its structure, the kind of democratic bond we are concerned with here, ought to be 'reproduced' beyond Europe too.[36] A global ethics within a pluralist international system may provide more realistic prospects for global peace.[37] To put it crudely, if it is desirable to embrace a transformative logic when thinking about Europe, why fall prey to mimetism or gradualism, this time from the European to the global level?

If we should remain agnostic about the validity of 'demoicracy' beyond the confines of the EU, this is I believe also in light of the implicit or explicit eurocentrism pervading much of the scholarship on global governance and the constitutional

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[34] These are more often framed through the question of global justice rather than democracy per se, whether in political theory, legal theory or international relations- from Linklater's cosmopolitanism, to Wendt's constructivism, Bohman's transnational democracy, or Krisch's constitutional pluralism to state but a few.

[35] J Rawls, *The Idea of Public Reason Revisited* (Cambridge, Mass.: Harvard University Press, 2002); In this tradition, see Cheneval, n 1 on the generation of the basic structure of multilateral democracy.

[36] See Howse and Nicolaïdis, see n 13; K Nicolaïdis and R Howse, 'This is my EUtopia . . . Narrative as Power', (2002) 40(4), JCMS. In a similar vein see also D Cass, *The Constitutionalization of the World Trade Organization: Legitimacy, Democracy, and Community in the International Trading System* (Oxford: Oxford University Press, 2005).

[37] R Howse and K Nicolaïdis, 'Towards a Global Trade Ethics' in Eagleton-Pierce, Jones, and Nicolaïdis (eds), *Building Blocks Towards a Global Trade Ethics* (Oxford GTE Programme, WP Series, July 2009).

evolution of the international legal system. Presenting the EU as a (demoicratic) pluralist, cosmopolitan, *avant-garde* heralding a possible future world order recalls the 'standards of civilization' that pervaded Europe's imperial era. As if the contemporary echoes of colonialism could be wished away if only we could 'get it right' this time around.[38] Even if we restrict our claims to relations between states which are themselves democratic, modernity obviously comes in many shapes and accents. And others may be more interested in our debates about demoicracy and its trials and errors than in its substantive features.[39]

Crucially, the idea of demoicracy resists recourse to a notion of 'European identity' as underpinning the EU polity, as many, if not all, federalists would have it. The EU is a community of others, as Weiler famously put it, not brothers.[40] That only a small minority of rooted cosmopolitans would describe the EU (and even 'Europe') as a chosen identity is a sociological fact.[41] But the argument against 'identity' is above all grounded and normatively in the imperative to reject the European demon of 'othering' non-Europeans (as any identity discourse ultimately requires). Nevertheless, is it not possible to imagine more positive variants? Is there a way to speak of 'European values' not as identity markers ('our' values, 'invented here') but as principles for action? When we explore the many debates about the EU around Europe, what we do find is a bewildering array of criss-crossing stories, or 'a kind of European ambivalence refracted through multiple identities informed by many cleavages between winners and losers, optimists and pessimists, movers and stayers in the EU'.[42] Indeed, the idea of demoicracy allows for many stories about what 'it is' as long as we can discuss the grounds for our 'reasonable disagreements'.[43] Translated in democratic theory, this means that the loss of democracy inherent in the process of integration cannot be recouped directly through a change of democratic identity scale: there is no EU-wide polity in which most citizens would be willing to accept to be subjected to the rule of a pan-European majority.

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[38] See R Rao, *Third World Protest: Between Home and the World* (Oxford: Oxford University Press, 2010); N Fisher Onar and K Nicolaidis 'The Decentering Agenda: Rethinking Europe in a Non-European World,' *Cooperation and Conflict,* 2013; T Lenz. PhD Thesis, Oxford University, Spring 2012.

[39] More generally, perhaps we can both emphasize European uniqueness and recognize a universal pattern at a higher level of abstraction—eg the search for the elusive equilibrium between the one and the many whereby neither does the one dominate over the many, nor do the many dominate the one. It may simply be that what is of universal relevance is not the specific form of demoicracy that the EU has stumbled upon but this quest for balance through experimentation.

[40] In this sense, van Parijs is wrong to assimilate Weiler and Habermas, as both representatives of those who believe in the 'family variant' rather than in the '(isolated) peoples' variant of the EU. See Philippe van Parijs and John Rawls, 'Three Letters on the Law of Peoples and the European Union,' (2003) *Revue de philosophie économique.*

[41] In 2010, the proportion of Europeans who define themselves as 'Europeans' and 'national' was less than a third while two-thirds defined themselves as 'national' only. See S Duchesnes, *L'identité européenne, entre science politique et science fiction* (Paris: L'Harmattan, 2010).

[42] 'Introduction' in J Checkel and P Katzenstein (eds) *European Identity* (Cambridge: Cambridge University Press, 2009). See also, J Lacroix and K Nicolaïdis (2010), see n 17.

[43] K Nicolaïdis and J Pelabay, see n 1.

What then is the glue that holds Europeans together in a demoicracy? If it is not a community of identity, what kind of community is it? A community of purpose, of destiny, of project? A collective of peoples pooling risk in an era of global existential threats? If citizens tend to complain about the obligations stemming from the EU in the same way as they might about their own government—not questioning the underlying existence of their country—is this where the real legitimacy of Europe lies: a disenchanted acceptance, a pragmatic consequentialist attitude? But does euro-indifference (or resignation) continue to trump Euro-scepticism among European electorates even at times of crisis? Can the idea of European citizenship constitute 'the glue', short of European identity *per se*? In a demoicratic framework, we need to consider the various ways in which EU citizenship expands the rights and opportunities of citizens without superimposing a new 'citizenship granting and monitoring' authority over them. And EU citizenship needs to be meaningful both for nomads and settlers in Europe. It may for instance empower non-movers over and above their domestic political circumstances as with the recent ECJ's move to grounding rights beyond free movement.[44] Can we interpret this move as reflecting a certain idea of integrity of the separate demoi under a shared set of standards? But does such an evolution require the actual autonomy of the idea and status of European citizenship? Can it not rather be framed as a change in the substance of national citizenship to reflect the openness of 'europeanized' citizenship?

And how do we know one of these constitutive demoi when we see one?[45] Perhaps it is enough that citizens conceive of their core democratic involvement as centered around their respective consolidated (and highly imperfect) liberal institutions. But even as we retain the primacy of the nation-state as the core unit of the Union, should we reify national demoi as the only legitimate unit of interest aggregation?[46] It may be that the idea of demoicracy is an invitation to live with the under-defined or at least to move away from essentialist debates about what might constitute a 'people' and to question the separation between 'peoples' and 'persons' that provides the moral foundation for international law.[47] In doing so, we may be able to accommodate understandings of such 'peoples' both as collective entities which in the modern era has usually meant 'states' or 'nations', and as networks of persons endowed with individual rights and participatory claims. To complicate matters, states may acknowledge several peoples in their midst, and some of these demoi might not be defined in national terms at all. Does it matter to the plural conception if the constituent demoi are delineated through linguistic, cultural, religious homogeneity, or some vaguer

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[44] See for example Case C-34/09 *Ruiz Zambrano*, 8 March 2011, nyr.

[45] For a recent review of the literature through a demoicratic lens see Antoinette Scherz 'What Is the Demos and Who Should Be Included? Membership Principles and Democratic Performance', *Living Reviews in Democracy* (forthcoming)

[46] For a discussion see M Maduro, 'Europe and the Constitution: What If This Is As Good As It Gets?' in Marlene Wind and Joseph Weiler (eds), *Constitutionalism Beyond the State* (Cambridge: Cambridge University Press, 2003), 74–102.

[47] See F Cheneval 2011, see n 1.

measure of community, shared trust, and the like? Should the idea not also accommo-
date individuals who do not identify with a single 'people' but either none or several?

Is demoicracy then simply an EU version of liberal pluralism? Not if we consider
that pluralism is what states make of it. Indeed, one can argue that its two alternatives
are also compatible with different forms of pluralism or toleration, but that neither has
embarked consistently on the project of reconciling the plurality of states and the
pluralism of individuals within states. Moreover, to say that the EU remains and
should remain not-a-state while progressively adopting a constitutional 'operating
system'—as Weiler would say—is a two-way statement: however much shared *kratos*,
we still have demoi; but also crucially, however many demoi, we need a common
kratos. In this sense demoicracy displays a compound character—a polity of polities, a
community of communities, an overlapping consensus of overlapping consensus
which must amalgamate pre-existing political and social bargains while respecting
the say of the peoples-as-states (whereby interests have already been aggregated) *and*
peoples-as-citizens (whereby disperse individual interests may or may not recognize
themselves in pre-existing national bargains). This is a tall order as these peoples may
have organized their national democracies around widely different models of capital-
ism and state–society relationships. Yet there is no necessary tension between the
preservation of pluralism and a common purpose expressed through common projects
(be it a single market or a single currency): the question is *how* such project are
implemented to respect the plurality of peoples.[48]

Is demoicracy a defence of the status quo, of the EU-as-is? Or could it provide
arguments for change in the EU legal or constitutional order? To be sure, the idea of
demoicracy was initially meant optimistically as a pointer to the EU's many *existing*
demoicratic attributes, partially echoing Moravcsik's denial of a serious 'democratic
deficit', or Weiler's advice, 'if it ain't broke don't fix it'.[49] The Treaty of Rome, both in
its institutional set up and the 'community method' can be seen as almost quintessen-
tially demoicratic—even if large Member States have regularly been prone to question
some of its tenets.[50] Thus a demoicratic lens makes the need for remedies to the so-
called democratic deficit both less and more daunting. Less, to the extent that it gives

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[48] In this sense, Rawls overstates the threat stemming from common projects against van Parijs's 'federalist'
creed when he asks in their exchange of letters on the EU: 'Isn't there a conflict between a large free and open
market comprising all of Europe and the individual nation-states, each with its separate political and social
institutions, historical memories, and forms and traditions of social policy. Surely these are great value to the
citizens of these countries and give meaning to their life.' (See van Parijs and Rawls, n 40). If a single market is
obtained through 'managed mutual recognition' rather than harmonization, it need not threaten national
diversity of policies and regulations. See *inter alia*, K Nicolaïdis, 'Mutual Recognition of Regulatory Regimes:
Some Lessons and Prospects,' *Jean Monnet Paper Series* (Cambridge, MA: Harvard Law School, 1997);
K Nicolaïdis, 'Kir Forever? The Journey of a Political Scientist in the landscape of recognition', in Maduro,
(ed), *The Past and Future of EU Law; The Classics of EU Law Revisited on the 50th Anniversary of the Rome
Treaty* (Oxford: Hart Publishing, 2010).
[49] Moravcsik, 'The European Constitutional Compromise and the Neofunctionalist Legacy' (2005) 12(2)
Journal of European Public Policy.
[50] See Paul Magnette and K Nicolaïdis, *Big vs Small States in the EU* (Paris: Notre Europe, 2003).

more weight to existing indirect accountability and checks and balance factors; more, as the horizontal openings demanded of a demoicracy (such as cooperation between national parliaments) can be more difficult than traditional vertical remedies (such as giving more power to the European Parliament). In short, the current demoicratic practices of the Union are both more democratically valuable than federalists recognize, and more perfectible than sovereigntists can live with.

But the idea of demoicracy was also meant to change the term of the debate and free up political energies from teleological tropes bent on describing the EU as a political form or endgame rather than a process of ongoing transformation. The ongoing debates over constitutionalism and the EU provide a particularly apt foil in this regard.[51] Under one reading, the Constitutional Treaty could have been the EU's 'coming out' as demoicracy in the making, as the substance of the text, including its provisions on democracy and its exit clause (more than the process), fared pretty well against the demoicracy benchmark.[52] On the other hand, it could be argued that the very adoption of a 'Constitution' itself would have changed the character of the EU, that it was bound to do what Constitutions do: proclaim the creation of a political community where the One (henceforth 'constituted') overrides the Many, where the direct relationship established between citizens and the highest level of governance not only takes on a life of its own but supersedes national state–society relationships. Perhaps constitutionalism simply consists in 'putting into form' as well as 'proclaiming' a given political endeavour; but can citizens apprehend the direct link created by a Constitution as something else than that with a *bona fide* 'state'? Yes, if we adopt non-statist understandings of European constitutional pluralism. No, if we believe Habermas when he declared at the time of the Convention, 'I support the idea of a European Constitution, and consequently of the adoption by Europe of a new principle of legitimacy and of Europe acquiring the status of a State'.[53]

Enshrined or not in a Constitution, theorists have asked whether European democracy might be just another way of speaking of 'federal democracy' without the name.[54] It could indeed be argued that the 'real' federal vision (as opposed to the above 'federalist' school) predates its capture by the state during the nineteenth century. Or that 'federalism' only refers to a process in the centralization of powers,

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[51] See for instance J Weiler and M Wind, see n 46. JE Fossum and A J Menedez speak of the 'constitutional synthesis' in *The Constitution's Gift: A Constitutional theory for Democratic European Union* (Plymouth: Rowan, 2011); T Borzel and T Risse. 'Who Is Afraid of a European Federation? How to Constitutionalize a Multi-Level Governance System?' in C Joerges, Y Meny, and JHH Weiler (eds), *What Kind of Constitution for What Kind of Polity?* (Florence: European University Institute, 2000). See also P Eleftheriadis, K Nicolaïdis, and J Weiler (eds), 'Symposium on European Constitutionalism' (2011) *International Journal of Constitutional Law* 43.

[52] K Nicolaïdis (2004) n 1.

[53] J Habermas, 2001, see n 22.

[54] See Mueller, n 1. On this question see Nicolaïdis and Howse, 2001 above; A Menon and M Schain (eds), *Comparative Federalism* (Oxford: Oxford University Press, 2006); Kelemen and K Nicolaïdis, 'Bringing Federalism Back In', KE Jorgensen *et al.* (eds), *Handbook of European Union Politics* (Thousand Oaks: Sage Publishing, 2007).

consistent with the continued position of the state as the dominant organizing unit in the system, as opposed to 'federation' as the end-point of that process.[55] Or one can attempt to rescue federalism from its statist incarnation by presenting EU demoicracy as a federal union not a federal state.[56] But we can also view the concept as too tainted by the particular conception of a 'federal state' to serve as background theory for the idea of demoicracy—as is certainly the case for the use of the term 'federal' in the public sphere, not only in the UK.[57]

Debates over the interpretation of Kant's cosmopolitan federal union may provide the most fruitful ground for a demoicratic reading of federalism.[58] For one, given Kant's emphasis on *jus cosmopolitius,* eg the (transnational) rights of individuals outside their own states which constitute in turn the core engine for the 'opening up' of democracies we are discussing here. Precisely because he stressed the necessary mediation of the state in a possible federal union, a demoicratic reading of Kant from a twenty-first-century perspective may well give more flesh to the bare bones of cosmopolitan law conceived originally as minimal rights of residence and duties of hospitality. In short, effective cosmopolitan law must rely on the institutions of the host state.[59]

In summary, we may ask what is lost and what is gained by the conceptual innovation of 'demoicracy'. Much of the inspiration for the idea comes from intellectual traditions (federalism, cosmopolitanism, constitutionalism), which themselves accommodate conflicting views over the desirability of statism on a wider scale. The beauty of these traditions is that they come with baggage, concepts, insights, controversies, and exegesis; in short, intellectual gravitas. But with such baggage, we are also burdened with semantic connotations, obfuscations, and interpretative turf battles. A scholarly debate aimed at refining a new concept such as demoicracy enables us to

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[55]   Michael Burgess (2000), 28; P King, *Federalism & Federation.* Baltimore, MD: Johns Hopkins University Press, 1982.

[56]   See Nicolaïdis, 'We, the Peoples . . .' (see n 1). For a critical viewpoint see P Eleftheriadis, 'Federalism and Jurisdiction' in Geert De Baere and Elke Cloots (eds), *Federalism and EU Law* (Oxford: Hart Publishing, 2012).

[57]   For an account of the battle-lines drawn at and around the European convention over federalism and its many composites, including Delors' call for a federation of nation-states see K Nicolaïdis, 'What is in a Name: Europe's Federal Future and the Convention on the Future of Europe' (2004) *The Journal of European Law.*

[58]   For interpretations of cosmopolitanism as a non-statist political vision applied to Europe, see J-M Ferry, *La Republique crepusculaire*: *comprendre le projet européen in sensu cosmopolitico* (Paris: Cerf, 2010); J-M Ferry, *Europe, la voie kantienne: essai sur l'identité postnationale* (Paris: Cerf, 2005); Beck and Grande 2007, see n 26, and F Cheneval, *La Cité des peuples: Mémoires de cosmopolitismes* (Paris: Cerf, 2005) see also D Archibugi (ed), *Debating Cosmopolitics* (London: Verso, 2003).

[59]   In this spirit, Ferry lambasted Habermas for his reading of Kant's 'permanent alliance between peoples' in *Perpetual Peace* as incompatible with Kant's own presuppositions in *The Metaphysics of Morals*, which had grounded the general principles of law on human rights. In Habermas' view Kant erred in considering that individual liberty depended on state sovereignty. For his critics, Habermas failed to see that the permanence of states was essential in the making of a cosmopolitan entity 'which cannot simply be buttressed on the universal constitutionalization of fundamental rights, but should stem from the constitutional recognition of the fundamental rights of the peoples' J-M Ferry, *La Question de l'Etat européen* (Paris: Gallimard, 2000); see also S Glendinning, 'Europe, for Example,' *LSE Europe in Question*' Discussion Paper Series, March 2011; A Hurrell. 'Kant and the Kantian Paradigm in International Relations' (1990) 16 *Review of International Studies* 183–205.

use these alternative frames as background theories, while allowing us to start the conversation afresh without the baggage of extant theory and authority.

In this spirit, defenders of demoicracy may appeal to affinities with the very 'essence' of these traditions, an essence anterior to or distinct from the particular variant of the 'state writ large' which might have tainted each of them in the public and scholarly imagination. To make up for the latter, they may also side with composite notions such as constitutional *pluralism*, federal *union*, or *moral* cosmopolitanism. Moreover, in the spirit of Beck's cosmopolitan realism, demoicracy can also help reconcile philosophical debate and normative arguments with the positive methods which prevail in the social sciences of the EU, starting with the extremely fruitful concept of multilevel governance to describe the EU's journey on the Rubicon.[60]

2 Ethos: European Demoicracy's Normative Core

How then are we to derive the normative core of the EU as demoicracy that may underpin our assessment of legal and political developments therein? Political philosophers like to debate the relative merits of non-ideal versus ideal theory as put forth by Rawls, or whether one should start with the imperfect but perfectible world as is, or from 'first principles', derived from an hypothetic original position which allows to balance fairly all possible conflicting views. I argue here for a normative inductive methodology which can draw on both sides. On one hand, historical contextualization does not mean that we have to accept what Waltz called the inductivist illusion and simply infer the normative core of European demoicracy from empirical observation.[61] We do need a normative benchmark, an analytically autonomous standpoint from which to assess the demoicratic quality of the European project today.[62] But is there not a risk that conclusions may already be contained, even if implicitly, in the premises of theories of democracy 'inspired' mostly by one case, and applied or tested on that same case?

In this spirit, I would argue that the normative core of European demoicracy can be found as immanent in the reality that one observes in the European Union as it is today thus allowing for real life approximation of Rawls's 'original position' but only under certain conditions: that one selects underlying norms *to the extent* that they are consistent with the idea of European demoicracy as a third way, and that the EU-as-is is pregnant with other normative possibilities as well as numerous pathologies; that it is itself the product of negotiations about norms where

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[60] Beck and Grande, see n 26. An analytical framework with strong affinities to the *descriptive* understanding of European democracy. L Hooghe and G Marks, *Multi-level Governance and European Integration*, (Lanham: Rowman and LittleField Publishers, 2001). See also M Jachtenfuchs and B Kohler-Koch, *Governance and Institutional Development;* Simona Piattoni, *The Theory of Multi-Level Governance Conceptual, Empirical, and Normative Challenges* (Oxford: Oxford University Press, 2010).

[61] K Waltz, *Theory of International Politics* (Boston: Addson-Wesley, 1979).

[62] As cogently argued in F Cheneval and F Schimmelfenning 'The Case for Demoicracy in the EU' (*EUSA Conference*, 2011). See also Cheneval, n 1.

various actors and cleavages are represented; but that in turn, the outcomes of these actors' interactions and negotiations can be granted normative status only to the extent that underlying power asymmetries have been sufficiently mitigated by procedural constraint towards compromise-and-consensus.[63] In contrast to Rawlsian constructivism, this kind of 'inductive normativism' learns from the bargaining, deliberation, and contestation which we find in EU practice. This observation can give us some confidence that a balance has been reached in the evolving EU order between opposing camps of sovereigntists and supra-nationalists; of big and small states; of Left and Right; of republican and liberal states, and last but not least, of nomads and settlers in the EU. We learn in ways, not only more subtle (that would be a drawback from a philosopher's view point), but perhaps more innovative than any scholar can conjure up deductively.

Accordingly, a normative inductive argument may be inspired by historically contextual and empirically informed normative reasoning in ways we observe in much political theory today. While we do not need to go back to Hegel or Marx to look for an ideal in the real itself, immanent principles have been necessary weapons in the struggle for progressive social change because they provide a basis for critique within historical reality and for emancipation from it.[64] We are reminded of Arendt's commitment to political action as a worldly activity and her call for singling out judgment as a distinct capacity of our minds.[65] So in the case of the EU, the transformative potential lies not in pursuing an ideal to its extreme but in pursuing such balancing, through a kind of fanatical moderation, in which the EU political actors unrelentingly pursue compromise under the shadow of consensus, and the Court pursues balance under the shadow of politics.[66] Combined with ways of making 'agreements to disagree' sustainable, this is not just a process-constraint but compromise and balance elevated to a normative good.

First things first. The EU was born from the ashes of a less than ideal world. The EU's normative core starts from what Europeans wanted to escape. But the point can be made more generally. As Michael Waltzer writes in *On Toleration:* 'the things we admire in a particular historical arrangement are functionally related to the things we fear or dislike'.[67] This method appeals to our intuition: the importance of something

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[63] If we take account of Rawls's process of reflective equilibrium (between the principles he generates and their real world application) normative inductivism is all the more compatible with to a proceduralist Rawlsian approach to demoicracy, the greater the weight granted to such reflectivity.

[64] This was the intention of those like Adorno and his *immanent critique* who by locating contradictions within the world observed, sought to contextualize not only the object of investigation, but also its ideological basis. For a discussion in a similar vein as normative inductivism see A Azmanova, *The Scandal of Reason: A Critical Theory of Political Judgment*, (New York: Columbia University Press, 2012).

[65] Hanna Arendt. *Responsibility and Judgment* (New York: Schocken, 2003).

[66] W Mattli and A-M Slaughter. 'Law and Politics in the European Union: A Reply to Garrett' (1995) 49 *International Organization* 183–90. See also P Magnette and K Nicolaidis, 'The European Convention: Bargaining in the Shadow of Rhetoric' (April 2004)*West European Politics*.

[67] M Walzer, *On Toleration* (New Haven: Yale University Press, 1997), 5.

we might value is often best understood when it is denied to us—in other words, we tend to recognize specific norms like 'the rule of law' in the breach.[68] Or, as Hobbes powerfully demonstrated, one way to capture an ideal is not to capture how it is for it to be fully instantiated, but what happens without it. Many political theorists have followed suit to this day.[69] As Avishai Margalit puts it most starkly, 'it is much more urgent to remove painful evils than to create enjoyable benefits'—asymmetries of urgency concentrate the mind.[70] What greater evil could concentrate European minds then European wars? Not only did the initial foundations of European demoicracy initially result from what Europeans wanted to escape, but such a 'drive to escape' is still with us today. For, I would argue, behind 'war' we had two underlying anti-values: the will to subordinate and the denial of recognition.

But at the very same time, our normative core can be and has been stated positively as an ideal which we are striving to approximate. For behind 'peace' (hopefully perpetual), we have two ideal values which mirror the anti-values behind 'war': transnational non-domination (or non-subordination), and transnational mutual recognition. In this and at least for our purposes ideal and non-ideal theory bring us to the same place.

Following political theorists like Bohman and Cheneval, in elucidating these anti-values/values we can make great use of background theories, including domestic and international political theory.[71] But they can only take us part of the way, especially as the norms in question are likely to be transformed in the process of European integration, including from the major key of war and peace to the minor key of political and bureaucratic games or what Kojeve saw as the end of history.[72] I do not believe that we necessarily need to privilege one background democratic theory over another, or that these two sets of anti-values/values are incompatible normative grounds for demoicracy.[73] I prefer to argue that a demoicratic theory should combine background theories of democracy—eg republicanism and liberalism— and should not be reduced to one or the other.[74] In this spirit, we can bring together related norms with clear elective affinities into 'normative clusters', organizing the

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[68] See M Krygier's insightful 'Four Puzzles about the Rule of Law': Why, What, Where and Who Cares?' in J Fleming (ed) *Getting to the Rule of Law* (London and New York: New York University Press, 2011).

[69] Philip Selznik urges us to start with the conditions of existence themselves if we are to create a 'moral commonwealth'. See *The Moral Commonwealth: Social Theory and the Promise of Community* (Berkeley: University of California Press, 1994). Judith Shklar with her freedom from fear asks of a norm not where it may deliver us *to* but what it may deliver us *from*; Amartya Sen invites us to focus on eliminating injustice and Avishai Margalit on eliminating humiliation if we seek to live in decent societies; Thomas Pogge shows how far we can go by embracing a no harm principle on a global scale; and Nancy Fraser and Charles Taylor's enquiries start with social denials of recognition.

[70] A Margalit, *The Decent Society* (Cambridge: Havard, 1996), 4.

[71] Bohman, see n 8; Cheneval, see n 1.

[72] F Fukuyama, 'The End of History?' *The National Interest* (1989).

[73] *Contra* JW Mueller, 'The Promise . . .', see n 1.

[74] F Cheneval (2011), see n 1.

meaning of demoicracy around the three core norms of 'non-domination', 'mutual recognition', and 'internal/external consistency'.

(A) Transnational Non-domination

The EU was born as an anti-hegemonic project when it left the shore of an anarchical system based on great power politics and wars. Peace would require not only the taming of nationalism in general but a more concrete set of mechanisms to contain the historical appetite for power of continental big states. The people of France or Germany *qua states* will never again be allowed to subjugate others or the continent, but will respect instead their mutual autonomy as separate demoi.

The threat of war may have receded but the norm of non-domination *among peoples* remains. While originally this meant an 'institutionalized balance of power between states', we have come to understand it as the requirement for checks and balance within an institutional framework. As the stakes change from survival to autonomy of demoi, we shift from the major key of international relations theory to the minor key of democratic theory, which in its republican guise casts the goal of non-domination as one by which 'the condition of liberty is explicated as the status of someone, who, unlike the slave, is not subject to the arbitrary power of another: that is someone who is not dominated by someone else'.[75] And indeed freedom as non-domination in a transnational context calls for practices in the EU which are far from embedded in the political culture of some of the larger Member States, often subject to a pervasive Gulliver syndrome. Instead, we are witness to the fact that the EU can easily become prey to new patterns of what we could call soft domination.

As the Union strengthens and the self-government of the Member States gives way to shared self-government, the risk of domination, albeit soft domination, reasserts itself in another guise, this time as vertical domination. As pre-Civil War US federalists so passionately reminded their contemporaries, when power is transferred from the units to a new centre, however 'decentralized', this centre is always prone to capture by permanent majorities or otherwise tyrannical agents. One needs to escape empires, be they that of Charlemagne or of Angela Merkel. One also needs to escape federal states, be they a United States of Europe or an EU-as-Germany. That is because neither empires nor federal states have addressed the fear of domination in a satisfactory way.[76] Napoleons and Bismarks would not do in the halls of Brussels, nor should Brussels supersede London, Madrid, Prague, or indeed, Athens.

So when it comes to vertical subordination, we need to enrich our normative vocabulary. This can be done, I believe, by returning to Joseph Weiler's principle of constitutional

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[75] Philip Pettit, *Republicanism: A Theory of Freedom and Government* (Oxford University Press, 1997); J Bohman, 'Transnational Democracy and Nondomination' in C Laborde and J Maynor (eds), *Republicanism and Political Theory* (London: Blackwell, 2008), 190–216.

[76] We may of course ask ourselves if these two Scylla and Charybdis are necessarily part of the mainland or if they cannot be imagined as part of the ride, still on the Rubicon, be it in the benign medieval version of empire or the benign commonwealth version of federation.

tolerance—for its appeal to the ideal of non-coercion, choice, or free association, the idea that peoples in a demoicracy merge their national democratic orders by choice, a choice that needs to be seen as ultimately reversible and where consent cannot be assumed as given once and for all.[77] What is more, such an idea of non-presumed consent calls for tempering with legal hierarchy. Constitutional pluralists like Maduro and Kumm push this idea further and start from the empirical observation that the question of final constitutional authority in the EU remains open in law, in order, ultimately to ground their normative claim that the question of final authority (between European and national courts) ought to be left open.[78] For this view, 'heterarchy'—defined as the 'networks of elements in which each element shares the same horizontal position of power and authority'—is seen as superior to hierarchy as a normative ideal in circumstances of competing constitutional claims. It suggests that neither the EU nor the Member States ought to prevail in their constitutional claims.[79] But the key in this context is to develop the capacity for each 'demos' to defend itself against domination through various representative, deliberative, and participatory channels.

There are clearly tensions in this narrative once we envisage it operationally. A demoicracy faces a precarious balance between the pathologies associated with international anarchy and hierarchy. If the normative ideal is to overcome these pathologies, then it should recognize its continuous vulnerability to both. Demoicracy is an exercise in power mitigation not denial. As theorists of the English school like Bull and Wright would have it, international order and peace demand that we put power to work, that collective expectations be built and institutionalized to entrench great power responsibly.[80] In an order characterized by the rule of law, be it domestic or international, it is the arbitrary use of power that needs to be curbed and not power per se.[81] This is true all the more in a demoicratic context embracing polities of great wealth and demographic asymmetries.

In sum, the first core normative cluster comes with tensions and questions of its own. Under the imperative of non-domination, transfers of power and competences to the centre are preferred to the extent that they are used to empower local actors, such as minorities. This is true in general for the democratic value added of international institutions.[82] But the so called 'constitutionalization' of the EU amplifies both the potential for such empowerment and the potential for ignoring it. We need to ask how the EU's political and legal order has affected the fabric of domestic and local

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[77] J Weiler, see n 23.

[78] Kumm (2002) and Maduro (2003), see n 3.

[79] D Halberstam 'Constitutional Heterarchy: The Centrality of Conflict in the European Union and the United States', in J Dunoff and J Trachtman (eds), *Ruling the World? Constitutionalism, International Law and Global Governance* (Cambridge: Cambridge University Press, 2009), 326–55.

[80] H Bull, *The Anarchical Society* (New York: Columbia University Press, 1977).

[81] See Walker and Palombella (eds), *Relocating the Rule of Law* (Oxford: Hart, 2008). For a discussion of the difficulties in applying this ethos in the context of EU enlargement see *inter alia*, K Nicolaïdis and R Kleinfeld, *Rethinking Europe's Rule of Law and Enlargement Agenda: The Fundamental Dilemma'* OECD-SIGMA Strategy Papers Series, March 2012.

[82] See R Keohane, S Macedo, and A Moravcsik, 'Democracy-Enhancing Multilateralism' (2009) 63 *International Organization* 1–31.

democracy and how the EU's centralizing functional logic can be checked against a localist preference.[83] How should a demoicracy adjudicate between risks of domination between people as states and between the individuals that compose it? How should non-hierarchy between peoples translate in shades of political hierarchy? When does the institutionalized balance between equality and non-equality principles become *de facto* domination? To what extent does the responsibility that comes with power mitigate the primary object of this preoccupation from domination? And while a demoicratic norm of non-subordination ought to serve as a constant warning against both the Union as a cover for horizontal domination and the Union as an instrument of domination itself, what if some of one is necessary to curb the other?

Hence, for instance, Pavlos Eleftheriadis argues in this volume that we should understand the EU as a community of 'obligation', but he does not tell us how and to what extent this may come into conflict with the republican primary concern with 'non-domination' adapted to a transnational context or the idea that social obligations of solidarity should not be imposed but chosen in a demoicracy.[84]

(B) Transnational Mutual Recognition

If the basic constraint of non-domination is meant to keep the European ship away from the two state-centric mainlands prone to the travails of domination, would we rest content with it staying put and vulnerable in the middle of the river? Political projects need to catch winds in their sails, some kind of animating force. Hence this second normative cluster, which in my view ultimately forms the essence of demoicracy, revolves around transnational mutual recognition and its variants.

There is a complex connection between denial of recognition within sovereign boundaries and the need for recognition between states.[85] Like non-domination, the normative cluster around mutual recognition is rooted in anti-values, what a demoicracy seeks to avoid, including variants of the denial of recognition through assimilation.[86] Lest the will

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[83] On granting autonomy to lower level actors to experiment with solutions of their own devising in exchange for their support of the centre, see Gráinne de Búrca and Joanne Scott (eds), *Law and New Governance in the EU and the US* (Oxford: Hart Publishing, 2006). See also Sabel and Zeitlin, see n 10.

[84] On non-domination, see Pettit, above. For a discussion of the kind of solidarity called for in the EU context as a subtle balance between political obligation versus altruism on one hand and self-regarding interest versus other-regarding community on the other see Nicolaïdis and Viehoff, 'The Choice for Sustainable Solidarity in the EU' in *Solidarity for Sale? The Social Dimension of the New European Economic Governance* (Bertelsmann Stiftung Foundation, January 2012).

[85] See N Fraser, 'From Redistribution to Recognition? Dilemmas of justice in a "postsocialist" age' (1995) I (212) *New Left Review* 68–93. See also, C Taylor 'The politics of recognition', in A Gutman (ed), *Multiculturalism: Examining the Politics of Recognition* (Princeton: Princeton University Press, 1994), 25–73; see also K Nicolaïdis, 'Trusting the Poles? Constructing Europe through mutual recognition' (2007) 14 *Journal of European Public Policy* 682–98.

[86] Mutual recognition is clearly related to non-subordination but in complex ways: to the extent that non-subordination is a prerequisite for genuine *mutual* recognition, mutual recognition subsumes it. Conversely, mutual recognition can be a prerequisite to subjugation—states need to recognize each other as enemies to be able to raise armies.

to subordinate by one great European power be singled out, we need only recall the pervasive absolute denials of recognition of close others, neighbours as intimate enemies, which led to the appalling crimes committed in the myriads of local battles for supremacy throughout Europe after the Second World War.[87]

So demoicracy arises with the need to both supplement and mitigate the diplomatic norm of mutual recognition with a social norm of transnational mutual recognition. At the same time, it avoids reaching the other shore where the degree of institutionalized convergence, harmonization, and assimilation renders such recognition mute. In federal states, mutual recognition becomes subsumed under the requisite of unity.

In short, if the EU is to be more than an alliance of states while remaining a community of others, it is because its peoples are increasingly connected through multifaceted and deep forms of political and historical mutual recognition.[88] As I wrote previously:

> To really celebrate the EU as a *demoicracy* consists in recognizing that Europeans are part of 'a community of others', who are somewhat at home anywhere in Europe. European demoicracy is predicated on the mutual recognition of the many European identities—not on their merger. Not only does it promote respect for their differences, in a classic communitarian sense, it also urges engaging with each other and sharing these identities. In an apt metaphor, existing European treaties allow nationals of EU member states to use each other's consular services outside of the union: A Spaniard's belonging to the EU allows her to be a bit Italian or a bit British when traveling outside the union. In the same spirit, today's constitution [2003] does not call for a homogeneous community or for laws grounded on the will of a single European *demos*. Rather, it makes mutual respect for national identities and institutions one of its foremost principles ... Why spin the rainbow white?[89]

Mutual recognition across borders is a holistic ideal referring to the entire realm of social interactions: identities and cultures, political traditions, social contracts, historical grievances and memories. It is on this basis that European peoples may accept, or better wish, to mutually open their democracies to the peoples of other member states. At the outset, this does not require a singularly European public space but asks only that citizens have 'an informed curiosity about the opinions and political lives of their neighbors'.[90] In time, multinational politics and perhaps even a new citizenship will emerge from the confrontation, accommodation, and inclusiveness of Europe's varied political cultures. And from this in turn, an enlarged mentality may even emerge, as Kant would have it, of thinking and judging from the point of view of everyone else.[91] If Europe is a community of others then we need to learn to justify our political

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[87] See *inter alia* K Lowe, *Savage Continent: Europe in the Aftermath of World War II* (Viking, 2012).

[88] On philosophical roots see A Honneth, *The Struggle for Recognition: The Moral Grammar of Social Conflicts* (Cambridge: Polity Press, 1996).

[89] In Nicolaïdis, 'We the Peoples . . .', 102. See n 1.

[90] M Maduro, 'So close and yet so far: the paradoxes of mutual recognition' (2007) 14(5) *Journal of European Public Policy* 814–25.

[91] Kant, *Critique of Judgment,* section 40. Quoted in Bohman (2007), see n 8.

judgments not from a perspective we argue should be 'ours', *this* people, but from what we believe may be theirs, *that* people, and find ways to creatively confront and pool different perspectives without pretending that they can be merged.[92]

More generally, denial of recognition is present as an obsession with 'oneness' which prevails in many European quarters. But mutual recognition also reaffirms resistance to isolation through a kind of openness which leads to changing one's own nature. Under genuine mutual recognition, it is not quite the same any more to be French or Greek or British—a theme to be revisited in the context of crisis.[93]

In this sense, mutual recognition presupposes toleration but does not finish there. The European dream is that enemies can become neighbours and neighbours can become friends. Recognition forces us to assess circumstances where mutual tolerance is not enough, eg the peaceful coexistence of groups of people with different histories, cultures, and identities, which is what toleration makes possible.[94] It may indeed guard against 'oppressive tolerance' or point to when the act of tolerance itself must either be supported by 'more' or risks degenerating into conflict if it is based on ignorance.

Where Walzer only needs an aspiration to peaceful coexistence for his normative core (and can therefore encompass under his umbrella associations ranging from empires to nation-states), a demoicracy is preoccupied with a much more demanding engagement of the demoi in such a process. Some would say that this is the true meaning of 'reconciliations' at the heart of European project (and not only between France and Germany). And, as reconciliation is translated into functional cooperation, the level of interdependence and common projects engineered by their governments and managed by their respective states is such that it requires peoples to care *both* about what their governments do together and about the inter-societal interactions which underpin this action.

So demoicracy cannot be reduced to the continued existence and desirability of diversity in an interdependent world threatened by powerful homogenizing forces. There may be enduring demoi but the challenge of demoicracy is for them to engage enough with each other in order to deliver *kratos* as part of the equation. This is why this second cluster includes a host of variants which can be adapted to a demoicratic lens, from binding trust to ideals of community, friendship, mutuality, inclusiveness, solidarity, loyalty, or fidelity, each of which deserves a longer discussion. Moreover, it is our modern understanding that the ideal of openness discussed here commands deliberation. But if we consider the normative core of demoicracy without adjective, then transnational deliberation is not necessarily part of its core essence; there are many ways in which democratic polities can interrelate including social bargaining, contestation, and mobilization. When Samantha Besson writes about deliberative democracy she does so precisely by arguing that, in her view, demoicracy as an ideal is not sufficient in and of itself to fulfil transnational liberal demoicratic aspirations.[95]

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[92] Bohman (2007), see n 1.   [93] J Weiler, 'To be a European: Eros and Civilization' (1999).
[94] M Walzer, see n 67.   [95] S Besson (2006), see n 1.

Finally, mutual recognition is tested as a normative core through the ways in which the peoples in a demoicracy relate to the mosaic of stories which they respectively hold about the Union as a whole. Embracing the narrative diversity about the EU which prevails both within and across European countries is a tall order. Yet if the EU is to be described as an overlapping consensus of overlapping consensus, then traditional EU integrationists will exclude dissenting voices at their peril. The EU rests on practices of interpretation and negotiation reflecting strong—yet reasonable—disagreements between its many component parts on the norms and goals that underpin the process of integration.[96] Taken together, all these stories are part of a logic of reflexive appropriation, decentring, and mutual learning which together provide the narrative backdrop for mutual recognition.

A demoicratic ethos of transnational engagement and mutual recognition focuses more than its alternatives on how the Union constrains and binds the ways in which a country treats other Union nationals beyond some shared customary norm of 'hospitality', as with Kant's cosmopolitan law. It focuses in particular on whether the rules of free movement/non discrimination are genuinely applied. It is open to the idea that people who move across borders bring with them the laws and social contracts of their home country, but asks how laws written solely in one country affect citizens of another (directly or through their effects on domestic welfare states), and how this in turn affects the quality of democracies. And it suggests that citizens should have a say in the rules that might affect them as consumers, clients, or school parents, but are emanating from other countries.

Here again, many question arise from the narrative core. How is the emancipatory potential of mutual recognition actualized? Can we sustain mutuality under profound inequality? Under what conditions can mutual recognition suffice in providing the 'ties that bind'? To what extent is the demand for recognition between peoples only a function of recognition between states' laws and regulations? And how can recognition be non-discriminatory when it is in part conditional on the features of the other side? If countering the tendency to deny recognition (through discrimination) is at the core of the (liberal) EU single market project, what of denials to recognition in the social realm, from gay marriage to refugee status, or the tendency to use mutual recognition in illiberal ways to bolster the exercise of state coercive powers against individuals?[97]

(C) Internal/External Consistency

EU officials, academics, and commentators have been struggling with a third normative cluster: the application of internal principles to external relations. This has meant, on the one hand, heralding the need for consistency between the internal and the

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[96] K Nicolaïdis, 'Germany as Europe: How the Constitutional Court unwittingly embraced EU demoi-cracy' (2011) 9 *International Journal on Constitutional Law* 786–92. Nicolaïdis and Pelabay, see n 1; Lacroix and Nicolaïdis, see n 17.

[97] For a discussion see S Lavenex 'Mutual Recognition and the Monopoly of Force: Limits of the single market analogy' (2007) 14(5) *Journal of European Public Policy* 762–79. See also Fichen and Massimo, Criminal Law Beyond the States: The European Model (19 April 2011), Helsinki Legal Studies Research Paper no 4.

external; but on the other hand, living in a world often 'inconsistent' with the EU's normative core. So we need to translate transnational non-domination and transnational mutual recognition from the internal to the external under such constraints.

Most simply, the kind of essentialism connected with the ideal of a European demos (defining ourselves through who we are) is bound to have something to do with 'othering', eg defining ourselves against some other, which in turn is the root of nationalism, this time Euro-nationalism. Is it desirable to see Europe built against an 'other'—be it Islam, the United States, China, or simply the non-European world—especially when such 'other' is so present within (Muslim communities in Europe)? Would Euro-patriotism be true to the EU's normative foundation?

It may be that the idea of demoicracy is grounded—and for some of us perhaps primarily motivated—by a commitment to 'no othering' both internally and externally, in spite of the reigning denial of Europe's colonial past. It is for this reason that when he chose to uphold the ideal of a European Union defined *against* that of the United States, it is fair to say that Habermas stepped outside the demoicratic ethos.[98]

(D) Synthesis? Horizontality and Transnationalism

Should we try to set forth a singly overarching norm that can define the project of European demoicracy? Some might simply refer to transnationalism as such a norm, a broader overarching norm in international relation, and a norm which connects to deeper roots in transnational histories.[99] In a minor key, I would be inclined to elevate the ideal of horizontality from a positive concept (describing the nature of international or European cooperation without government) to normative status to the extent that it can convey both the ideal of non-domination and that of mutual engagement and recognition. The 'mutual opening up of democracies' which is the signature of a demoicracy is not the pre-condition but the result of a political-legal order centred around horizontal transfers of sovereignty between demoi and their representative institutions.[100] If in a demoicratic polity like the EU, such horizontal transfers tend to be preferred to vertical transfers of sovereignty, this is no less demanding a process as we now explore.

3 Genealogy: Resilience and Pathologies

There are at least two options if we want to ask how these general norms are to be operationalized. We can propose to deduce practical implications directly from the

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[98] J Lacroix (2009), see n 19.

[99] For an early discussion see T Kappen (ed), *Bringing Transnational Relations Back in* (Cambridge: Cambridge University Press, 1995).

[100] See K Nicolaïdis and G Shaffer, 'Transnational Mutual Recognition Regimes: Governance without Global Government' (2005) 68 *Michigan Review of International Law* 267–322.

norms themselves. Or we can pursue a normative-inductive approach and avail our-
selves of the rich historical material provided by decades of trial and error in European
legal and political development.[101] In other words, we can use the EU's historical
experience to refine the guiding principles that may sustain demoicracy over time.

So, how does a demoicratic system come about and develop? Can we have demoi-
cracy without demoicrats? Can it be the case that we do not find a demoicratic grand
design in the EU but what Hallstein labelled 'creative opportunism', namely a balance
that no-one intended to begin with? Or on the contrary, could demoicracy be the result
not only of 'rhetoric entrapment' but also 'normative entrapment'? Is the ethos of
demoicracy pervasive enough in the EU that a critical mass of actors 'do it' without
labelling it, as Mr Jourdain spoken prose?

In these last pages I can only sketch elements of a response regarding the root cause
of demoicratic resilience and the pathologies that may threaten it as is apparent in the
current crisis.

(A) Resilience through Transformation

If we were to write a story of resilience of demoicracy in Europe, we would need to
distinguish between two periods. First, during the foundational period, the basic
structure of a demoicratic polity of peoples-as-states was put in place as 'the commu-
nity method'. During this time, the organizing principles were not tested against the
mettle of peoples-as-citizens and indirect political accountability seemed to suffice as a
proxy for 'democracy in Europe'. During the second, current, period, which started
with the end of the Cold War, the peoples-as-citizens entered the scene along with a
more public and explicit engagement with the democratic question. Resilience would
have to do in part with the ways in which these two logics work together.

Joseph Weiler's analysis in 'The Transformation of Europe' did much to convince us
that we cannot and should not try to encapsulate the EU under a static political
form.[102] From its inception, the EU has been in a process of adaptive transformation.
The fundamental pattern of European politics can be seen as a dance between law and
power, judges and politicians, respectively and reflexively engaged in trading off a
gradual foreclosing of exit (hardening EU law through the chemistry of combining
supremacy and direct effect) with the retaining of Member States' voice through their
insistence on unanimous consent ('hard law making' in Weiler's terminology). This
was a deal struck less by design than by necessity. In this way and through the first
three decades, a constitutionalized arrangement between states emerged with increas-
ing legal bite but a bite of their own design. Letting go and asserting control as the *yin*

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[101] For a synthetic overview see E Bomberg and J Peterson, *Decision-Making in the European Union*
(London: Palgrave MacMillan, 1999).

[102] J Weiler, 'The Transformation of Europe' see n 6. And A Hirschman, *Exit, Voice and Loyalty—Responses
to Decline in Firms, Organizations and States* (Cambridge: Harvard University Press, 1970).

and *yang* of European politics can serve the first analytic building bloc of this demoicratic story. And this tension explained the paradox that integration had been seen to increase (by lawyers) and stagnate (by political scientists) at one and the same time. In this way, a common purpose could be pursued—the single market—through the management of managed mutual recognition among states while guarding against supra-national subordination, or total harmonization of standards. As the principle of indirect democracy (peoples-as-states) reigned supreme, citizens were not asked to own the process but its results.[103]

But what would happen next? At the time, Weiler expressed his judgment that such foundational equilibrium was precious and that we should worry about dismantling that which 'helps explain the uniqueness and stability of the Community for much of its life'.[104] Formally, we may consider that the demoicratic bargain was unhinged at Maastricht and the years that followed. The perceived combination of creeping EU competence with shrinking indirect accountability was not matched by an appropriate renewal of democratic stories and practices. The peoples-as-citizens were knocking at the door and the seeds of a 'demoicratic deficit' were planted in spite, or rather because of, a quasi-exclusionary focus on the European parliament as the political answer.

Nevertheless, I would argue that EU politics have continued to deliver the basic ingredients of a demoicratic polity. It has done so through rebalancing, taking small steps to reinvent the foundational equilibrium in other guise, at least when considering peoples-as-states: the generalization of opt-outs as well as most recently the highly symbolic 'exit clause' introduced the Lisbon Treaty (even while one might question its *de facto* feasibility); the retaining of elements of formal state equality through the continued (now headless) rotation for the Councils of Ministers; the collective reassertion of voice on the part of Member States in the face of growing EU (including Commission) competence in the financial area; and, in spite of the pressures of scale, enlargement has not meant an abandonment of the consensus-and-compromise method of decision making.[105]

The EU has radically transformed itself since 1958, as the functionalist currents have constantly been steered by demoicratic preferences.[106] But these developments, important as they are from an institutional perspective, have left the matter of popular democratic legitimacy unresolved. What of Hirschman's third part of the triptych, the

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[103] The work of Friz Scharf and Giandomenico Majone both cogently analyse this logic. Majone, *Regulating Europe* (Routledge, September 1996); *Dilemmas of European Integration* (Oxford University Press, 2005); *Governing in Europe. Effective and Democratic?* (Oxford/New York: Oxford University Press).

[104] Weiler, see n 46.

[105] Renaud Dehousse, Florence Deloche-Gaudez, and Olivier Duhamel, *Elargissement—Comment l'Europe s'adapte* (Paris, Presses de Sciences Po, 2006).

[106] This story of demoicratic transformation can be read in various ways. Andrew Moravcsik's master narrative emphasizes choices but overlooks the normative core; others the reverse. See A Moravcsik, *The Choice for Europe: Social Purpose and State Power from Messina to Maastricht* (New York: Routledge, 1998). See also S Benhabib, 'Transformations of Citizenship: The Case of Contemporary Europe' (2002) 37(4) *Government and Opposition* 439–65.

kind of loyalty to an institution which activates the commitment to voice in the first place rather then its alternative of exit?[107]

(B) From Pathologies to Crisis

European democracy ultimately depends on the health of national democracies. This is both an asset and a problem for demoicracy, so we need to ask what happens to national pathologies once democracies open up to each other. Does the EU level magnify such pathologies or does it help reduce them? It may be that the EU often helps entrench domestic democratic flaws, starting with the weakening of the rule of law by the use of managerial channels of power and executive decision making. At the same time, in Weiler's formulation, the DNA of EU politics since its inception has been the pursuit of a political messianic venture where legitimacy is to be derived from the destiny pursued rather than the peoples.[108] And messianism as a force of fusion amplifies political dynamic of disintegration and anti-EU populism, which then justifies its own rhetoric: further integration to counter the Eurosceptic bogeyman— which leads us back to the quality of national democracies.

It is of course in times of crisis that such pathologies can come to seriously threaten the EU's demoicratic ethos: can the demoicratic logic still accommodate more central- ization of functions, loss of voice, and foreclosure of exit at one and the same time? At which point will we have crossed the Rubicon whereby the EU's legal order has taken on undeniable statist characteristics? What are the demoicratic safeguards against the alliance between the logic of messianism and the determinism of 'market pressure'? And what is the line between the legitimate exercise of disproportionate 'responsible' power in the pursuit of common purposes and illegitimate albeit 'soft' domination by a member state and its people?

Spelling out concrete and generalizeable principles to address these questions is perhaps the most pressing research agenda attached to the idea of demoicracy at a time of crisis in the EU, and one which is also suggested by several contributions to this volume.[109] Indeed, guiding principles for legal and policy praxis have been honed through the history of the EU which need to be protected and perfected. Among such principles I would include the autonomy of peoples, safeguards at the centre against power imbalances, preference for pluralities over majorities, transnational rights, legal recognition of equivalence, domestic mediation of supranational disciplines, empowerment of lower levels of governance and individuals, complementarity

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[107] Hirschman, see n 102.

[108] Chapter 6. Such a belief in the rightfulness of deeper integration for its own sake backed up by elite networks of cooperation impervious to the demands of the 'peoples' is in sharp contrast with the pattern of 'cycles of federalism' which we can observe in more mature federation. *Federal Vision,* see n 31. See also K Nicolaïdis 'Our Democratic Atonement: Why we Need an Agora Europe' in *The People's Project? New European Treaty and the Prospects for Future Negotiations* (Brussels: European Policy Centre, December 2007).

[109] K Nicolaïdis, "European Democracy and its Crisis" (2012), *Journal of Common Market Studies.*

between direct and indirect accountability, co-citizenship among peoples, and commitment to political diversity.

4 Conclusion

In the last two decades, philosophers have been discovering the EU and its new brand of democracy across states and hailed its radical transformative logic. But if we move our focus from the transformation of the state as our unit of analysis to the transformation of the European system of states as a whole, the European Union can be understood as an original choice to incrementally transform the latter rather than to transcend it altogether. We are not creating a united Europe. We are changing the way in which its various states can remain separate while at the same time opening up their institutions and democratic politics to each other. Paradoxically, the transformative logic of European demoicracy therefore owes its radical nature to the conservative refusal to do away with the core tenet of nation-state-based democracy.

In this chapter, I have sought to make the case for demoicracy as a philosophical idea that illuminates extant EU law. I have argued that the radical mutual opening of national democracies that a genuine demoicracy would involve ought to serve as a beacon for the EU's further development. Scholars and actors alike must resist the pull of 'oneness'—be it one people, one state, one voice on the world stage, or indeed one story—to concentrate instead on drawing strength from the accommodation of differences. A 'demoicratic' ethics for Europe can sometimes be reflected in law, but not always. In the end, it is borne in our collective imagination.