Part III
Institutional Architectures

7

Demoicratic Theory and Europe's Institutional Architecture in Times of Crisis

Kalypso Nicolaïdis

Introduction

Few would contest that the euro crisis has altered the EU's democratic trajectory for the worse.[1] While Europhiles would argue that this came on the tail of tentative democratic progress in the last decade, EU critics would counter that the crisis only served to amplify the existing pathologies of both European and national democracies. This chapter builds on a nascent literature on demoicratic theory to nuance both these diagnoses and offer recommendations for the demoicratization of Europe's institutional architecture (Besson 2006; Bohman 2007; Cheneval and Schimmelfennig 2013; Cheneval, Lavenex, and Schimmelfennig 2015; Nicolaïdis 2003, 2004b, 2012, 2013, 2015). Like the other contributors in this volume, I share in the premise spelled out by our editor that democratic renewal is the foremost challenge facing the EU today (Piattoni, this volume). But in doing so, I am particularly attentive to the dangers of reading democracy in state-centric terms (see also Crum as well as Fabbrini, this volume). Specifically, I believe that some of the efforts to address the euro crisis have sadly succumbed to what I call the 'mimetic temptation' or the propensity to seek to reproduce domestic models of democracy developed for the nation state when moving beyond the state. Hence, with Eurocritics, I argue that the crisis has given free rein to messianic managerialism and politics disembedded from their national anchor. While these have characterized the EU since its inception, the stakes have radically changed. However, I also believe with EU defenders

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[1] I would like to thank Ben Crum as well as the indefatigable editor of this volume, Simona Piattoni, for their precious comments on this chapter.

that its existing institutional architecture is sound albeit perfectible and that the EU does not need profound reform in order for its functioning to be channelled anew towards demoicratic standards.

This diagnosis starts with a straightforward normative stance. Throughout the European crisis we have heard two contrasting calls to arms: 'Federal State *ou la mort*!' and 'Back to sovereign autonomy!' This is all unsurprising. With Europe as with other human pursuits there tends to be two sides to each battle: those who prefer more togetherness, oneness, merger, and those who prefer more autonomy, diversity, separation. The EU has broadly spelled out this opposition through its own binaries, federalists vs sovereignists, supranationalists vs intergovernmentalists. The demoicratic credo is to claim that Europeans need not be enslaved to the tyranny of dichotomies. Instead, it should continue to forge and support a 'third way' for integration which is indeed more than simply an 'in-between'. Fifty years of European integration may have led to a steady centralization of competences, strengthening the European *cratos*. The euro crisis seems to demand an acceleration of this trend, but the *demos* has mainly remained domestically constituted and political will formation remained a national affair. The polity needs to reflect this tension. Thus the demoicratic frame is both positive and normative: it is about what the EU *actually is,* and about how it *should evolve.*

If democracy is the rule of *the entire people*, a demoicracy is a polity ruled by *a plurality of peoples* who govern together but not as one. Stated bluntly, the traditional political science categories pertaining to democracy discussed in the introduction to this volume need to be rethought for this (potentially) new kind of democracy. As MacCormick so aptly put it:

> For this is a new form of political order, a new kind of 'commonwealth', which offers the hope of transcending the sovereign state rather than simply replicating it in some new super-state … It creates new possibilities of imagining, and thus of subsequently realizing, political order on the basis of a pluralistic rather than a monolithic conception of the exercise of political power and legal authority (MacCormick 1999: 191).

This same intuition has been expressed in many different ways by EU scholars and one may ask what the neologism adds here. Indeed, demoicracy could be but another word for what others have explored as multilateral democracy (Cheneval 2011), transnational democracy (Bohman 2007), multilevel or compound democracy (Fabbrini 2010), or the numerous variants on federal democracy. It also chimes with other approaches highlighting the conflictual, horizontal, and experimental nature of multilevel politics, such as directly deliberative polyarchy (Sabel and Zeitlin 2010), or Mouffe's agonistic democracy for Europe (Mouffe 2013). The idea of a 'European demoicracy' has the potential to ground normative claims about the EU which encapsulate the

intuition of analysts and protagonists who do not use the word itself. And yet, neologisms such as this one can provide a licence to invent new languages or variations on existing ones and therefore free our conversations from the baggage of extant theories and concepts (Nicolaïdis 2012).

This chapter is divided into three parts. I first briefly present the main tenets of demoicratic theory. I then turn to a more specific exploration of the governance and institutional features of demoicracy. Finally, I move to an appraisal of some of the questions and tensions associated with demoicratization in times of crisis. Throughout I build on the analytical *distinction* between two dimensions of integration, one multilevel or vertical and the other multicentric or horizontal, each of which in turn can be subject to more or less demoicratization and whose relation is at the core of this inquiry.

The Demoicracy Lens on the 'Deficit Turn'

The idea of demoicracy is an attempt at translation, from the sophisticated worlds of legal and political theory into the simpler world of politics and political discourse. Its main implications seems to resonate in public opinion and media debate albeit not under the demoicracy label (Beetz 2015; Duchesne et al. 2013). To be sure, it partakes in the debate over the nature of the EU's overarching legal and political order as a semantic variation within the burgeoning literature which seeks to deploy new understandings of European constitutionalism, cosmopolitanism, or federalism short of their 'statist' connotation.[2] But the aim is also to help bring politics back in, by which I mean the political imagination, discourses, ideologies, and practices which make up the EU polity.[3] Indeed, the idea of demoicracy was inspired by politics, both negatively as a way to escape the tyranny of dichotomies that one could observe on the floor of the Convention drafting a Constitutional Treaty for the EU in 2001–3, and positively as a rhetorical device that could help tell a non-Constitution-like constitutional story about the EU (Nicolaïdis 2003, 2004). Accordingly, it contributed to what we can call 'the deficit turn' in integration theory (democratic deficit, legitimacy deficit, political deficit), by seeking to change the benchmark for such a deficit. Ten years later, the democratic challenge has been hugely magnified by the euro crisis (Cramme and Hobolt 2014). Yet, to help navigate the tempest currently assailing the EU,

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[2] To be clear, 'statist' is employed here in the sense of 'state-writ-large' or the design of entities superseding the core tenets of the existing state system.

[3] Politics is also about the intimate convictions which underpin scholarly exegesis. Mine chimes above all with that 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 (Weiler 1991, 1999; Weiler and Wind 2003).

Kalypso Nicolaïdis

the idea of demoicracy seems ever more relevant as it seems that the current imperative is less to save Europe from the pathologies of national democracies than the latter from the pathologies of the EU. I lay out the main tenets of this analytical frame below and explain what it may mean to assess the evolving nature of EU institutions against this benchmark.

'Demoi' vs 'Cratos': The Demoicratic Premise

As always, everything starts with a question: how can an ever closer union between ever distinctly democratic peoples be democratically legitimate? Progressively since the end of the cold war, and more dramatically since the beginning of the euro crisis, European integration has been put to the test by the increased disconnect between the locus of managerial authority (the combination of shifting competences and institutional roles) and the locus of political life in Europe.

If European integration requires a compass not a destination point, this compass is a certain understanding and valuing of the EU as a European demoicracy in the making. Cheneval et al. (2014) speak of a single constitutional order defined nevertheless in terms of its separate *demoi* which seeks to balance the dual nature of its *pouvoirs constituant*s, its statespeople and its citizens. I define demoicracy as a union of peoples (understood as both states and citizens) who govern together but not as one (Nicolaïdis 2013).[4] The democratic question in Europe therefore starts with this distinction between a single polity ruled by and for multiple *demoi* and a polity ruled by and for a single *demos*.[5] Demoicratic theory seeks to lay out the ways to sustain the tension between two concurrent requirements: the legitimacy of separate, self-determined *demoi* on the one hand, and the openness and interconnectedness implied in the notion of liberal democratic *demoi*, on the other (Cheneval et al. 2014).

As a result, the EU can be understood as a single polity, but a polity which is not associated with a state—a state in the Weberian sense of an administrative apparatus endowed with the kind of authority over its citizenry which can justify the monopoly of violence within a territory. As a result, the *cratos* is that of a polity without a state, yet a polity made of states, and crucially, states whose nature has been irremediably changed by the integration process. We can debate whether this *cratos* is best characterized as governance

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[4] Note a semantic difference in our use of terms. Cheneval et al. are concerned with 'statespeople' and 'citizens'. I prefer to avoid the compound term to stay closer to demoicratic semantics, and refer to both as different incarnations or referent for the peoples of a *demoicracy*, i.e. peoples as collectives and as individuals, as 'states' or 'citizens'.

[5] As discussed below under the weak version of demoicracy, I do not believe however that the demoicratic story rests exclusively on the no-*demos* argument.

without government, but the state functions which it exercised derive from the (statist) resources and authority of the member states. Crucially however, the EU *cratos* governs over a borderless space carved into separate jurisdictional boundaries (Nicolaïdis 2014).

While it could be said that all theories discussed in this volume share in the basic concern with appropriate loci of authority in a multilayered democracy, demoicratic theory is based on two specific premises. The first, positive, lies with highlighting the socio-political *gap* between the functional requirements of interdependence and Europe's nation-centric socio-political reality, the former having long outpaced the latter. Thus demoicratic theory can be thought of as a theory of correspondence between transfers of powers and 'people power'. The second premise is normative, namely that for this state of affairs to realize its transformative potentials, this gap needs to be accommodated, not denied or transcended. The EU's demoicratic quality is not a bad thing for believers in the benefits of European integration, nor should it be considered as a temporary state of affairs to be overcome over time. In this sense, its difference from theories of multilevel governance (MLG) analysed by Benz in this volume is a matter of emphasis as to whether we should care about the precise nature of the polities or 'jurisdictions' to be aggregated as well as the nature of the whole. The demoicratic frame privileges a *specific* level as it were and emphasizes the 'nation statist' nature of the constituent units and indeed their very unique quality as 'member states' (Bickerton 2012). Moreover, the demoicratic frame is not neutral normatively, concerned as it is with whether modes of coordination and aggregation protect the self-determination of separate peoples more or less effectively, while MLG privileges the functional requirements of finding the appropriate scale of governance and identity formation in social communities to ensure supranational policy effectiveness (Benz, this volume; Conzelmann 2008; Enderlein, Wälti, and Zürn 2010). This is not therefore a disagreement over input vs output legitimacy but one about the normative primacy of the political over the functional.

Beyond this, as with other abstract and contested concepts, various formulae can be found to encapsulate its essence, and many possible conceptions of demoicracy can be deployed as to the specific meaning of the demoicratic premise and its implications. A strong version of demoicratic theory rests on the no-*demos* thesis, that alongside these *demoi* the EU simply does not have a unified *demos*, whether subjectively (socio-psychological conditions of belonging) or objectively (patterns of party formation, media expression and other evidence of a common public sphere) (Cheneval and Schimmelfennig 2013). The *demoi* is all we have. But demoicracy is also compatible with a weaker version of the no-*demos* thesis—call it the '*demoi* thesis'—which recognizes elements of identification and transnational political practice at

141

Kalypso Nicolaïdis

EU level (Menéndez 2009; Risse 2010) but simply asserts that these pale in comparison with national bonds. There can very well be an evolving thin European *demos* characterized by common debates, transnational parties, and mobilization, or some degree of a common sense of belonging (especially when being outside Europe). The critical point here is that national *demoi* remain the dominant political unit where bargains are struck and compulsory solidarities institutionalized.

In the same vein, analysts can disagree on the relevant definition of 'people' for demoicratic theory. If a people is defined minimally as a community of citizens who are able to reflect and revise their opinion on public policies in the light of opinions expressed by others (Benz, this volume), realizing the kind of mutual opening up called for by ideal–typical demoicracy would qualify the thus interconnected European peoples as an integrated European people. But if we argue instead that horizontal relations of accommodation beyond state boundaries are not sufficient to constitute a single people, what is needed over and above such inter-personal democratic empathy to constitute a 'people' is the sustained acquiescence in the majoritarian game determining the contours of one's binding community.

While there is agreement among demoicratic theorists that for the EU *cratos* to be deployed legitimately across national jurisdictions, majorities of individual *demoi* cannot be bypassed and the ascent of individual *demoi* is required, at least in critical matters, the question remains: where is the line to be drawn? If European demoicracy rests on peoples whose collective authority and therefore authorization is the critical ingredient for democratic legitimacy, when is this authorization truly necessary? Is the critical distinction between primary and secondary law—the first to be subject to unanimity, the second to super majorities? Or between redistributive and regulatory policies, in other words the substance of the policy, with the former subject to unanimity? And how it is possible to prevent the pooling and delegation of sovereignty from bypassing such *demoi* authorization without falling prey to multiple and paralysing vetoes?

Crucially, how are we to understand the question of authorization dynamically, as circumstances change with the passage of time, and given the powerful status quo bias of unanimous decision-making? Should we not require the renewal of collective authorization through sunset clauses and other mechanisms of adaptation, lest previous incarnations of peoples tie the hands of new generations?

Moreover, if the EU's demoicratic quality is not only about the plurality of its *demoi* but also about unequal *demoi* we need to ask more systematically what this inequality implies, and in particular what 'equality among unequal *demoi*' implies. In a genuine demoicracy inequality of power needs to be mitigated among *demoi* to ensure the autonomy and equal authorization

142

rights by all peoples. But the line needs to be maintained and ways found to ensure equality between citizens in terms of political membership if not in terms of voting weights. Institutions need to reflect this balance. At the same time the EU's institutional make-up needs to reflect other institutional differences which may even be connected to unequal democratic endowments for instance. This may mean that different national parliaments, courts, agencies, administrations, or civil society groups 'access' the EU differently and that some leeway has to be given for these differences.

This leads to the overall question of representation in a demoicracy, in particular its relationship with our understanding of political community (Bellamy and Castiglione 2013) and the different emphasis within a demoicratic frame on the balance between deliberative and representative democracy as well as 'arguing' and 'bargaining' (Eriksen and Fossum 2000; Magnette and Nicolaïdis 2004; Neyer 2006). A demoicracy combines various channels of representation for peoples as states and peoples as citizens—but what should be the balance of power between the two logics?

Finally, there are important discussions to be had about scope conditions. Should the demoicratic lens be holistic, a way of characterizing the EU as a whole across groups of member states and across functional areas of integration? Or does the theory work best when circumscribed?

In sum, demoicratic theory is at its inception. We can say, nevertheless, that a demoicratic understanding of the EU is both pragmatic and idealist. It is, pragmatically, an argument in support of *what Europe is*: European integration is demoicracy at its best when it accommodates the deep diversity of our national political and economic systems, under a modus operandi that is multicentred and not only multilevel. But European demoicracy is also, idealistically, about *what Europe should be,* the EU's better self, an ideal worth nurturing. European diversity is not a constraint that we must work around or try to overcome through the right kind of pedagogy or the right kind of incentives for convergence at all costs. Each member state is an arena for different social bargains, state–society relationships as well as different debates which overlap and echo across borders but are also grounded in different 'languages' (as discussed in Lacroix and Nicolaïdis 2010). The role of the EU should be to engineer their permanent compatibility and horizontal contagion, not their homogeneity.

Of Concepts and Metaphors: Demoicracy as a Third Way

To bring these controversies into sharper relief, it is useful to set forth another conceptual building block without which, I believe, the idea of demoicracy loses its transformative connotation. In contrast with the classic representation of the EU as an 'in-between', the EU as a demoicratic-polity-in-the-making

143

Kalypso Nicolaïdis

should be understood as *a third way*. Demoicracy is pitted against alternatives (an alliance of sovereigns and a federal state) which are ontologically similar in that they share in the belief that democracy must rest on a single *demos*. In contrast, the EU has been a truly unique political experiment and should remain an open-ended process of transformation which seeks to accommodate the tensions inherent in the pursuit of radical mutual opening between separate and democratic peoples.

As a third way, demoicracy is not about 'splitting the difference' between these two mainstream political alternatives, nor is it a temporary state-of-affairs en route from one to another, but emerges from their respective contradictions and inadequacies.

In order to capture the spirit of this qualitatively different third way I have found it useful to resort to an old metaphor, but with a twist (Nicolaïdis 2013). In 49 BC, by crossing the Rubicon, Caesar dramatically changed the foundations of the Roman polity. Similarly, we can consider the demoicratic way as a kind of constitutional Rubicon whose crossing would radically change the foundation of the EU. The transformative journey that started after World War II has meant that EU ships have stayed on the Rubicon for decades even while its waters have been at times calm and at times rough. It is well known that the 'red river'—this is the meaning of the word Rubicon—has often changed course in the intervening 2000 years, so there would be no point in looking for a fixed red line on a map. Similarly, this EU Rubicon offers shifting and sometimes hardly traceable shorelines. Nevertheless, we can know whether or not we are on shore.

If it is true that the EU is still on the Rubicon, it will be tempted to cross it at its peril. Instead, if they remain on the Rubicon, state vessels can share sovereignty without losing statehood, and thus avoid both national retrenchment and national renouncement. Today, in 2015, as we contemplate the changes taking place under crisis imperatives, European demoicracy should not be a hostage to 'legacy measures' struck under collective duress and which may force 'the crossing of the Rubicon'.

The Rubicon metaphor is meant to reflect a great swathe of theoretical debates. For one, as discussed by Burgess in this volume, through its metamorphosis from treaty-based cooperation to constitutionalized polity the EU has long become part of the comparative federalism family (Burgess, this volume; Beaud 2007; Elazar 2001; Halberstam 2004; Nicolaïdis and Howse 2001; Menon and Schain 2006; Moravcsik 2001; Kelemen and Nicolaïdis 2007). But like Moliere's Mr Jourdain who spoke prose unknowingly, EU citizens do not see it as such. The question before us today is whether the EU will inexorably drift from federal union to federal state, from demoicracy to a more classical federal form of multilevel democracy, and thereby cross the Rubicon to a new political order.

144

There are many ways to resist crossing the Rubicon if we interpret the EU project as a venture into the realm of the constitutional and/or the federal without landing on the opposing shores of statist paradigms. Many have been inspired by Neil MacCormick's flagship pluralist philosophy to resolve or at least address the tensions of a multiplicity of competing legal orders with overlapping supremacy claims, thus developing a growing corpus of thought on constitutional pluralism (Kumm 2012; Maduro 2001; Walker 2002; Wiener et al. 2012). Others have built on the insight that the EU can be understood as 'constitutional synthesis' resting on the plurality of national constitutions, which are nevertheless 'seconded' to the common constitution (Fossum and Menendez 2011). As succinctly put by Ben Crum in his 'two-level' theory, supranational democratic constitutionalization cannot succeed by aiming to replace national constitutions, but only by being built on top of them (Crum 2012). Crum invokes the Rawlsian idea of 'reasonable acceptability of the exercise of power' built upon national political structures (Crum 2012).

All these approaches share a concern with preserving the boundary between a non-statist and a statist reading of the EU's legal-constitutional order—not crossing the Rubicon—although they exhibit subtle variations regarding the degree of institutional and normative hierarchy characterizing the system as a whole. The question remains whether a truly pluralist ideal for governance beyond the state, including under the demoicratic label, should allow for *any* constitutional referent (Krisch 2010; de Burca and Weiler 2012). In this sense, it is possible to argue 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 interstate realm (Eleftheriadis 2012).

Demoicracy's Normative Benchmark

We are still left with the question: why should we care? Why should some version of the democratic imperative constitute the ultimate benchmark for appropriate change in the EU polity? Piattoni discusses this question in her introduction by assessing what she sees as alternative (but ultimately compatible) normative benchmarks to democracy, including, inter alia, non-domination, tolerance, and broader conceptions of justice. While she argues that democracy ought to take precedence, my starting point is slightly different. I understand the EU as a project grounded in fundamental normative commitments which are not alternatives to democracy but precede it. That democracy progressively becomes an imperative in the EU must be read against this backdrop which thus constitutes a kind of normative matrix through which to interpret the precepts of democracy in a transnational context. In other words, the normative underpinning of the *transformative*

145

Kalypso Nicolaïdis

demoicratic version of democracy can be found in the EU's original *raison d'être,* namely peace between nations.

The political ethics which stand as a prior to demoicracy (rather than an alternative frame) is simply the post-war Kantian ideal to institutionalize 'peace' and translate it into a set of viable institutions for European cooperation (Ferry 2005). I have discussed elsewhere (Nicolaïdis 2012, 2013) how the Union's ideal type can simply be inferred from what Europeans sought to escape—subjugation by the strongest and denial of one's neighbours among the peoples of Europe. This has shaped both the imperative of *transnational non-domination* as an anti-hegemonic, not an anti-national, project; and genuine *transnational mutual recognition* as a basis for governing together but not as one. Both norms are prerequisites for transforming a *peace Union* into a *democratic polity*. They imply for instance that Germany today cannot simply address its hegemonic dilemma (how not to turn desired responsibility into undesired coercion) by replacing horizontal power from Berlin with vertical domination from 'Brussels'. In her introduction, Piattoni reminds us of Pettit's admonition that the best guarantee against 'robust and resilient' non-domination are constitutional provisions that allow for the contestation of the laws on the basis of which interference may be exerted, through screening and sanctioning devices against the interfering agents and the fact that the interests and ideas of the interfered people are fully tracked, though not on a sectional, but on a common good basis (Pettit 1997). At the same time, mutual recognition demands that the implications of the actions of one polity onto another be taken into account, albeit not as if the interests of both sides were merged into one (Honneth 1995). To a great extent, the kind of checks and balances that we see exercised through EU institutions can be viewed as imperfect translations of this twin imperative. This dual emphasis and balance between two normative pillars also speaks to the affinity of demoicratic polities with both liberal and republican ideals.

In the strictures of this volume, the two fundamental norms of transnational non-domination and recognition are permissive norms: they constitute the normative backdrop for the kind of non-mimetic democracy beyond the state that we are discussing here. In particular, they speak to a particular congruence on the two questions of democracy and justice beyond the state as the fundamental normative compass for enhancing the EU's political legitimacy. Ideally, political institutions ought to realize a fair distribution of the benefits and burdens stemming from the EU *as well as* an equal participation in the decisions that lead to such fair outcomes. Justice-comes-first proponents will argue that the latter is simply a means to an end while democracy-comes-first proponents will counter that democratic processes

146

constitute the only legitimate way of arbitrating between necessarily dispa-rate notions of justice. But the two can be viewed as autonomous in that the intrinsic value to democratic self-determination (rather than instrumental liberal value) does not depend on what is achieved by that and, vice versa, just outcomes can be attained through different political means. If democ-racy is fundamentally a matter of just procedures, in particular grounded in the right to justification, then we must ask in which fora are such justi-ficatory processes best deployed (Neyer 2011; Neyer, this volume). In this sense, demoicratic procedures appear to be an indispensable element in the realization of political equality amongst members of a political order organ-ized between peoples endowed with different levels of power (Fraser 2005; Viehoff and Nicolaïdis 2015).

In this spirit, the demoicratic ethos leads us to revisit the parameters of what is often referred to as *consensus* democracy. To the extent that we refer to *demoi* and not only states, consensus democracy is ultimately about incorpo-rating vulnerable constituencies. The normative benchmark for demoicracy is an inclusive one—no EU constituency left behind, except for those beyond the pale. Publics with widely different expectations of integration can and should feel part of this EU polity. Call them if you will, *the Bad,* construc-tive Eurosceptics who are fond of localism, decentralized politics and the integrity of their own democracy; *the Small,* citizens of smaller or periph-eral states for whom the Union should remain the ultimate bulwark against neighbourly domination; and *the Other,* non-European others for whom the preservation of multiple national *demoi* within Europe in a polity commit-ted to self-determination is itself a guarantee against external and internal neo-colonialism (Nicolaïdis et al. 2014).

Demoicratic Institutions

How then is the spirit of a polity predicated on the mutual recognition of the peoples that compose it and their commitment to non-domination, to be translated into legal and institutional terms compatible with the rule of the peoples? There is no ready blueprint on how to translate such a broad ethos into a litmus test for the changing pattern of European integration under the EU crisis. Indeed, the spirit of open-ended transformation is to recover the contingent and unpredictable nature of genuine politics (Van Middelaar 2012). This is true wherever politics takes place, in capitals, in cit-ies, in assemblies, or in subterranean spaces. Nevertheless, the demoicratic premise clearly calls for a reinterpreting of classic democratic architectures when we scrutinize the EU's democratic credentials.

147

Kalypso Nicolaïdis

The EU's 'Demoicratic Gaps': The Sirens of Mimetism

To the extent that the EU can be said to be a demoicracy in the making, the institutional architecture set up by the Treaty of Rome can be considered as its core institutional *demoicratic foundation*. We start with an array of more or less integrated national *demoi*, their representation *as states* at the European level through the Council and European Council and *as citizens* through national and European parliaments; national parliaments choose ways of holding their governments to account; and the independents, for example the European Court of Justice and the Commission, shape in collaboration with the other institutions the kinds of disciplines that hold the whole together. How can this system be described as both quintessentially demoicratic and yet demoicratically flawed?

In a nutshell, the bare-bone architectural description of the EU is underdetermined demoicratically. 'Demoicratic gaps' grew over time as these institutions were deployed to both manage and spur growing interdependence through the growth of supranational EU competences. This in turn ought to have triggered their more systematic grounding in national democratic processes, in other words ought to have deepened the EU's demoicratic character. The less this happened the more the growth of competences has undermined the EU's demoicratic foundations—an effect magnified by the increased pressures for mimetic state-like institutions at the EU level (Cheneval et al. 2014; Nicolaïdis 2014a). Moreover, 'demoicratic gaps' can be found not only between the architectural foundations and subsequent practice, but also between these foundations and evolving conceptions of the democratic standards by which the EU ought to be gauged. In assessing them very briefly, I distinguish between two core dimensions: first, *transfer of power (competences)*: the preservation of state powers in its relation with the supranational centre to reflect both the self-determination and interdependence of individual peoples; second, *sharing of power (at the centre):* the balance between institutions at the supranational level to reflect the imperative *governing together but not as one.*

On the first front, concerning transfer of power, a number of theoretical frames can provide analytical foundations for demoicratic theory. First, as thoroughly discussed by Benz in this volume, the scholarship on the EU as a multilevel governance system (MLG) gives us the landscape on which to chart our 'deficits' by highlighting the ways in which the multiplication of different loci of power and the connection between them create potentially incompatible incentives as well as accountability gaps in the ways in which these incompatibilities are adjudicated. Suffice to say that a demoicratic frame shines a particular light on this landscape, both by stressing imbalances between vertical and horizontal transfers of sovereignty as means of

148

addressing interdependence, and by giving pride of place to a single 'level' of governance, namely the nation state.

In doing so, it calls for special emphasis on one democratic pathology in particular, namely the old Weberian tension between the (legitimate) recourse to expertise in government and the managerial capture of government functions. Managerialism—or technocracy without democratic accountability—is arguably both the greatest obstacle to demoicratization in the EU and its core target. It has been enabled by messianic hubris, or the sense that the end or mission to deliver peace and prosperity would legitimately justify the means, namely the obfuscation of politics and democracy (Weiler 2012). Within a vast historical literature on these issue (Smismans, this volume), Peter Lindseth's work on Europe's 'administrative settlement' provides an especially fitting legal–historical micro-foundations for demoicratic theory (Lindseth 2010, 2014). Accordingly, path dependency matters. While demoicratic in a formal sense, that is, regarding member state power, the EEC was certainly not demoicratic as a matter of political praxis. For it was founded on the belief that the various *demoi* needed to be kept at bay for European countries to be able to pool their administrative resources at the service of renewed prosperity on the continent. Peace, wealth, and stability were the values governing the enterprise, not democracy, transparency, and participation (Schrag 2013). The fact that the EU initially failed to couple administrative managerialism with strong representative safeguards may well have constituted a necessary (democratic) sin. Indeed, its overarching demoicratic institutions at the centre served to mask the problem for a long time, resting as they did on the assumption that technocracy was subject to domestic controls through the Council. Critically, the EU's progressive and growing abidance with the tenets of neo-liberalism underpinning the 'completion' of the single market greatly contributed to the capture of EU law-making by market logics and transnational corporations and private actors. For managerial Europe to undergo a demoicratic mutation, European technocrats need to accommodate a basic principle of no delegation without representation in a multilevel and multicentric form. If we assume, with the strong version of the theory, that only 'mediated legitimacy' between national principals and supranational agents obtains, this means genuinely re-anchoring decision regarding market management in popular domestic politics.

On the second front, that is, *sharing of power,* a critical 'demoicratic gap' in the EU as it evolved over time lies with what we can call the functional majoritarian pressures and the extent to which practices were able to resist them. This question is especially critical when we consider the need to preserve smaller states' power to reflect the self-determination imperative of *all* individual peoples (Magnette and Nicolaïdis 2003). In this regard, those who describe the EU as a 'consociational regime' (e.g. Gabel 1998) are right in

149

Kalypso Nicolaïdis

that the functioning of the EU rests on the acquiescence by 'bigger parties' to forgo the majority logic and develop procedures favouring compromise. And yet, the consociational analogy may be too weak given the nature of the 'groups' in question. 'Peoples' who continuously aggregate and trade off their references within the confines of their own nation state believe that they owe their political existence to territorially bound 'consensus communities'—the Rawlsian 'overlapping consensus'. In theory, they can hardly be expected to routinely interact among themselves in majoritarian games and engage in preference aggregation at the EU level without revisiting their own overlapping consensus internally. And the EU then cannot but seek to express through its policies this 'overlapping consensus of overlapping consensuses'. Thus, as Fabbrini asserts in his chapter, if we see the EU as a separation of power system which expresses this layered process (an assertion which itself would deserve a longer discussion), it 'cannot operate through the formation of a single cross-institutional majoritarian coalition'.

Might we envisage a progressive evolution from consensus democracy towards majority rule, as elite consensus gives way to increased trust and genuine recognition between peoples? A key consociational insight is that groups remain separate because it is in the interest of the elites to keep them separate so long as these elites can agree among themselves. In this sense, a demoicracy is precisely a kind of state-based consociational democracy.[6] Arguably, and even if the crisis has arrested this evolution, the EU could evolve beyond the constraints of the 'community method' and of a 'semi-consociational democracy' to that of a 'semi-parliamentary democracy' where majority votes would be embedded in transnational public discourse and deliberation thus breaking the logic of elite consensus (Majone 2014). And yet, from a demoicratic perspective, even under conditions of heightened mutual trust, the line between areas where consensus and majoritarian democracy need apply is critical; even in areas of majoritarianism, proxies need to be found to check and compensate the subservience of overruled states to majority interest. In short, a demoicracy relies on consensus-making institutions but is undermined by the monopolization of these institutions by the elites.

Beyond Mimetism: National, Transnational, and Supranational Realms

Against this theoretical scaffolding, we can now turn to specific implications in three concurrent realms. The first is the primacy of *national* democratic self-government. European demoicracy starts with and rests on

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[6] I am grateful to Simona Piattoni for drawing my attention to this point.

the health and integrity of national democracies, the *cratos* of individual *demoi*. The crisis has led us to ask with ever greater urgency what are the minimum requirements for the member state polities to maintain their own democratic integrity. In a demoicratic frame, the EU ought to adopt a 'do no harm' principle and test its planned interventions in domestic arenas against it, thus weeding out interventions that are democratically counterproductive or actions with negative spillover effects on national democracy. More ambitiously, the EU ought to mitigate rather than magnify the pathologies of its national democracies—executive dominance and state capture, elitism, nepotism, and social inequalities. Since understandings of democracy vary in time and context accordingly to national or local traditions, ideas, and practices, we need also say that a demoicracy ought to accommodate the deployment of various democratic ideals and strategies for approximating such ideals across the plurality of democracies that compose it.

Second, and contrary to vertical federal models, a demoicracy supplements an emphasis on the national with *transnational* democracy: the *demoi* so protected ought not to be considered as *any old demoi*. Demoicracy is about the common *cratos*—the shared rules and rule making—even if such *cratos* relies for enforcing its authority on a fragmented and diffuse multistate machinery. So the type and extent of *delegation* of power to the EU level ought to be determined by the need to manage not only economic but also *democratic interdependence*—which implies that the EU should nurture and maximize positive externalities as well as discipline negative ones. Because we value member states as the sites where democracy and social justice have been progressively and imperfectly shaped historically, states should interact on fair term and their actions be democratically compatible. Addressing economic or democratic failings in a member state can only be sustained if done democratically, that is, through a conversation between peoples.

Third, the way in which the first two realms are to be balanced is in turn dependent on what happens *at the supranational locus of democracy*. The current institutional make-up of the EU provides an adequate scaffolding in balancing representation of states (Councils) and citizens (European Parliament) with independent bodies (Commission, Central Bank, Court of Justice) in charge of getting states to internalize externalities and enforcing the rules they agree to in order to do so. It is this dual nature of EU supranational governance—representative and independent—which needs to be demoicratized.

A mimetic approach to the democratic deficit usually involves two blind spots: a focus on the first (representative) and not the second (independent agencies) and a tendency to approximate national representative patterns, of which the European Parliament's bid to elect its 'government' (e.g. the head

151

Kalypso Nicolaïdis

of the Commission) is the latest manifestation. Instead, the demoicratic lens can be deployed along the two dimensions of supranationalism.

First, the *pooling* of sovereignty in representative bodies must be compatible with the need for authorization of individual *demoi.* Hence, a *demoicratic* 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 *demoicratic* version of 'federal safeguards' those doing the representing and accountable for it are also engaged in governing at the state level (in this sense the European Council is not and cannot be a senate). Moreover, small states must not be bullied into submission through executive authoritarianism. Finally, representative bodies must privilege consensus over competitive democracy for primary law as well as secondary law within the bounds of 'reasonable disagreements'. In practice this may mean greater use of loopholes, opt-outs, differentiated regulation.

Second, the *delegation* of sovereignty—how the Commission, the European Court of Justice, and the European Central Bank are empowered to act as mediators or enablers of political action—ought to be connected to some genuine democratic politics to compensate for the necessary limitation of representative dynamics in such a complex polity. Democratic criteria of transparency and accountability need to permeate the nomination, mandate, interpretative, and enforcement strategies of these bodies (Vauchez 2014). This is where demoicratization, that is, attempts at controlling the centre by national political elites beyond executives as well as the latter by national publics comes into tension with messianic managerialism. The quantum leap in EU competences associated with the governance of EMU brings this tension into ever sharper focus.

Relations, Trade-offs, and Horizontality

While the above provides for guiding institutional principles in each of the realms in question (national, transnational, supranational), it may be the case that 'architecture' is not the right analogy. Instead, we need to recognize that transformative dynamics in a demoicracy are about *relationships* and *trade-offs* rather than isolated legal–institutional features: a demoicracy is less about each locus of power individually than about their relationship (Nicolaïdis et al. 2014b).

In this sense, purely supranational or national logics are not sustainable and need to be infused with transnationalism in order to reflect the demoicratic character of the polity. So, for instance, it may be heuristically useful to separate analytically the interplay of the organs of government situated at the supranational level, each representing different *vertical* forms of delegation of power and representation, from the *horizontal* and decentred interplay

152

of member state institutions among themselves. The evolving quality of EU demoicracy depends on the *interaction* between vertical and horizontal demoicratization through networks. In other words, in a demoicratically constituted polity, we should generally expect a horizontal set of relationships to be embedded in vertical delegation.

The hallmark of a demoicracy is the combined emphasis on minimizing vertical centralization to satisfy certain shared functionalities and maximizing horizontal interplay over time. We can ask to what extent the horizontal interplay is more or less embedded in the vertical design: the European Council for instance is the epitome of horizontal interplay embedded in vertical delegation. Transnationalism as the backbone of demoicratization is therefore not the (horizontal) alternative to (vertical) supranationalism but rather a feature of demoicratic supranationalism. If the need to balance respect for national policymaking autonomy with either transnational rights or externalities calls for a deepening of horizontal interactions, more or less guided or constrained by supranational coordination, this must be reflected in the ways in which the EU's institutional architecture embeds the horizontal in the vertical. The EU's demoicratic credentials may be facilitated by its institutional architecture but they are ultimately bolstered through praxis rather than a priori.

Transnational links between same-level institutions and actors characterize all types of policymaking in the EU. But one can argue that they are especially critical in core areas of statehood and redistributive policy realms where governments have searched for alternative modes of cooperation than majoritarian and legally binding policymaking to protect national autonomy. In soft, coordinative forms of policymaking transnational networks need to be demoicratized through multiple channels.

Ultimately, transnationalism needs to be taken *all the way down*. If the EU's basic constitutional demoicratic order constitutes the *prerequisite*, and its legal–institutional transformations the *enabler* of demoicratization, its currency ultimately resides with individuals' equal access, participation, and representation in the politics and policies that affect them. And in this perspective, demoicratic citizenship is a demanding ideal (Hurrelmann 2015; Welge 2015).

Federal Resilience and Boundary Questions

That the EU had reached a constitutional settlement of sorts before the euro crisis through fifty years of mutual accommodation between its legal and political systems did not mean that the EU's form of federal union was necessarily stable (Weiler 1991; Maduro and Wind 2015). The sources of durability and instability usually associated with federal systems, namely state shirking and federal overreach have been present all along (Kelemen 2008).

153

Kalypso Nicolaïdis

In our metaphor, they have constantly pulled the EU towards one or other shore of the Rubicon (Wiener and Diez 2004). But undoubtedly, this twin source of institutional instability has been amplified in the uncharted waters of EMU crisis. To be sure, federal robustness depends on the various ways in which institutions defend authority boundaries between the units and the whole from opportunistic transgression (Bednar 2009). But what if the polity itself is captured by agents for whom transgression is itself the goal? It can be argued that the EU had entered the cyclical logic of all federal constructs when the crisis triggered a new wave of centralization (Donahue and Pollack 2001). This is because the EU is not a state, but a federal contract in which both centralizing and decentralizing moves are not yet seen as normal cycles of federalism, but rather interpreted by opponents and proponents as existential moves away from the equilibrium.

Boundary questions have to do with identifying under what conditions we can say that the EU is or is no longer a demoicracy—or indeed is being brought back to its 'demoicratic character'. We can identify trends in the EU which both strengthen and weaken such demoicratic character and may cumulatively change its very nature away from a demoicracy in the making. In short, as the institutional fallout of EMU reform becomes entrenched, the tension may become too great between the grounding of the EU in its separate *demoi* and the upscaling of their common institutions and policies. This is the demoicratic paradox: just as demoicracy becomes more necessary it also becomes more vulnerable.

How then do we know when a polity like the EU may have crossed the Rubicon? While the cardinal guiding principles for a demoicratic polity have been summarized elsewhere (Nicolaïdis 2013), we can state the boundary litmus test as follows. First, do the individual *demoi* retain *constituent power*, for example through veto, exit, and proxies such as enhanced cooperation? In this regard, we may be at a critical juncture when, for the first time, a national (British) veto was bypassed for treaty change during the negotiations over the 'Fiscal Compact' in December 2010 even if the dynamics at hand were closer to a consensual opt-out. Whether the Rubicon has been crossed (the boundary question) will depend in part on upholding the right of exit as a clear and present option. Second, is the delegation of competences to the EU democracy-hollowing for the member states? Finally, is the evolving institutional balance at the centre respecting imperatives of non-majoritarian representation?

Democratic Dilemma Through the Lens of Demoicratization

In light of these broad principles and benchmarks of demoicracy, I close this chapter by laying out a number of areas amenable to demoicratization today

154

in the EU (see also Nicolaïdis et al. 2014). The analysis of demoicratization dynamics addresses the changing prominence of the EU's demoicratic features over time and the factors that might affect its demoicratic transformation. Demoicratization strategies are meant to respond to the increased pervasiveness (actual or perceived) of EU disciplines not only given *how* they are adopted (procedures) but given what they are (substance). In doing so we must centrally acknowledge the structural tension between multilevel policymaking and parliamentary democracy analysed by Benz and others in this volume and ask how a demoicratic approach can help overcome this tension. In better balancing the external pressure and commitments derived from interdependence with the demands derived from domestic politics, a demoicracy needs to rein in on both sides. It must correct centralizing trends without compromising effective policymaking; and it must correct domestic insulation without alienating citizens. One common thread is that in doing so we do not necessarily have to choose between institutions and their relative power: redundancy is a good thing in a demoicracy. Checks and balances can be crafted in many different ways. Balancing executive power can occur through both the European Parliament and national parliaments as well as other institutions; soft coordination can precede, accompany or follow hard-law-based cooperation; a union can be both a single polity and allow for enhanced cooperation; enhancing parliamentary democracy does not mean shunning other modes of democratic control and accountability. I will explore a sample of these tensions in turn as they play out in the crisis context.

Discretion: Technocratic Disciplines vs Interstate Commitments

To be sure, it is typical of the role of international and supranational law to alter choice sets faced by different states and therefore their publics through international commitments as self-binding mechanisms. Much of the EU story, as with all federal construct, has been to try to get 'national discretion' right through the use of directives leaving varying degrees of margin for manoeuvre to member state interpretation when it came to regulating markets. At the same time, the overall margin available to state capacity has been shrinking over time with the asymmetric liberalization of capital flows and concurrent decrease in taxing powers. The critical governance move following the euro crisis has been to try to play the same game with regard to fiscal disciplines for member states. In this case, however, the result has been a widespread feeling of domestic democratic pre-emption as shared constraints no longer were perceived as voluntary *commitments* but as unilateral *disciplines*. What kind of discretion is left by supranational legal and para-legal processes to democratic politics at the national level? How is this discretion

Kalypso Nicolaïdis

used, and under what conditions can EU decisions supplant decisions taken through domestic democratic processes? As the workings of EMU unfold with Commission and Council joining to dictate the fiscal choices of the member states, how do we distinguish between (legitimate) commitments and (illegitimate) disciplines?

A demoicratic answer resides in one simple precept: supranational governance is supposed to be deployed to limit the arbitrariness of its constituent actors' policies *but not* their capacity to decide among meaningful *alternatives*—choices which may need to be constrained when it comes to free-riding on neighbours or on future generations, but which must nevertheless remain meaningful choices. European law, like international law, aims at addressing the interests of European peoples and not only states—and indeed we understand peoples here to mean both peoples as collectives and peoples as individuals with rights and obligations. When powerful governments collectively manipulate 'the shared law' short of a genuine and democratic mutual engagement process, the risk is great that the law no longer serves a demoicratic ethos but only the interests of governing elites. Twenty-first-century democracy in general and its demoicratic variant in particular (giving as it does pride of place to local bargains) is about reinvesting the political as the ultimate sphere for solving problems of redistribution and first order value conflicts, against all the traditions that fail to subscribe to such an ethos (from nineteenth-century socialist ideology to ordo-liberalism). A decision-making architecture which allows for monolithic choice corresponding to the preferences of parties that do not bear the consequences of these choices cannot be said to be demoicratic.

Of course, the 'disciplines' imposed on states through mechanisms like the European Semester are themselves voted in councils of ministers as well as European councils by European executives. So the demoicratization question brings us back to executive capture in the EU and the extent to which dis-embedded politics at the European level can be re-embedded in national politics—demoicracy calls for the domestication of European politics.

Delegation: Legitimation vs Control

Ultimately, and however much attention we may pay to the discretion left to states, the process of delegation remains powerfully motivated by a functional need to give up control of executive and administrative functions as a credible commitment strategy (Moravcsik 1998). The demoicratic question also has to do then with the ways in which such delegation is constrained from the extreme independence of certain agents (Majone's trustees) to outright and systematic control on the part of states as principals. A supranational regulatory power, no matter how seemingly technical, deals with the

156

very essence of politics—the allocation of scarce resources or contests over values—as does most regulatory power in modern administrative governance (Lindseth 2010). Hence a demoicratic perspective grounded on subsidiarity does not necessarily exclude extensive delegation. But as discussed by Piattoni in her introduction, the notion of delegation alone is certainly an insufficient basis for EU democracy (Menon and Weatherill 2002; Piattoni, introduction to this volume). Instead, we need a range of mechanisms through which political actors *at the lowest level possible and as transnationally as possible* can exercise their control over the supranational through various kinds of supervision, coordination, or more generically oversight.

The core question is the following: when should these mechanisms serve as loci for reason-giving and accountability and when, on the contrary, is control and veto power of the essence. Self-evidently, the more supranational delegation relates to the core of sovereignty—taxing, spending, and borrowing—the more the latter becomes desirable. The catch, of course, is that the character of these various mechanisms of legitimation through oversight varies among numerous states and other agents. Demoicracy is thus also about national discretion in how supranational discretion is handled.

Governance: Community Method vs New Modes

In a context of overall weak accountability of executives and administration to representative organs and citizens, it can be argued that the current drift away from the traditional Community Method renders a problematic situation even worse. As Benz argues in this volume, new modes of governance like the *Open Method of Coordination (OMC)* have often been considered as integration by stealth, since the Commission can intervene in policies without powers being allocated to the European level by primary law. Compared to tightly coupled structures based on the treaties and endowing national parliaments with the right to scrutinize national representatives in the Council, loosely coupled structures are evidently less stable and increase the likelihood of authority migration (Benz, this volume).

Yet, these so-called new modes of governance may have been tolerable to address areas traditionally outside EU competences like poverty and unemployment where they served to empower actors, often non-governmental, who had been marginalized domestically. But what of the new modus operandi regarding EMU and fiscal oversight—are they also more prone to escape national parliaments and feed the autonomization of the supranational sphere?

Admittedly, the main question that has preoccupied decision-makers designing institutional responses to the crisis has been how to prevent member states of the eurozone from falling into Troika–ESM territory so as to be

Kalypso Nicolaïdis

able to subject them to disciplines short of credit conditions. In general, the economic governance framework designed to address the euro crisis for all members of the eurozone is complex and opaque with a multitude of 'instruments', laws and regulations, funds with changing acronyms, and numerous institutional arrangements to accompany them (for a review see, e.g. Armstrong 2013). These developments have in several and important ways contributed to putting European demoicracy in peril—but they can also be ameliorated.

It can be argued that the modus operandi of EMU governance stems from a disjunction between short-term recommendations regarding fiscal policy as called for in the Stability and Growth Pact and those linked to long-term structural policy embedded in the Lisbon strategy—each corresponding to different architectural set-ups and decision-making processes which before the crisis did not happen at the same time nor were drawn by the same people. More importantly they did not belong to the same *world of governance.* While the first occurred under the Community Method with its supposed greater legal authority, the second was deployed under the OMC. Notably, The main EU sets of directives setting out the new EMU governance framework (the 'Six-Pack') in effect brought these two logics together under what is now widely known as the European Semester which serves inter alia to implement country recommendations.

While scholars have disputed for the last fifteen years the relative merits of the traditional Community Method and of the OMC, this key innovation has blurred the distinction between rules-based and coordination-based governance in the EU in fascinating ways. This may have been a good thing: in an evolving demoicracy, the consensual development of recommendations is desirable especially if they do not have force of law. Moreover, there had been attempts to strengthen the preventive arm of the Stability and Growth Pact well before the beginning of the crisis. After all, the idea of synchronizing fiscal and structural assessment of the member states corresponds to a sense that there is a realm of post-legislative governance that can only be implemented through hybrid forms of governance.

But, as Armstrong points out, this has happened with a twist. The OMC has been hardened through the Community Method, with considerable discretion left to the Commission in the interpretation and monitoring of the rules as well as the allowance of fines in case of infringement (Armstrong 2013). In other words, the management of the euro crisis has allowed the wolf of supranational democracy pre-emption to penetrate the EU den in OMC sheep's clothing. As discussed above, the question is not whether EU institutions are legitimately entitled to design some of the disciplines that will make shared membership of EMU sustainable. The question is rather whether in doing so, they ought to act as if there could be one solution, one

158

'right approach' to macroeconomic policy as if it could legitimately be sub-tracted from politics and the collective resolution of conflict in the demo-cratic sphere.

This mindset has been on display repeatedly since the beginning of the European Semester process, on issues ranging from the indexation of wages to pension reform. But there is a silver lining in the kind of horizontality that accompanies these developments. While initially, the kind of innova-tions we observe with the OMC tended to trade increased autonomy from governments against decreased authority, the European Semester has moved back in the opposite direction but without reintegrating the kind of par-liamentary control which at least in theory accompanies the traditional Community Method. When it came to other realms of the OMC, analysts had been able to observe that increasingly, EU agencies practising various form of open cooperation were more politically accountable to the member states and their representative institutions than the Commission (Borras and Radaelli 2014).

If there is indeed a trade-off between the intensity of exchange of exper-tise and opinions between peers across borders as a form of transnational learning—and vertical accountability—perhaps then a demoicratic perspec-tive needs to invest in the multiple ways in which peer networks can be made more accountable especially when handling sensitive redistributive issues.

Institutions: Intergovernmentalism vs Supranationalism

The macro-institutional question lurking behind the controversy over respective domestic vs supranational discretion has perhaps been more con-troversial among scholars than European publics. The management of the euro crisis has created much ado about the virtue of intergovernmental-ism, deliberative or otherwise, vs the virtues of parliamentary democracy in Europe. On one side some defend 'the powerful capacity of the European Council—through its representation of individuals democratically account-able to their own national electorates—to seek also to promote a vision of a common European good' (Armstrong 2013). On the other side, others argue that the representation deficit when it comes to citizens' views in EU poli-tics needs to be filled from a directly representative body. And that because governments cannot be counted on to do the right thing on their own 'a democratic (and that is necessarily: a demoicratic) EU requires a European Parliament that is a real counterweight to the national executives—without copying federal nation-state democracy'—under a weaker version of demo-icratic theory, legitimacy resources need to be found at all levels of govern-ance (Gaus 2014). Yet, arguably neither parliamentarization of the EU nor conversely intergovernmentalism are per se are more or less demoicratic. In

159

Kalypso Nicolaïdis

short, which of the contested meanings of representation is most faithful to a demoicratic character of a polity (Pollak 2007; Rehfeld 2009)?

To be sure, a demoicratic lens does recognize governments are the prime representatives of their peoples and therefore puts great store in classic indirect legitimacy as one expression of the authorizing power of individual *demoi* in the system of European governance (Crum and Curtin, this volume). This logic has reached its limits, however, first on the formal EU side, as the shrinking scope for the veto led to partial severing of the link between *demoi* and Councils; but also on the side of domestic politics, with the governments' legitimate claim to 'represent' the whole clashing with the heightened democratic demands emanating from *demoi* not only as 'represented' but including oppositions, fringes, and disenfranchised groups. Demoicratization therefore is about entrenching more *cratos*-friendly proxies for national governmental vetoes while at the very same time broadening the reach of *demoi*-representation into European politics starting with parliaments.

In short, we need to move beyond institutional fundamentalism. If one side or the other is not per se more demoicratic, what matters is twofold: first whether the respective institutions are in-and-of themselves actually and perceived to be demoicratic, including the extent to which they institutionalize or mitigate power asymmetries among member states, represent a broad array of citizens' interests and cultivate citizens' access to their decision-making procedures. The European Council may be the most explicitly demoicratic given its two-faced nature as representing the member states in the EU and representing the supranational at the national level. A demoicratic defence of the power of the European Council is predicated on the ways in which European leaders have themselves Europeanized their domestic politics. But also the supranational institutions per se may be seen as demoicratic institutions if they serve as hubs or connectors between national representations and fora for interaction between states and peoples.

Second, what matters is also the kind of relationships that develop between the 'table' around which governments bargain and the 'assemblies' within which representatives of all sides bargain too (Lord 2001b). To be sure, the European Parliament may be said to be more inclusive in its representation: the Parliament hosts national domestic oppositions and Eurosceptics in contrast with the Councils; but the contrast may be overblown since what is gained in representation may be lost in the process of parliamentary decision-making whereby the aggregation of preferences consists in a collusion of the centre-right and centre-left. As a result it may not be surprising that the first president of the Commission elected by the European Parliament on the basis of EU-wide election results, is himself a creature of the Council. High demoicratic credentials will come through praxis rather than his mode of election.

160

Representation: Demoi in National vs European Parliaments

Even as one may advocate a continued balance between intergovernmental and parliamentary democracy at the centre, much controversy remains as to the relative merits of national parliaments vs the EP. Increasingly, analysts have converged in admitting that the two levels form of an emerging 'multilevel-parliamentary field' (Crum and Fossum 2009) or 'multilevel EU parliamentary system' (Winzen et al. 2014) characterized by the co-development of national and European parliaments, but according to a great variety of codes and practices. According to Crum and Fossum national parliaments and the European Parliament form a combined system of citizen representation in which European citizens have some of their concerns represented at either level.

It can be argued however that national parliaments ought to form the backbone of a functioning demoicracy. Both Benz and Neyer in this volume stress the importance of existing developments regarding the changing role of national parliaments—a point which has received much scholarly attention of late and is congruent with a call for Europeanizing domestic politics. In this view the real tension lies not in Council vs European Parliament since both sides are part and parcel of a multilevel parliamentary democracy, but in whether the national are to be given pride of place as 'the most important sites for democratic decision-making', with the European Parliament, the Council, and the Commission simply filling regulatory gaps that national parliaments leave out (Neyer, this volume). A demoicratic lens invites us not to take the virtue of national parliaments for granted but instead to ask under what conditions they can express a greater capacity to internalize the externalities that they respectively create for each other; and what collective action they can take together in order to hold the various councils accountable.

In this light, supranational institutions in turn can be viewed in two ways: as alternative seats of power and decision-making jurisdiction that occupy the upper tier of governance; or as facilitators of horizontal transfers of sovereignty and locus for the kind of mutual opening of polities called for in a demoicracy and facilitated by trans-European parties and the likes. Turning the logic around, a demoicratic frame highlights not only the horizontal foundation of a vertical ordering of authority, but also the vertical foundation of a horizontal sharing of authority—a collective arbiter that exists alongside and can draw on shared norms.

As Benz discusses in his chapter, strengthening vertical accountability relations between executives and parliaments without corresponding development of the horizontal dimension of representative democracy is bound to make agreement more difficult. National parliaments are better able to seriously consider concessions if, first, these concessions' costs in national terms

are seen to be significantly lower than the benefits to the others; and if, second, they can trust in inter-temporal reciprocity. In a demoicracy, we need to consider every possible mechanism to improve relations between parliaments in such a way as to make these calculations routine.

In the end, we should not have to decide which of national or European parliaments ought to be on top. Instead, to be consistent, a demoicracy outlook centred around self-determination needs to leave open all the possible ways for the separate *demoi* to assert themselves and 'govern together' in the shared *cratos*. The multilevel parliamentary system ought to accommodate both the weakly involved national parliaments or EU-friendly parties which see empowerment of the European Parliament as a legitimate compensation for their own loss of influence, those who countenance a cooperative relationship and those who still treat the European Parliament as a rival, especially strong parliaments and ideologically driven parties; some champion their role themselves, others rely on institutional allies—*pace* the German Constitutional Court; some see a trade-off in relying on the European Parliament as opposed to coordinating with their peers in other countries, others do not (Nicolaïdis et al. 2014). It could be argued that conflicting views found within national parliaments on appropriate representative structures in the EU constitutes the core of demoicratic politics in the EU (Winzen et al. 2014). Demoicracy therefore means accommodating variations in national parliamentary involvement rather than codifying them. Whether such variation could accommodate a third chamber (or 'European Senate') made up of national parliamentarians, a proposal which would appear clearly demoicratic, remains to be seen.

Conclusion

This chapter has sought to provide an account of demoicratic theory as both a positive and normative take on the current predicament of the EU, namely, how to achieve democratically sustainable integration at a time when competences are increasingly centralized. After positing the demoicratic premise, that is, 'governing together but not as one', it lays out the normative-historical foundations upon which a demoicracy like the EU ought to be based; it asserts that EU institutions do provide it with demoicratic foundations but that these are only the bare bones of a demoicracy; it then shows how in order to gauge its continued demoicratic foundations we need to identify practical instances of 'demoicratic gaps' which the EU exhibits; and it exposes the risk of trying to fill these gap in a mimetic manner moving on instead of asking how the EU can be improved qua demoicracy. Thus, the EU is at best a *demoicracy in the making*, possessing the institutional-legal building blocks for such a polity

but not the deep socio-political and ethical grounds for a truly demoicratic political praxis (Howse and Nicolaïdis 2008).

To be sure, the current discussions on the governance of EMU can be seen as an extreme and skewed version of the wider, long-standing debate about the political architecture of Europe. I have argued that EU politics are at their best when avoiding crossing the Rubicon to a federal state while engineering the kind of mutual responsibilities befitting a polity still grounded in the sovereign autonomy of its *demoi*. As a third way contrasting with both state-based and supranational-based democracy, EU demoicracy may have been stretched to its limits by the kind of dependencies and governance requirements associated with the monetary union. It may even be argued that the monetary union is not soluble in demoicracy. I believe otherwise. Under a demoicratic vision, the EU's democratic architecture should not be primarily grounded in top-down disciplines and vertical sovereignty transfers but rather in commitments embedded in domestic politics accountable to the peoples of Europe, together as well as separately.