

EUtopia or Aporia? Europe's Democracy in Crisis ¹

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“To say that a *poros* is a way to be found across an expanse of liquid is to stress that a *poros* is never traced in advance, that it can always be obliterated, that it must always be traced anew, in unprecedented fashion.”

Sylvie Kofman in *Post-Structuralist Classics*, Andrew Benjamin, ed, 1983

Contemplating the sea of possible futures ahead of them after the War, Europeans argued intensely over the better route, the way “across an expanse of liquid” that would lead them away from the dreary land of anarchy, nationalism and war, a land, their land, set on fire twice in half a century by beliefs and passions most could no longer abide. There was a sense that they should all board the same ship, together, but to chart what route? Many felt that the right way was to cross the water and to the promised land on other side, a land of unity where Europeans would become one and forge a new state together from the ashes of their defunct nations. And some boarded the ship believing this would happen. But the ship of European states, instead of crossing to the other side, ended up tracing a different route altogether: away from both shores, as if to stay on the choppy waters for the foreseeable future. It would not do: in order to escape a continent consumed by the tyranny of small differences, they would not simply deny them. Europeans would not sail to the dry land, reassuring, orderly, familiar, land of unity - reinventing themselves as a European nation, same old on a bigger scale.

Instead. One does not find a path, but only other more impassable ways, impossible conundra, condemnations to hells of togetherness: that is the inevitable punishment for man's hubris. The French philosopher Sarah Kofman, musing about political *aporia* - impossible situations from which there seems no way out - saw beyond the indeterminacy the indissoluble link between the journey, transition, crossing, resourcefulness, expediency, techne, light and limits.

The predicament of the European journey has been thus. Blazing a trail where no trail exists, they would not resolve the radical contradictions forged by their common destiny. Its peoples – whether we think of them as collectives inhabiting individual states, or as individuals who all share in European citizenship – would have to give up crossing the Rubicon, from one dry familiar land to another, from a failed order of nation-states alternatively competing and cooperating only to better remain separate; to a continental European state, organising formers friends and enemies into one big united family, as one. On the waters in between they would now sail, affronting together the storms they would themselves conjure up. The peace journey would have to go on, faltering and failing anew, every time without ends, without a telos that would justify it all.

¹ This chapter is a revised and abridged version of Kalypso Nicolaidis, “European Democracy and its Crisis” *JCMS*, March 2013

And so it is that in 2009, the European Union (EU) found itself in the most terrifying storm, the aftershock of a global financial crisis which put into question what it had become, the journey, the avoiding of the dry lands on both sides of the Rubicon - the land of anarchy and the land of unity. Staying on this vast and stormy Rubicon, where chartering a pass had seemed challenging at the best of times, would become harder than ever. Sirens on both shores tried to woe the ship back to their realm: on one side, sirens crying for democratic autonomy and against technocratic capture, they appeal to all those who yearn to conquer their sovereignty back, recover the ability to tax and spend as they wish or devalue, leaving the liquid expanse of the Euro or even the EU altogether; on the other side, sirens singing the vision of a grand democracy that would bring together all European citizens within a single deliberative agora that could at last legitimate the decisions that need to be made to keep the common currency together.

This article starts from the widely shared premise that the Eurozone crisis has radically deepened the so called legitimacy deficit of the European Union, but departs from the mainstream assumption that this conundrum could be addressed by creating federal structures with overwhelming powers to dictate state policies. It calls for resisting a tempting EUtopia, one where we finally head for the promised land of unity and common state functions, to pursue instead a better but more demanding vision, one that acknowledges the political aporia itself which results from the seduction of the two shores, promised lands spelling ultimate delusions, and the concurrent need for resisting the seduction. If aporia there is, it is in the hope and capacity of Europeans to chart a course faithful to its past trajectory and yet radically transformative, a course that does not seem to transcend nations but yet subverts them, a course faithful to what the EU is but also to what it should be and isn't.

Here is the problem: the name of the democratic game in Europe today is *democratic interdependence*, rather than simply the need to democratically manage economic interdependence. The Union seems to magnify the pathologies of the national democracies in its midst, even as it entrenches and nurtures these democracies. Its democracies affect each other in profound ways but are not designed to deal with such affecting of each other. Threats to democracy in the EU lie in the insularity of its Member States' governments and their refusal to face pervading democratic externalities. They lie with citizens who fail to engage across borders. And they lie in Brussels' (partial) inability legitimately to address these democratic flaws while respecting democratic boundaries. We may better understand what is at stake, I argue, if we analyze, defend and criticize the EU as a democracy (as in *demos*=peoples) – highly imperfect democracy though it is.

The idea of European democracy is seductively simple: a Union of peoples who govern together but not as one. However much shared *kratos* or power to govern, we must contend with the plurality of *demos*; but also crucially, however many *demos*, we need a common *kratos* to define and deliver, through mutually agreed disciplines, the responsibilities we owe to one another. This simple ideal is, however, potentially under threat as proposed solutions to the crisis proliferate which fail to rely on enhancing the health of national democracies in Europe. To suggest why this may be the case, I take stock of the incipient scholarship on democracy (Nicolaidis, 2003, 2004a, 2012, ; Besson, 2006; Nicolaidis and Pelab, 2008; Cheneval, 2011; Mueller, 2010; Cheneval and Schimmelfennig, 2014).

The argument unfolds in three parts. First, I discuss the nature of democracy as a third way against those who equate the democratic potential with the singularity of a *demos*. Next, I lay out the normative core of the EU understood as democracy, predicated on what the project seeks to escape – namely domination and denial of recognition. Finally, I tease out some of the factors that may explain the resilience or pathologies of democracy over time.

I. Ontology: Democracy as a Third Way

The democratic conundrum rests with the connection between two mirror aspects of belonging: how the Union can better ‘belong to its citizens’ through the effectiveness of mechanisms of representation, accountability and participation depends in turn on what it means for citizens to feel that they ‘belong to the Union’, as individuals, as groups of individuals or as constituted states. The first has to do with governance and institutions, the second with socio-political reality.

So we must start with the second aspect of belonging, namely the social reality, to say something meaningful about the first, namely the institutional reality. The *no-demos* thesis, articulated by the German Constitutional Court in its 1993 Maastricht judgment, offered a simple connection: since there is no European demos as yet, integration must rely on domestic institutional mechanisms like the Bundestag. Somewhat ironically, since the Court considered the eventual emergence of a European demos a desirable prospect, the no-demos thesis has been restated ever since as grounds for resisting European integration or at least European integration through increasingly centralized institutions and rules. Conversely, the no-demos thesis was used as a foil by the European political mainstream of the early 2000s, and those like Joschka Fischer and Jürgen Habermas who argued that a European demos could and should be ‘forged’ as the foundation for formal constitutionalization of European integration. The Eurocrisis that has plagued the EU since 2009 and its management has reignited the search for a European demos.

The idea of demoicracy emerged in order to counter arguments about the EU by appropriating and then subverting the no-demos thesis (Nicolaidis, 2003, 2004a, b; Besson, 2006).²The point is that the Court was right (or at least mainly right) in its diagnosis, but not in its implications. For a plurality of *demoi* there may be in the EU, but plurality is what peoples make of it. The EU can be democratically legitimated by a *plural pouvoir constituant* (if the topic is constitutional) or by *multiple but connected national politics*. To be clear: stressing the resilience and desirability of multiple *demoi* in the EU does not rest on demonstrating that there are no constitutive elements of a European demos (some identity, some public sphere and so on). Only that the latter is less important as a referent of the lives of European citizens than their respective identification as part of national *demoi*. The European demos is one more among Europe’s many *demoi* referent. Indeed, the yearning for a single and overarching European demos is not just implausible but undesirable if the EU polity is to set aside the Schmittean temptation to define itself against ‘others’. Instead, let us invent a different kind of democracy for the EU (Weiler, 1998; Dryzek, 2000).

In short: no European demos → no European-level democracy,

versus

European demos in the making → European democracy

can be replaced by :

multiple European *demoi* → European demoicracy. But this summary covers three different kinds of statements:

- 1) Normative: the EU ought to be a demoicracy;
- 2) Analytical: the EU is a demoicracy (in the making);
- 3) Analytical-prescriptive: the EU fails to, but could live up to its demoicratic promise.

² In more recent work I have myself qualified this assessment by proposing a strong and a weak version of demoicratic theory. The strong version adheres to the no-demos thesis, but the weak version allows for the existence of a weak European demos which exist alongside the strongly legitimating national *demoi*. Nicolaidis, Kalypsos (2015), “Demoicratic Theory and Europe’s Institutional Architecture in Times of Crisis” in Simona Piattoni (ed), *The European Union: Democratic Principles and Institutional Architectures in Times of Crisis*, Oxford: OUP.

Political philosophers focus on the first, while political scientists tend to straddle the last two and legal theorists the first two.

A Matter of Paradigms

On the normative plane where ideal political forms are discussed, the democratic third way rests on the plausibility of lumping together its two alternative paradigms, the two dry land on either side of the Rubicon, as part of the same cognitive straitjacket. Crucially, a third way may *look like* the traditional ‘in between’ (international organization versus federal state) and may *empirically* borrow from both sides, but contrary to a *via media* it is *normatively* antithetic to both. As with every third way, the idea of democracy holds the promise of escape from the tyranny of dichotomies which still dominate EU debates. The aporetic challenge here lies in the hope of turning this tyranny of dichotomies into the productive contradictions associated with idea and practice of democracy.

The two camps from which a democracy tries to free itself both believe in the proposition: ‘no demos → no democracy.’ The difference between them is a matter of scale, and this matters terribly. On one side, believers in the ‘national civic’, ‘sovereignist’ or ‘intergovernmentalist’ creeds criticize aspirations to EU-level democracy in the name of the primacy of the nation-state as locus of democracy (Manent, 2007; Miller, 2009). Since Europeans ‘belong to the EU’ as separate *demoi*, with different political ‘languages’, the EU should remain an intergovernmental construct, centred around indirect accountability at home and the European Council in Brussels (see also Scharpf, 2009).

On the other side are those who believe in the desirable and possible advent of a European demos. They tend to equate more (supranational) Europe with the promise of economic, social, moral and eventually political progress by virtue of its anti-nationalism, premised on the assumption that a new territorial scale is necessary to instantiate democratic principles of representation and justice (Van Parijs, 1998; Habermas, 2001; Hix, 2008; Collignon, 2004; Morgan, 2005). Thus the model for the EU is often a version of the nation (Nicolaïdis and Weatherill, 2003).

As a third way, democracy is not about ‘splitting the difference’ between these two mainstream political alternatives but emerges from their respective contradictions and inadequacies (see Figure 1). It can be defined as follows:

European democracy is a Union of peoples, understood both as states and as citizens, who govern together but not as one.

More specifically,

It represents a third way against two alternatives which both equate democracy with a single demos, whether national or European. As a democracy-in-the-making, the EU is neither a Union of democratic states, as ‘sovereignists’ or ‘intergovernmentalists’ would have it, nor a Union-as-a-democratic state to be, as ‘federalists’ would have it. A Union-as-democracy should remain an open-ended process of transformation which seeks to accommodate the tensions inherent in the pursuit of radical mutual opening between separate peoples.

If identifying a ‘demos’ at whatever scale is no longer the grail of democracy, what is? For a start, European democracy should not be seen as mainly ‘national’ or ‘supranational’, but as ‘transnational’ – notwithstanding the question of who are the constituting *demoi* (Weiler, 1998; Besson, 2006; Cheneval, 2011). It is this, for its stress on the horizontal and radical opening, that

makes the EU more than a variant of ‘confederation’ and gives its democracy a truly ‘transformative’ – as opposed to ‘gradualist’ or ‘mimetic’ – character (Dahl, 1989; Bohman, 2007; Cheneval and Schimmelfennig, 2013).

<Figure 1: EU Democracy as a Third Way, Not an ‘In-Between’ >

Crucially, scholarship with a democratic parentage tends to address the constitutional, institutional or legal matrix that underpins the EU as priors to the democratic question – unsurprisingly since the EU was not designed with democracy in mind. We can recognize its basic tenets in the work of many authors for whom the EU as ‘not-a-state’ is a core premise (*inter alia*, Weiler, 1998; Maduro, 2003; Balibar, 2005; Castiglione *et al.*, 2006; Menon, 2008; Joerges, 2011; Pelabay, 2011). The concept has strong affinities with ‘multilateral democracy’ (Cheneval, 2011), ‘transnational democracy’ (Bohman, 2007), ‘compound democracy’ (Fabbrini, 2010), ‘directly deliberative polyarchy’ (Cohen and Sabel, 1997), ‘agonistic democracy’ (Mouffe, 2000) and, for that matter, *some* of the variants of federal and cosmopolitan democracy, or constitutional pluralism (Walker, 2002; Kumm, 2009). And it chimes with Joseph Weiler’s defence of the EU at its best as committed to a philosophy of constitutional tolerance (Weiler, 2001). In their most general form these works examine the uneasy coexistence between peoples, *both* as states and as citizens, translating into democratic language the duality of Member State and Community legitimacy in the EU with its co-mingling of international and constitutional logics and vocabularies.

Because a democracy prism starts with our individual embeddedness in national communities as separate *demos* and with the primacy of the state, the term ‘democracy’ can be misunderstood as a label for the first (sovereignist) camp (Van Parijs, 1998). At the same time, because a democracy prism does not end with essentially self-serving *demos*, stressing instead with the second camp the importance of shared responsibilities over time, believers in democracy often find themselves lumped with ‘federalists’ under a generic ‘pro-EU’ label. This may be why some of the earliest and most cogent expressions of this philosophy were not framed as a third way, but rather in direct opposition to the ‘federalist’ (or ‘unity’) school (as with Weiler, 1991). This is also why, while the idea of democracy owes much to the ‘post-national’ constellation, it parts with its more Euro-patriotic and anti-national expression (Habermas, 1998; for a discussion, see Lacroix, 2009; Nicolaidis 2006, 2012).

I should point out here that much of the inspiration for democracy comes from intellectual traditions (federalism, cosmopolitanism, constitutionalism) which all accommodate conflicting views about the realm beyond the state. Defenders of democracy may thus resort to one of three strategies. First, appeal to affinities with the ‘essence’ of these traditions (on cosmopolitanism, see, for instance, Beck and Grande, 2007) – an essence anterior to or distinct from the particular variant of the ‘state writ large’ which might have tainted each of them in the public and scholarly imagination (as with a democratic reading of Kant’s federal cosmopolitanism, for instance). Second, and alternatively, to make up for the capture by statist lenses of each of these “isms”, they may side with composite notions like constitutional *pluralism*, or the idea that the EU should not cross from a federal *union* to a federal *state* (Menon and Schain, 2006; Nicolaidis and Howse, 2001). Or, thirdly, the sticky nature of statist variants may lead them to give up on their respective ‘isms’ altogether.

Last but not least, it would be critical to this story of course to say much more on what we mean by the “peoples” of a democracy, who these peoples are and whether they purely and simply correspond to the boundaries of Europe’s nation-states (Besson 2006, Nicolaidis 2012, Balibar 2013). As Balibar reminds us, we use “people” in the sense of *demos* as a ‘community of citizens,’ A referent for ‘constituent power’ that may legitimize national or supranational political authority. But the Ancient Greeks had other terms for our “people,” namely *ethnos*, *plethos* and *laos*. The

people as 'nation' or *ethnos* are more organic, unified by a lineage, a culture, or generally in modern times a language. The many more ethnies on the European continent than there are constituted *demos* currently hardly count in the shaping of its continental order but may eventually come to demand some kind of more explicit recognition. On the other hand, the *pléthos* – or later the pejorative *plebe* – refers to the people as the 'masses' of the population as opposed to the elites "from a sociological perspective concerned with inequalities, means the 'folk' or 'people of the people' who are the majority" which could mean the poor, or "at least those who are not the privileged in rank or fortune" (Balibar 2013: 2). This sense is certainly relevant to a demoicratic spirit which aspires to bring democracy in Europe "all the way down." Lastly, the idea of *laos* has survived in modern Greek from the times of the anti-Ottoman revolution (harping back to Homeric epics where the term designated military units), referring to the people as "a collective ideality, with a mission or a destiny" (Balibar 2013: 2). This may be the sense most prone to "othering" and to being shaped by struggle and hardship, an ideal which may inspire resistance to rather than partaking in the kind of community of destiny wished for by the powers that be in Brussels.

A Matter of Emphasis

Beyond the rarefied confines of philosophical paradigms, however, the idea of European demoicracy was initially meant as another defence of the EU *as is* (Moravcsik, 2002; Weiler, 2000). If the Rome Treaty had provided an original institutional matrix faithful to the core structural tenets or at least prerequisites of a demoicratic vision, we can ask whether the EU has indeed become more demoicratic over time or whether it has fallen prey to the sirens on either shores. Overall, I would argue that the EU demoicratic pedigree was improved by many of the sequential amendments to the Treaties, from the institutionalization of the European Council, to the right of exit clause or the role of national parliaments in the Lisbon Treaty. On this institutional front, European demoicracy has been a work in progress, albeit with caveats (Nicolaidis, 2003, 2004a, b, 2006). It is at least clear that the EU has remained 'not-a-state' while progressively adopting a constitutional 'operating system', as in Weiler's formulation. And that this operating system, while not intended to address democratic concerns, was actually potentially suited to do so.

In this perspective, the frame of demoicracy can serve as an interpretive strategy that can be mistaken for the ubiquitous understanding of the EU as 'in between' the sovereign-anarchy and the federal-unity paradigms. Analyzing data and cases through a demoicratic lens may appear then to be a matter of emphasis: if the European constraint is meant to 'tame' the national (or empower constituencies within it), it can sometimes be a source of dissolution of national democracies and sometimes a means of perfecting them (Keohane *et al.*, 2009); a demoicratic lens obviously emphasizes supranationality but understood as a deep commitment mechanism, an instrumental rather than ontological fact; in a demoicracy, differences between small and large member states are paramount as they may dictate crucial conflicts over governance issues (Schure and Verdun, 2008); and a demoicratic perspective on Europeanization focuses on the mediation exercised by states' democratic systems between EU rules and peoples-as-citizens.

Most importantly, and in the spirit of Deutsch's transactional perspective, analysis through the demoicratic lens emphasizes the *horizontal* at all levels of interaction – positing 'mutual opening' as the result, not the precondition, of a political-legal order centred around horizontal transfers of sovereignty between states and regulatory systems – a point increasingly accepted by scholars of multi-level governance (Hooghe and Marks, 2001). EU governance, though networked and experimental, is still centred around states. In this sense, the German Constitutional Court's intervention in the fiscal crisis has been broadly faithful to demoicratic principles. Most uniquely, the EU has managed to put international and national legal orders at the service of Kant's *ius cosmopolitanum* – albeit in the name of a rather narrow neo-liberal focus on absolute rights of

economic free movement. The EU's choice of managed mutual recognition over harmonization to bring about a single market has long entrenched such horizontal sovereignty transfers. In short, a democratic lens emphasizes the link – or lack thereof – between *horizontal* transfers of authority, co-operation, impact and representation.

A Matter of Remedies

Ultimately, the idea of democracy was meant to help wean the debate away from teleology, emphasizing ongoing processes of democratization predicated on growing democratic interdependence between national polities. A democratic lens thus both mitigates and exacerbates diagnosis of democratic deficits, drawing on scholarship linking democratic theory with the EU's unique way of combining various modes of political representation (see, for instance, Kohler-Koch and Rittberger, 2007; Lord and Pollak, 2010). What is the benchmark of rightful exercise of political power in a democratic setting? If the ideal of the *political equality* between citizens obtains within states, can it be relaxed between states – in the name of equality between peoples as collectives? Is the kind of 'constrained discretion' granted to representatives in single demos contexts likely to be subverted if these representatives conspire across borders to relax these constraints? Or if at least a subset of representatives does perhaps "against" a minority subset of others? How can these two logics be linked by accountability mechanisms which differ widely across different kinds of democracies in Europe (Schmidt, 2006)? If the compound nature of EU democracy creates structural limits on both political equality and legitimate discretion at the heart of representation, are complementary non-electoral forms of democratic expression (deliberation, participation and contestation) better suited to its nature?

Above all, the lack of – or at least weakness of - a European demos means that European citizens will not and should not accept to be bound by a majority of Europeans. If EU-wide majoritarian approaches are to be rejected, what other EU-wide processes are legitimate? This is where law, political philosophy and political science must work together. If democratic interdependence calls for a focus on the responsibilities that peoples owe one another without turning those into statist-type obligations, we need to identify the concrete consequences of those responsibilities, drawing on writers on cosmopolitan democracy who read the so-called 'all-affected principle' or 'stakeholder model' through a transnational prism (Bohman, 2007; Cheneval, 2011). But peoples both as states and citizens must internalize not only socio-economic, but also democratic, externalities. Accordingly, Germans and Greeks should not only have the right to put the problems they create for each other's democratic health on each other's political agenda, but should entrench institutional mechanisms to address them. Decisions on how to share the burden of internalizing externalities can only remain national under these conditions.

II. Ethos: European Democracy's Normative Core

Once we lay out the socio-economic as well as constitutional outline of a European democracy, however, we need to ask what drives the process forward, what is the compass that orients these ship on the liquid expanse of a Union of peoples? The method here is "normative inductive" (Nicolaidis 2012) that is extracting what I argue is the EU's normative core from its original intent, while allowing for a transformative interpretation of this normative core with changing times.

The EU was born from the ashes of a less than ideal world: its own capacity to almost destroy it. Thus, not only does the normative core of European democracy start from what Europeans wanted to escape, but this 'drive to escape' remains with us today – the argument cannot be reduced to 'original intent'. For, as Avishai Margalit (1996) starkly puts it, 'it is much more urgent to remove painful evils than to create enjoyable benefits'. If a globalized European civil war was

indeed at the time an evil that concentrated European minds, I would argue that behind ‘war’ we have two anti-values which endure: the will to subordinate and the denial of recognition. Hence in spite of the supposed obsolescence of the ‘peace’ ideal, Europeans continue to aspire to the imperfect approximation of two corresponding core norms while struggling with their complex implications: non-domination and mutual recognition. We should discuss normative elective affinities around these two overlapping normative clusters.

Transnational Non-domination

The EU is an anti-hegemonic, not an anti-national, project. The peoples of France or Germany *qua* states would never again be allowed to subjugate others on the continent thanks to a system of institutionalized balance of power between states. This was the original intuition of moderate federalists like Spaak and Monnet: 300 years after Westphalia, while the idea of Union in Europe could prevail as an alternative to the closure of sovereignty, it would remain complementary to the idea of European nations.

The threat of war may have receded, but that of soft domination in Europe has not. As the stakes have changed from the survival of *demos* to their autonomy, we shift from international relations to democratic theory, which implies translating to a transnational context the goal of non-domination as democratic freedom by which men are free from one another’s arbitrary power (Pettit, 1997; Bohman 2007; Mueller, 2010). But as the Union strengthens and self-government gives way to shared self-government, the risk of domination reasserts itself in another guise, as vertical, through the potential arbitrary use of supranational powers. So concerned are states-turned-member-states (and Germany first among them) about possible horizontal domination that they incrementally opt for vertical domination. As a result, it might appear descriptively accurate to view the EU as a benign medieval version of empire or a benign commonwealth version of federation to express such horizontal or vertical forms of soft domination (*inter alia*, Marks, 2011). But these labels ultimately clash with the normative core of democracy.

There are of course tensions: democracy is an exercise in power mitigation, not denial. In an order characterized by the rule of law, be it domestic or international, it is the arbitrary use of power that needs to be curbed not power per se. This is especially true in a context of great asymmetries. To what extent, then, does the responsibility that comes with power mitigate our preoccupation from domination? When is equality between citizens likely to turn into *de facto* domination between peoples? While a democratic norm of non-domination ought to serve as a constant warning against *both* the Union as a cover for horizontal domination and the Union as an instrument of domination in itself, what if some of one is necessary to curb the other? As some have argued, one possible way of achieving the balance is to exploit the pluralist philosophy of EU constitutional law to address the tensions of a multiplicity of competing legal orders with overlapping supremacy claims. Still, it is not clear whether a constitutional lens, however adjusted, can entirely do justice to the specific challenges of non-domination in a democracy like the EU.

Transnational Mutual Recognition

The second norm underpinning EU-as-democracy also starts with what Europe sought to escape: the myriad appalling crimes committed in local battles for supremacy throughout Europe in the aftermath of World War II and rooted in denials of recognition of close others – neighbours as intimate enemies – which had pervaded contemporary European history (Lowe, 2012). A history, in turn, characterized by complex connections between struggles for recognition within sovereign boundaries and diplomatic mutual recognition between states as the latter served to avoid inquiring into the former (Honneth, 1996; Taylor, 1994). Democracy arises with the need to subvert the shallow diplomatic norm of recognition with an intrusive social norm of transnational mutual recognition. At the same time, it avoids reaching a degree of federalization

where harmonization and assimilation renders such recognition mute.

The EU is more than an alliance of states while remaining a community of others only if its peoples increasingly connect through multifaceted and deep forms of mutual recognition – a holistic ideal referring to the entire realm of social interactions: identities and cultures, political traditions, social contracts, historical grievances and memories (Lacroix and Nicolaïdis, 2010). It is on this basis that European peoples may accept, or better wish, to open their democracies to each other. Where Walzer (1997) only needs an aspiration to peaceful coexistence for his normative core of tolerance, a democracy is preoccupied with a much more demanding engagement of the *demos*. Some would say that this is the true meaning of ‘reconciliations’ at the heart of the European project – and not only between France and Germany.

At the outset, this logic needs no singularly European public space asking only that citizens have an informed curiosity about the opinions and political lives of their neighbours. In time, transnational deliberative processes and citizenship will emerge from the confrontation, accommodation and inclusiveness of Europe’s varied political cultures (Risse, 2010). An enlarged mentality may even emerge, as Kant would have it, of thinking from the point of view of everyone else. To paraphrase Weiler, the EU needs a principle of democratic tolerance. The political fallout of the financial crisis, whereby many – including the Germans and the Greeks – have sought to reassert their own sense of self *against* other Europeans demonstrates how removed we still are from such a normative benchmark.

Democracy cannot be reduced to the assertion of the ‘s’ of peoples, the continued existence and desirability of diversity in an interdependent world threatened by powerful homogenizing forces. This is why this second cluster includes a host of variants that can be adapted to a democratic lens, from *binding trust* to ideals of *community, friendship, mutuality, inclusiveness, solidarity* and *loyalty* or *fidelity*. Here again tensions arise. Can we sustain mutuality under profound inequality? Under what conditions is mutual recognition insufficient to provide the ‘ties that bind’? Can recognition between states’ laws and regulations create resistance to recognition between peoples? How can recognition among many be non-discriminatory when it is in part conditional on the features of the other side? Can mutual recognition simultaneously serve liberal ends when lifting obstacles to free movement, and illiberal ends in states’ exercise of the coercive powers against individuals?

IV. Genealogy: Transformations, Resilience, Pathologies

A research agenda around the idea of democracy needs to turn from the ‘what’ to the ‘why’ question not only to demonstrate how EU historical dynamics can be read through democratic lenses, but because such reading is part of a normative-inductive methodology. How was a democratic system created and developed in Europe, albeit painfully and imperfectly? Can we have democracy without democrats or grand design, simply as the product of balancing forces? Could democracy be the result not only of ‘rhetoric entrapment’, but also ‘normative entrapment’? Is the ethos of democracy pervasive enough in the EU that a critical mass of actors ‘do it’ without labeling it as such? I suggest, *inter alia*, three lines of inquiry leading to our contemporary crisis.

Transformations

As we discussed, political theorists who see EU democracy as ‘transformative’ focus on the *state unit* and its radical transformation. But if we adopt an international relations viewpoint, we come to view this transformation itself as the delayed product of post-war attempts to change the European *state system* as an incremental, not a radical, choice. Supranationality in its various incarnations was meant to *transform* this system, not to *transcend* it. Even while including elements of ‘solidarism’ between peoples, such a transformative logic is bound to the anarchical nature of

international society. It is this (conservative) transformative logic that anchors European democracy in international law. The EU appears *sui generis* for it resulted from a unique historical context – for at no other time and place have such deeply entrenched if relatively recent constructs of ‘nation-states’ been so collectively bent on taming the nationalist beast, and been shielded in doing so, moreover, by a hegemon’s security umbrella.

If Dahl’s transformative logic operates today it is because what followed after the foundational bargain is another type of *incremental* transformation – that of the EU itself. Joseph Weiler (1991) captured this in his article ‘The Transformation of Europe’, bringing into focus the fundamental pattern of European politics as a dance between law and power, judges and politicians, respectively and reflexively engaged in trading off a gradual foreclosing of exit (the hardening of EU law) with the retention of voice through their insistence on unanimous consent (among *demos* as states). Thus, a constitutionalized arrangement between states emerged in the EU with increasing legal bite. Various logics have combined (a cautiously bold court, a political process bent on compromise, the ‘wisdom of the crowds’) which have led from the initial institutional-legal foundation of democracy as interlinked constitutional orders of democracies to its gradual transformation into a political object in its own right. In sum, the EU is a democracy – both as institutional design and emerging social reality – because it stands at the intersection of at least three types of *transformative logics* – each apparent from a different standpoint and analyzed in different disciplines. Its unique kind of democratic interdependence stems from this unlikely combination.

Resilience

How resilient is this process of dynamic equilibrium? Has EU democracy become an unstable equilibrium? The basic structure of a democratic polity of peoples-as-states put in place through the community method in the foundational period only came to be tested against the mettle of peoples-as-citizens after the cold war. If the democratic bargain was unhinged at Maastricht and the years that followed – through extended legal disciplines combined with loss of voice – the perception of ‘democratic deficit’ stems in part from the quasi-exclusionary focus on the European Parliament as a remedy. The resilience of the system has been demonstrated repeatedly, from flexible opt-outs to the evolution of Council–Commission division of labour on fiscal union. But these developments have left the matter of popular democratic legitimacy unresolved, thus hollowing out the kind of loyalty which activates commitment to voice in the first place. We still need to understand why the dramatic amplification of national voice through popular referendums came to threaten the resilience of the EU-as-democracy.

Pathologies

Increased democratic interdependence raises questions of vulnerabilities as much as synergies: what happens to national pathologies of democracies as they open up to each other? Consider, for instance, how the EU is plagued by an institutionalized culture of credentialism – the Weberian phenomenon of social capture through the capacity to close access to certain goods, professions or markets on the basis of (imperfect) *credentials* acquired once and for all (Keene, 2012). Credentialism pervades the sense of legitimate closure in the governance of Europe and is mirrored in the dynamics of entry into the Union or the eurozone, whereby all is done for preservation of the relatively privileged material and symbolic position of members who – once in – will not be re-assessed. As a result, the EU as a polity has not managed to sustain the kind of domestic change away from clientelism or corruption towards respect for the rule of law which would make membership of the club sustainable. We are far from the idea of states-as-laboratory, dear to Jeffersonian federalists, or calls for letting individual states go bankrupt, as in the United States. In short, if a democracy calls for the ongoing refinement of one’s own democracy under the shadow of shared government, credentialism has served to blunt the main channel for such

refinement.

Moreover, and in Weiler's formulation, the EU suffers greatly from the pathology of messianism, grounded in the belief in the cause of deeper integration in and of itself, such that legitimacy is derived from the destiny pursued rather than the peoples (Weiler, 2012). Ironically, broadly liberal elite networks of co-operation have long been impervious to the yearning for control over their lives by disillusioned citizens. That they may help balance such forces of fusion and contempt for 'the wisdom of the crowds' can lead us to the paradoxical judgement that many Eurosceptics (or simply advocates of 'localism') who echo this malaise contribute to the quality of EU democracy.

Under what conditions (endogenous or exogenous) are these pathologies likely to combine into more acute crisis as in the years 2009–12? Can the democratic logic still accommodate more centralization of functions, loss of voice and foreclosure of exit at one and the same time? What are the democratic safeguards against the unholy alliance between the logic of messianism and the determinism of 'market pressure'? The euro crisis suggests that the (democratic) equilibrium reached by the EU is vulnerable to strong forces of fusion and fission, centralization and disintegration, wherein pressures for a federated core Europe coexist with pressures for exit at the periphery. Some may argue that the creation of economic and monetary union (EMU) was already a step too far for a democracy, given its inherent dynamic of (messianic) fusion. We can understand the German resistance to what they refer to as a 'transfer union' between states, but if their conditions include asymmetric external governance within the EU are we still faithful to non-domination? Instead, a democratic lens suggests that solidarity between European peoples ought to remain a choice, but constrained by deep mutual recognition (Nicolaidis and Viehoff, 2015). It remains to be seen whether the vagaries of financial markets will allow its pathologies to overwhelm Europe's democratic character.

Conclusion: On the Rubicon?

In the preceding pages, I started with the assertion that a democracy is what the EU has become over time, and with the argument that its peoples should aspire to nurture, recover or reinvent its democratic features in the context of the euro crisis. Seen through the prism of aporia, and in order to be faithful to its democratic potential, the EU requires a transition from a familiar state which affords one every security (internal through the welfare state and external through progressive expansion of its zone of stability), to a new, unfamiliar state which requires the collective management of risk among strangers or at least the kind of semi-strangers that Europeans are to one-another. Not crossing the Rubicon from the dry land of sovereignty to that of unity requires navigating the rough waters of instable equilibria and taking bearings on a very faint horizon, without the beacon of an improbable or even dangerous EUtopia.

<Fig 2>

Beyond this general aporiatic intuition as it were, I have sought to lay out some broad parameters for discussion for an eventual 'democratic theory' for the EU and to highlight some of the meeting points, misunderstandings and semantic games between various traditions or fields relevant to the endeavour. Indeed, the concept of 'democracy' can accommodate many contending conceptions of how this can be achieved. At the heart of such an agenda is the need to reconcile normative arguments with the positive methods which prevail in the social sciences of the EU. There is still ample room for disagreement on the relationship between making the case for understanding the EU as it is today as a democracy-in- the-making (part I), deploying the concept as an autonomous normative benchmark by which to assess its evolving legal,

political and economic order (part II), and explaining the evolution of the enterprise (part III).

If metaphors can be of help, the challenge of democracy story is to stay on the Rubicon that is the liquid expanse in between the dry lands of sovereignty and unity (see Figure 2). European peoples have progressively left the shores of state sovereignty under anarchy to enter the Rubicon of ‘neither-nor’, the realm of ambiguity where state-bound *demoi* can no longer do their thing separately, nor organize their co-operation at the continent level by borrowing from traditional notions of domestic law and democracy. They are bound instead to chart a way, a *poros*, following the basic injunction of democracy: thou shalt not cross the Rubicon on which a Union is still ruled by and for multiple *demoi* in order to land on the dry land of a Union ruled by and for one single *demos*. On this ship, many yearn to land on one shore or the other rather than stay on the Rubicon. Changing tides make the determination of the shorelines unclear anyway. Some insist on a destination while others remain content with a normative compass. All know that whatever happens, whether it is on a moment’s crossing or for a long journey, life on the Rubicon is never clear of a tempest when *all the might of a thousand splendid battle calls is cried out into the night air*.

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