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Epilogue: the challenge of European *demos*-cratization

Kalypso Nicolaïdis

ABSTRACT The conclusion to the collection draws out some of the insights from the contributions on the various challenges facing European *demos*-cratization.

KEY WORDS Democracy; *demos*-cracy

INTRODUCTION

This collection has brought together scholars interested in very different aspects of European integration. Collectively, however, they demonstrate that the concept of *demos*-cracy provides a fruitful analytical lens to interrogate current developments in the European Union (EU). And they point the way to three critical moves in this regard.

The first move is from *concept to conceptions*. The contributors all illustrate the fact that, as with other abstract and contested concepts, better formulae can be found to encapsulate its essence and many possible conceptions deployed to operationalize it.

The second move is *from theory to praxis* as the contributors engage with the what and the how of European *demos*-cracy and help specify which of its operational features qualify the EU as *demos*-cracy in their area of focus.

The third move is from comparative statics to an appraisal of *demos*-cratization dynamics i.e., the changing prominence of the EU's *demos*-cratic features over time and the factors that might affect its *demos*-cratic transformation.

Building on the editors' and contributors' insights, I suggest *inter-alia* three interim conclusions:

1. Transformative dynamics in a *demos*-cracy are about *trade-offs* and *relationships* rather than isolated legal-institutional features. The contributions demonstrate that this is not a simple story as epitomized by Borrás and Radaelli's (2014) matrix of *demos*-cratic credentials in the Open Method of Co-ordination (OMC) or the variety of attitudes to the European Parliament (EP) on the part of national parliaments and their constitutive parties discussed by Winzen *et al.* (2014). Specifically, this collection is premised on the core analytical *distinction* between two dimensions of integration, one multi-level or vertical and the other multi-centric or horizontal, each of

Table 1 A template for *demos*-cratization

Issues: Domains:	Trade-offs and relationships	Emphasis on transnationalism	Boundary questions
Institutions (Structures)	e.g., horizontal vs vertical interplay	e.g., transnational co- operation at all levels	e.g., unitary, centralized EU or fragmented, closed states
Competences (Rules)	e.g., horizontal vs vertical transfers of sovereignty	e.g., managing mutual recognition; trust vs monitoring	e.g., hollowing out of national democracies
Societies (Citizens)	e.g., non-national vs multi- national belongings	e.g., transnationalism all the way down	e.g., exclusionary citizenship

which in turn can be subject to more or less *demos*-cratization. At the same time, authors explore how the evolving quality of EU *demos*-cracy depends on the *interaction* between vertical and horizontal *demos*-cratization, through networks between agencies, regulators, parliaments or courts. A *demos*-cratic balance between autonomy and transnational rights or externalities trades off vertical centralization for horizontal interplay overtime. But the horizontal interplay in question is *more or less* embedded in the vertical design, which in turn may produce a legal system with *more or less* emphasis on horizontal rather than vertical transfers of sovereignty. And as the relevant contributions illustrate, comparative *demos*-cratic credentials may only emerge through *praxis* rather than *a priori* – whether concerning norms (national treatment, mutual recognition or co-ordination), or procedures (community method, the OMC or agency delegation).

2. *Demos*-cratization *emphasizes transnationalism* not as an alternative to supranationalism but rather as a preferred mode in its operation and more broadly as the next frontier of European politics. In this light, if we take transnationalism *all the way down*, we come to see the EU's basic constitutional *demos*-cratic order (effective and equal rights of entry, exit and approval of basic rules for all its *demos* as *pouvoirs constituants*) as the pre-requisite, and its legal-institutional transformations as the enabler of *demos*-cratization, whose currency ultimately resides with individuals' equal access, participation and representation in the politics and policies that affect them, short of strategies treating them *as if* a single European demos. The studies by (and referred to by) Borrás and Radaelli (2014), Welge (2014) and Hurrelmann (2014) all speak to these strategies while raising a meta-question: should these be similar or differentiated if we care about 'equality among unequal *demos*'?

3. A focus on *demos*-cratization ultimately raises *boundary questions* that are all the more relevant in today's times of crisis and re-invention. We can identify trends in the EU which both strengthen and weaken its *demos*-cratization and may cumulatively change its very nature away from a *demos*-cracy in the making. As the editors (Cheneval *et al.* 2014) aptly stress, whereas the growth of supranational competencies triggers the need for *demos*-cracy in the first place, too much growth undermines its foundations: the tension may become too great between the grounding of the EU in its separate *demos* and the up-scaling of the institutions and policies they are being asked to share. We need to recognize when this happens.

While I cannot do justice here to the rich texture of this collection, I will point to some of the intriguing variants on these questions suggested by the various contributions (as summarized in Table 1).

INSTITUTIONS AND *DEMOS*-CRATIC STRUCTURES

If, as the editors (Cheneval *et al.* 2014) suggest, we take the fact of multilevel governance of the EU as our starting point, a *demos*-cratic lens first leads to ask whether and how individual peoples are represented and their rights respected at the centre, starting with the veto of *each* people as *pouvoir constituant*, while recognizing that in the *demos*-cratic version of 'federal safeguards' those doing the representing and accountable for it are also engaged in governing at the state level. While this collection concentrates on the day-to-day politics of *demos*-cratization rather than Treaty change – where the national veto is being transformed into opt-outs – its contributions illustrate the same point: our story is one of relationships and trade-offs. If *classic indirect legitimacy* has reached its limits, *demos*-cratization is about entrenching more *kratos*-friendly proxies for national governmental vetoes while at the very same time broadening the reach of *demos*-representation.

Variations on community methods?

Arguably, the various governing 'methods' analysed here can be seen as attempts to reverse the autonomization of the supranational sphere and thus as less secretive and/or more inclusive variants on the Community method and comitology, the EU's original commitment to horizontality but for a technocratic élite. Buess (2014) assesses whether EU agencies are indeed more politically accountable than the Commission; Borrás and Radaelli (2014) select *demos*-cratic yardsticks to show how what they call 'third-way channels' can be empowered through the OMC as meaningful mechanisms of *demos* representation. What is striking, however, is the enormous variance found by the contributors: Borrás and Radaelli (2014) on the extent to which the use of the OMC in a particular area changes prevailing practices of parliamentary or extra-parliamentary involvement; Buess (2014) on the extent to which member states'

representatives on agencies' management boards are accountable to democratic domestic institutions directly or to peers horizontally; Winzen *et al.* (2014) on the propensity of national parliaments/parties to exploit channels of vertical accountability. If there is no *demosi*-cratic magic bullet but a complex interactive system, then we must ask under what conditions transnational executive, regulatory or judiciary politics even '*demosi*-cratized' can complement rather than replace vertical legislative processes. Given how much variance the contributors find across countries and policies, *demosi*-cratization is fated to come in many national and policy-specific shades.

Variations on parliamentary roles?

While the changing *role of national parliaments* has received much scholarly attention of late, the *demosi*-cratic lens offered by Winzen *et al.* (2014) invites us to analyse the development of a multilevel EU parliamentary system as a whole, characterized by the co-development of national and European parliaments, but according to a great variety of codes and practices. Perhaps the fundamental message we can take away from their study is that *demosi*-cracy is about self-determination, including about how the *demosi* assert themselves in the shared *kratos*. The system can accommodate many different institutional preferences: the weakly involved national parliaments or EU-friendly parties which see EP empowerment as a legitimate compensation for their own loss of influence; those who countenance a co-operative relationship ('parliaments of all levels unite'); and those who still treat the EP as a rival, especially strong parliaments and ideologically driven parties. And it can accommodate different institutional strategies: the fact that some parliaments champion their role themselves, while others rely on institutional allies – as with the championing of the Bundestag by the German Federal Constitutional Court – or the fact that some parliaments see this as a trade-off between relying on the EP and co-ordinating with their peers in other countries, others don't. The agonistic politics analysed by the authors among the different factions of the *Folketing* and the *Bundestag* and their conflicting views on appropriate representative structures in the EU constitutes the core of *demosi*-cratic politics in the EU.

Variations on institutional balances?

Some of the prescriptive implications discussed by the authors raise the question of whether parliamentarization of the EU or conversely intergovernmentalism are *per se* more or less *demosi*-cratic. Should not the answer depend in part on whether the respective institutions are in-and-of themselves actually and perceived to be *demosi*-cratic, including the extent to which they institutionalize or mitigate power asymmetries among member states? But the answer also lies again with the relational dimension dear to Winzen *et al.* (2014): the distrust of the red card by German social democrats may seem rather un-*demosi*-cratic, unless the national parliament can trust the EP to 'represent' its concerns.

Similarly, the idea of the EP electing a President of the Commission may seem too great a concession to ‘one people’ symbolic politics, especially considering the aggregative loss from a multi-*demoi* parliament to a single figurehead. But at the same time, if European *demoi* are to legitimize both institutions (i.e., the Commission as well as the Council), the process may benefit from (albeit very imperfect) debates of the entire EP where national domestic oppositions and Eurosceptics are represented. Or consider Beetz’s (2014) discussion of the proposal to create a third chamber (or ‘European Senate’) made up of national parliamentarians, which he sees as a compromise to intergovernmentalism rather than a self-aware move towards a European *demoi*-cracy. And yet, it would make eminent sense from a *demoi*-cratic point of view for national parliaments to check competence creep in deliberative mode, rather than aggregating their vetos for an orange card as is currently the case. Finally, a *demoi*-cratic defence of the powerful position of the European Council is predicated on the ways in which European leaders have themselves Europeanized their domestic politics. On these various counts, it is worth reflecting on Beetz’s implication that (innovative) *demoi*-cratic ideas tend to emerge from engagement with Euro-scepticism – of the constructive criticism kind of course!

COMPETENCES AND DEMOI-CRATIC RULES

If institutions are the hardware of *demoi*-cracy in the EU, its software lies with the types of rules, rulings, norms and standards that commonly affect its peoples – or how substantive competences come to be allocated and exercised. *Demoi*-cratization strategies are meant to respond to the increased pervasiveness (actual or perceived) of these EU disciplines not only through *how* they are adopted (see above) but through *what* they are (e.g., the realm of legal exit rather than voice as in Weiler’s famous metaphor [Weiler 1991]). To translate and amplify the legal principles of subsidiarity and proportionality (competences *per se*), we need to focus on the ways in which common disciplines affect, and may ultimately pre-empt, the substance of national democracies. Again, I draw three insights from the contributions to highlight some of the tradeoffs involved.

‘*Demoi*-sensitive’ norm combinatrix

While the editors (Cheneval *et al.* 2014) contrast a vertical praxis that *harmonizes* or replaces national rules with a horizontal alternative that *co-ordinates* them, in practice harmonization, national treatment and mutual recognition usually operate together. Mutual recognition started life as the *community method*’s miracle cure for trade-impeding regulatory diversity – not an alternative to it as argued by Sievers and Schmidt (2014). Nevertheless, their study illustrates the ways in which the norm has been stretched to its limits when applied from goods to services to arrest warrants to asylum requests – all of which relate to EU border crossings requiring recognition by the ‘host’ state

of some ‘home’ state act (accreditation, judgment); thereby ‘stamped’ as kosher. In this sense, recognition is a *sine qua non* for crossing jurisdictional boundaries, not one of several options. The European Arrest Warrant is ultimately a recognition agreement – operating irrespective of the convergence of judicial systems. The ‘*demoi*-cratic test’ has to do with balancing the functional imperative of integration (the home-state side) with concerns related to the territorial prerogatives of host states, pitting source *demoi* and target *demoi*. The extent to which mutual recognition borrows from harmonization *ex ante* and national treatment (residual host state safeguards) *ex-post* reflects this balance over time. In my view, well designed and flexible instances of ‘managed’ mutual recognition best correspond to a *demoi*-cratic polity.

‘*Demoi*-sensitive’ extraterritoriality

The editors (Cheneval *et al.* 2014) present *demoi*-cratization as a response to the functional pressure to expand integration from regulatory to distributive realms to core areas of statehood, with redistribution and coercive implications where sovereignty and identity concerns of the national *demoi* reign supreme. We assume that these concerns can be mitigated through less authoritative rules and/or various degrees of horizontal instead of vertical sovereignty transfers. But the lesson from praxis is that negotiated extraterritoriality comes with its own challenges. As Sievers and Schmidt (2014) document, even while functional pressures call for transferring sovereignty away from host states in both realms of the single market and justice, their reluctance to do so may be heightened when protecting human rights rather than consumer rights and when the recognition in question involves full foregoing of jurisdiction. If a Polish engineer wants to get into Britain (host), Britain recognizes her home rule in order to let her in; if a British resident committed a crime in Poland, recognizing home rule means kicking her out. The paradox is that post-9/11 rules of recognition of arrest warrants *assumed* trust rather than *built* it over time, as had been the case for the single market, albeit while allowing for safeguards to make up for the wide judicial discrepancies at hand.

It is not clear why *demoi*-cratization in the EU should call for extraterritoriality without a safety net. The costs of managing diversity through horizontal transfers of sovereignty might be too high when gains in integration are too small or when socio-political-regulatory differences are too high. When the Commission criticizes member states for their ‘abuse’ of safeguards, their public opinions may ask what other recourse is there if a judge mistrusts a foreign standard and procedure for issuing an arrest warrant, refusing refugee status or certifying a profession. The *demoi*-cratic credentials of mutual recognition depend on the institutional foundations of mutual trust bolstered by mutual monitoring, and on the belief that national adjustment is often more sustainable through changed incentive structures rather than bargaining over set preferences. This may be why, while Sievers and Schmidt (2014) doubt whether their particular circle can easily be squared, Borrás and Radaelli’s

(2014) account of OMC-generated rules calls for some (*demoi*-cratic) optimism. In the latter's account, the various kinds of substantive adjustment between national systems brought about by the OMC logic are likely to be more criticized for their ineffectiveness than for their intrusiveness – a lesser evil, in my view, in a *demoi*-cracy. To generalize, the *demoi*-cratic quality of the EU's various integration methods not only hinges on their domestic democratic anchoring, but also on the capacity of individual *demoi* to compensate for cross-national asymmetries of power when they decide.

CITIZENS AND *DEMOI*-CRATIC POLITICS

The third domain of *demoi*-cracy takes citizens as its point of departure and asks what kind of *demoi*-cratic beliefs, attitudes and practices are shaped by, and in turn affect, the institutions and rules discussed above. In the relevant contributions, *demoi*-cratization concerns the textured pattern of participation in the EU and the plausibility of a European politics characterized by progressive mutual opening between European *demoi*.

Accommodating pluralistic citizenship rules?

To the extent that *demoi*-cratic voice is as a formal affair, what is the contribution of EU citizenship rules to softening the exclusionary tendency of national democracies? To simplify matters, if *demoi*-cratization calls for greater inclusiveness of all citizens as members of the broader political community that connects national *demoi* (an equality principle), this needs to happen bottom–up, as it were, through national political communities and their idiosyncratic modes of social integration (a democratic interdependence principle). The EU has sought to square this circle through what Welge (2014) refers to as institutionalized gradual citizenship; but within this overall gradation actual political rights and concurrent degrees of inclusion also depend on the home and host countries of the (partial) citizen in question. Welge finds that these conditions in turn determine levels of satisfaction with the state of residence, noting the disenfranchisement of ‘movers’ around whom, after all, the integration project has been based and who ought to be the prime candidates for the kind of transnational involvement called for by a *demoi*-cratic polity. But this would depend, it seems, on access to national elections in their country of residence or on a universal right of multiple citizenship throughout the EU. Should a *demoi*-cratic system accommodate such a plurality of modes of internalization of EU citizenship principles?

Mitigating the pathologies of national democracies?

How does *demoi*-cratizing the EU mitigate rather than magnify the pathologies of its national democracies? As Radaelli and Borras (2014) aptly stress, a theory of *demoi*-cratization will privilege different constitutive factors as a function of

one's preferred underlying theory of democracy. It would be interesting to extend their exercise to highlight the pathologies of contemporary democracies – executive dominance but also clientelism and state capture, elitism and social inequalities – and ask under what conditions European integration fails to play its democracy-enhancing role in the member states. Hurrelmann (2014), for instance, worries that steps towards a more *demosi*-cratic institutional order in the EU might accentuate existing participatory inequalities, leading to the (often self-enforced) exclusion of significant parts of the population. True, if *demosi*-cracy presupposes citizens with very specific qualities, competent followers of politics in various democratic arenas, this is an élite cosmopolitan game. But if, dynamically, it leads to the multiplication of fields of accountability and distributed governance, including on the internet, as citizens realize that they are subject to a legal-political system that they cannot influence, they may start voting accordingly across borders with their ballots, their feet, their ISPs or their fists.

***Demosi*-cracy without *demosi*-crats?**

Is EU *demosi*-cracy without *demosi*-crats? To be sure a polity predicated on the continued *pouvoir constituant* of its multiple *demosi* is bound to be more complex and therefore harder to 'own' on the part of its citizens. Hurrelmann's (2014) conclusion regarding citizens' lack of cognitive and attitudinal prerequisite of effective *demosi*-cratic citizenship is echoed by Beetz's (2014), whereby much of the media has a hard time distinguishing democratization of the EU from simply access to its supranational structures and tends to consider the existence of a European people as a *precondition* – whether to applaud or regret its evanescent character. As they both amply document, the idea that the EU might constitute a third way rather than a way-station between an old fashion intergovernmental and an emerging federal Europe hardly seems to exist in the European public sphere. Instead, the tyranny of the dichotomy constituted by these two poles is alive and well. Yet, isn't it too quick to conclude with the editors (Cheneval *et al.* 2014) that there is little resonance of *demosi*-cratic ideas in national debates about Europe and that *demosi*-cratic principles are simply an academic construct? Beetz's finding that EU citizens often subscribe to our analysis of the existence of a multiple *demosi* and a single *kratos* but not to the combination of legitimation by the national *demosi* and EU citizenry might suggest a theory of stages of *demosi*-cratization.

CONCLUSION

Ultimately, *demosi*-cratization simply calls for matching deeper integration with practices that recognize that the EU ought to remain a union of peoples who govern together but not as one (Nicolaidis 2013; see also Cheneval and Schimmelfennig 2013). According to Hurrelmann (2014):

the encouraging message that one gets from *demos*-cratic theories is that in order to realize basic democratic objectives, the EU might require some institutional reforms, but nothing that would amount to a fundamental transformation of its political identity.

This is true. As this collection beautifully illustrates, however, we still need a real paradigm shift to convert widely held *demos*-cratic intuitions into a positive vision for European integration.

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