

## European Democracy and Its Crisis\*

KALYPSO NICOLAÏDIS  
University of Oxford

### Abstract

This article offers an overview and reconsideration of the idea of European democracy in the context of the current crisis. It defines ‘demoiocracy’ as ‘a Union of peoples, understood both as states and as citizens, who govern together but not as one’, and argues that the concept is best understood as a third way, distinct from both national and supranational versions of single demos polities. The concept of ‘demoiocracy’ can serve both as an analytical lens for the European Union-as-is and as a normative benchmark, but one which cannot simply be inferred from its praxis. Instead, the article deploys a ‘normative-inductive’ approach according to which the EU’s normative core – transnational non-domination and transnational mutual recognition – is grounded on what the EU still seeks to escape. Such norms need to be protected and perfected if the EU is to live up to its demoiocratic nature. The article suggests ten tentative guiding principles for the EU to continue turning these norms into practice.

### Introduction

The aftershock of the 2008 global financial crisis in the European Union (EU) has come to be widely seen as a crisis of ‘democracy’ in Europe. This article starts from the premise that the EU’s legitimacy deficit will not be addressed by tinkering with its institutions. Instead, the name of the democratic game in Europe today is *democratic interdependence*: the Union magnifies the pathologies of the national democracies in its midst, even as it entrenches and nurtures these democracies, who in turn affect each other in profound ways. 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 demoiocracy – highly imperfect demoiocracy though it is.

The idea of European demoiocracy is seductively simple: a Union of peoples who govern together, but not as one. However much shared κράτος or power to govern, we must contend with the plurality of δήμοι; but also crucially, however many *demoi*, we

\* For comments on previous versions of this article, I would like to thank Albena Azmanova, Francis Cheneval, Pavlos Eleftheriadis, Sergio Fabbrini, Cecile Fabre, Nora Fisher Onar, Andrew Hurrell, Gabi Mass, David Miller, Leonardo Morlino, Fiorella Paddoa Schoppa, Vinicius Rodriguez Vieira, Frank Schimmelfennig, Tristan Storme, Philippe Van Parijs, Juri Viehoff and Rebecca Welge as well as the *JCMS* anonymous reviewers. I would also like to thank participants in ‘Demoiocracy: Government of the Peoples’, University of Zurich March 2012; the Oxford IR colloquium, October 2011; ‘The European Union: What Institutional Model for Which Type of Democracy?’, University of Innsbruck, September 2011; ‘The Transformation of Europe’, European University Institute, Florence, October 2011; and ‘The Future of the Community Method’, Notre Europe-BEPA, Brussels, February 2012.

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 demoicracy (Nicolaidis, 2003, 2004a, 2012; Besson, 2006; Nicolaidis and Pelabay, 2008; Cheneval, 2011; Mueller, 2010; Cheneval and Schimmelfennig, 2013).

The argument unfolds in five parts. First, I discuss the nature of demoicracy as a third way against those who equate the democratic potential with the singularity of a demos. I then go on to justify the use of a normative-inductive method limited in scope to the EU, while leaving open the applicability of demoicracy at the global level. Next, I lay out the normative core of the EU understood as demoicracy, predicated on what the project seeks to escape – namely domination and denial of recognition – and tease out some of the factors that may explain the resilience or pathologies of demoicracy over time. Finally, I suggest ten guiding principles for sustaining a demoicratic politics against the backdrop of the EU's crisis of democracy.

## I. Ontology: Demoicracy as a Third Way

I start with the assertion that a demoicracy is what the EU has become over time, and with the argument that its peoples should aspire to nurture its demoicratic features in the context of the euro crisis. The democratic conundrum rests with the connection between two mirror questions of belonging: how the Union can better 'belong to its citizens' through the effectiveness of mechanisms of representation, accountability and participation depends on what it means for citizens to '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.

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, 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. Conversely, it 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. Ten years later, the prospect of fiscal union has reignited the search for a European demos.

The idea of demoicracy emerged in order to counter the latter arguments by appropriating and then subverting the *no-demos* thesis (Nicolaidis, 2003, 2004a, b; Besson, 2006). The point is that the Court was 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*. Indeed, a single 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 no European demos → European democracy. But this summary covers three different kinds of statements: the EU ought to be a democracy; the EU is a democracy (in the making); and the EU fails to, but could live up to its democratic promise. 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 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 difference between the two ‘no demos → no democracy’ camps is a matter of scale, and this matters terribly. At one end of the spectrum, 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 *demos*, 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).

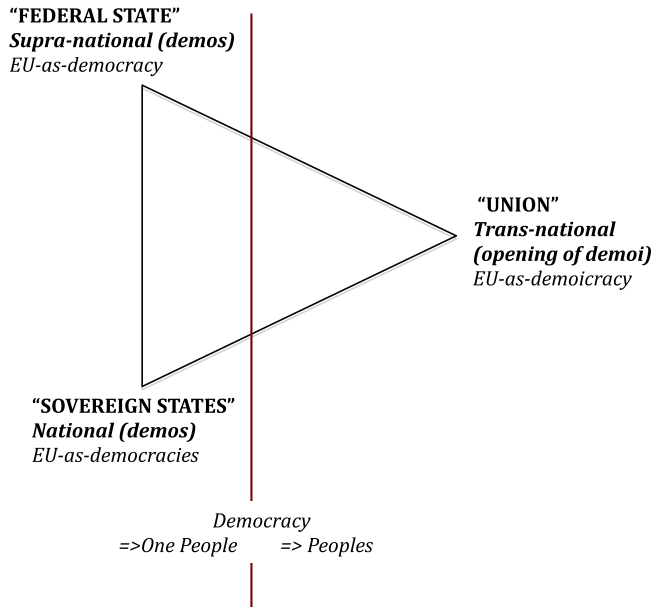
At the other end of the spectrum are those who believe in the desirable and possible advent of a European demos. They tend to equate more (supranational) Europe with the promise of economic, social, moral and eventually political progress by virtue of its anti-nationalism, premised on the assumption 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 (Nicolaidis 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. 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 *demos* (Weiler, 1998; Besson, 2006; Cheneval, 2011). It is this, for its stress on the

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



Source: Author.

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).

Crucially, scholarship with a demoicratic 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 demoicracy prism starts with our individual embeddedness in national communities as separate *demoi* and with the primacy of the state, the term ‘demoicracy’ can be misunderstood as a label for the first camp (Van Parijs, 1998). At the same time, because a demoicracy prism does not end with essentially self-serving *demoi*, 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; Nicolaïdis 2006, 2012).

Last but not least, much of the inspiration for democracy comes from intellectual traditions (federalism, cosmopolitanism, constitutionalism) which accommodate conflicting views about the realm beyond the state. Defenders of democracy may 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). Or, to make up for the capture by statist lenses, 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; Nicolaïdis and Howse, 2001). Or the sticky nature of statist variants may lead them to give up on their respective ‘isms’ altogether.

### *A Matter of Emphasis*

Beyond the rarefied confines of philosophical paradigms, however, the idea of European democracy 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 tenets of a democratic vision, it was improved by sequential amendments, 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 democracy has been a work in progress, albeit with caveats (Nicolaïdis, 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 democracy can serve as an interpretive strategy that can be mistaken for the ubiquitous understanding of the EU as ‘in between’, especially since the two overlap. Analyzing data and cases through a democratic 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 democratic lens obviously emphasizes supranationality but understood as a deep commitment mechanism, an instrumental rather than ontological fact; in a democracy, differences between small and large member states are paramount as they may dictate crucial conflicts over governance issues (Schure and Verdun, 2008); and a democratic 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 democratic 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 democratic 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? 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 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. Method: Democracy as Immanent

The move from the general account of European democracy offered above to specifying its core norms and guiding principles raises important methodological and epistemological issues.

### *Normative Inductivism*

How should we give substance to democracy as a normative benchmark, from which to assess the quality of the European project today? As Cheneval and Schimmelfennig (2013) cogently argue, we can reason from ‘first principles’ derived *à la* Rawls from a hypothetical original position which allows a fair balance of all possible conflicting views on what principles the basic structure of a democracy ought to follow (Rawls, 1993, 1999; Cheneval, 2011; Cheneval and Schimmelfennig, 2013). Or we may be inspired by historically contextual and empirically informed normative reasoning *à la* Amartya Sen or Michael Walzer, and non-ideal theory more generally, which starts with recognizing the ways social arrangements fail to do what they are meant to do. As with Adorno’s *immanent critique*, we can try to contextualize our object of investigation and its implicit ideational basis by discerning evolving aspirations, tensions and contradictions *within* this world observed (Azmanova, 2012).

In this spirit, I would argue that the EU normative benchmark can both be found as immanent in the reality observed *and* be used to assess this reality, but only under two conditions: recognizing that one selects underlying EU norms and principles *only to the extent* that they are consistent with the simple idea of European democracy as a third way, and that the EU has been and continues to be pregnant with other normative possibilities and pathologies; and recognizing that the outcomes of actors’ negotiations in the real (EU) world can be granted normative status *only to the extent* that underlying power asymmetries have been sufficiently mitigated by procedural constraints.

Under these conditions, what I call ‘normative inductivism’ is likely to approximate the conclusions of a Rawlsian constructivist approach to democracy, but with a crucial added advantage: this method can draw on the insights stemming from the deep texture of European history, law and politics. The kind of bargaining, deliberation and contestation which we find in the evolving EU order can bolster confidence that some balance has been reached between ‘opposing camps’ such as sovereignists and supranationalists; big and small states; left and right; republican and liberal states; and last but not least, nomads and settlers in the EU. The EU’s transformative potential lies not in pursuing an ideal to its extreme but in a kind of fanatic moderation, by which political actors unrelentingly pursue compromise under the shadow of consensus, and the Courts pursue balance under the shadow of politics. The challenge, of course, is to make this logic sustainable.

### *Scope*

A normative inductive approach also has implications in terms of geographical scope – that is, whether it is appropriate to start with global democracy *tout court* to arrive at ‘European’ democracy. Against the tendency to apprehend the EU as a particular instantiation of a broader universal form of democracy between states short of statism-writ-large (Dryzek, 2000; Linklater, 1998; Bohman, 2007; Cheneval, 2011), I argue that

our normative beliefs about the EU should not be hostage to our normative beliefs about the (potential and/or desirable) evolution of the international system. While universalizing viewpoints are often illuminating – Rawls may have understood ‘European peoples’ better than many Europeans – we ought to construct an ideal-type of European democracy while remaining agnostic about its validity beyond the confines of the EU (Van Parijs and Rawls, 2003).

As a result, even if we argue that other regions or even global governance may borrow experimentally from the EU governance toolbox, this does not mean that its deeper structure, the kind of democratic bond we are concerned with here, ought to be ‘reproduced’ beyond Europe too (Howse and Nicolaidis, 2002). If it is desirable to embrace a ‘transformative logic’ from the national to the European level, why fall prey to gradualism from the European to the global? The concern is not only analytical, but also ideological, in light of the implicit or explicit Eurocentricism pervading much of the scholarship on global constitutionalism and governance. As if the contemporary echoes of colonialism could be wished away if only we could ‘get it right’ this time around.

### III. Ethos: European Democracy’s Normative Core

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 *demoi* 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 Nicolaidis, 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.

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

##### *Transformations*

As we discussed, political theorists who see EU demoicracy 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 demoicracy 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, forthcoming). It remains to be seen whether the vagaries of financial markets will allow its pathologies to overwhelm Europe's democratic character.

## V. Praxis: Ten Tentative Guiding Principles for a Democratic Ethics

Ultimately, peaceful inter-state relations call for regulatory principles of interaction setting the bounds of acceptable political behaviour within shared norms and purposes. Existing EU praxis is constrained by political-legal principles enshrined in the treaties that serve as imperfect translations of its normative core. But they are themselves subject to possible non-democratic interpretations. Democratic guiding principles should be broad enough to be relevant across issue-areas, flexible enough to enable transformative dynamics and operationalizable enough to guide concrete interactions among peoples. As a basis for further debate and amendment, I suggest ten tentative guiding principles for European democracy.

*Guiding Principle 1 (Autonomy): In a Democracy, Relations between Member States are Ultimately Constrained by the Collective Autonomy of Its Peoples*

Peoples as states must have the *de jure* right, but also *de facto* capacity, to choose to enter or exit the Union, or parts of the Union, as well as a corollary right of return under agreed conditions with proactive support from the Union to do so. Member states must remain

masters of the treaties, however difficult mutual accommodation for ‘reasonable vetoes’ this may imply, including to agree on conditions for opt-outs and differentiated integration. The ad hoc bypassing of the unanimity rule for treaty revision in 2012 seems to contradict this simple principle.

*Guiding Principle 2 (Safeguards): In a Democracy, all Peoples-as-States Must Benefit from Institutional and Legal Safeguards at the Centre*

In a democracy, decisions at the centre must entrench the equality of peoples as states enough to guard against soft domination. In particular, mechanisms for the mitigation of power asymmetries enshrined in the Community method should be cross-cutting, from regulatory agencies to the European Council. Conversely, decision-making in the EU needs to accommodate political ownership by big states. Arguably, Angela Merkel’s ‘Union method’, privileging intergovernmental decision, can only avoid betraying the Community method if the Commission and the European Court of Justice remain the ultimate arbiters on *responsible* exercise of power.

*Guiding Principle 3 (Pluralities): In a Democracy, Governance Institutions and Decision-Making should Eschew Majoritarian Logics and Privilege Pluralities, Horizontal Co-operation and Shared Leadership*

A democracy seeks to counter the drift to majoritarianism inherent in modern democratic logic, be it as majorities of states or majorities of EU-wide population. Instead, it should privilege non-aggregative, non-majoritarian logics at the Union level. The one-person-one vote principle must be mitigated to compensate for population asymmetries so that no national majorities (from big or small states) may be systematically overridden. Shared leadership must be entrenched through practices like rotation, comity and consensus. Decision-rules based on pluralities should be favoured, which require joint action *among* agencies of the state, national parliaments or citizens.

*Guiding Principle 4 (Transnationalism): A Democracy should Give Priority to Transnational Rights and Obligations while Guarding against Coercive Assimilation*

A democracy focuses on Union constraints on the treatment of non-nationals. The obligations of free movement and non-discrimination should be genuinely applied and citizens receptive to the idea that people moving across borders bring with them the laws and social contracts of their home country, just as migrants must progressively internalize the externalities that these create for others. The transnational political rights of those who move should be taken seriously, so that, for instance, loss of home country voting rights should be compensated with voting rights in the host country. Transnational lists in the European Parliament could serve these kinds of transnational interests.

*Guiding Principle 5 (Equivalence): In a Democracy, Shared Projects (for Example, Single Market, Single Space, Single Money) do not Require Harmonized Standards, but Minimal Compatibility and Maximal Recognition*

Integration without unity calls for engineering policy compatibility while accommodating non-convergence. The principle of proportionality must pervade the EU political culture

and single policy standards shunned to the extent compatible with the pursuit of common projects. Instead, European policies and laws should deal with tensions between home and host country jurisdiction through conflict-of-laws approaches and managed mutual recognition. The motto of a democracy when it comes to fiscal union could be: as much fiscal harmonization as necessary, as little as possible.

*Guiding Principle 6 (Mediation): In a Democracy, the Enforcement of Common Disciplines Requires Strong, Legitimate Domestic Mediation*

The thickness of mediation by national state and non-state institutions is both a constraint and a principle, which needs to be actively nurtured to ensure democratically sustainable integration. National leaders, courts, ministries, parliaments, agencies, civil servants and non-governmental organizations must use their margin of manoeuvre to translate, transform and own collective EU disciplines. As the travails of EMU illustrate, it helps when political agents for change are Janus-faced insiders in Brussels and at home able to nationalize EU disciplines in the long run.

*Guiding Principle 7 (Empowerment): In a Democracy, Common Disciplines and Resources should Primarily Empower Lower Loci of Governance*

If centralized authority ought to serve primarily for top-down empowerment, we need to identify jointly and democratically the privileged target for such empowerment. Subsidiarity under democratic interdependence calls for cities, regions and other sub-state entities to govern in horizontal consideration of each other. It may sometimes necessitate devolving back competences from the EU level.

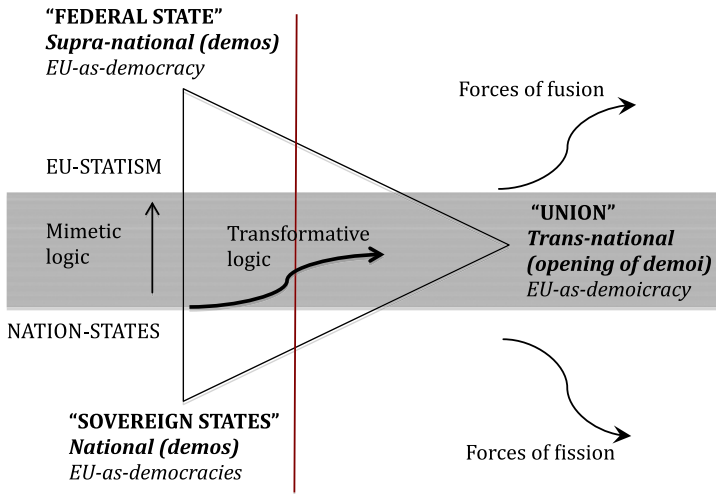
*Principle 8 (Complementarity): Direct Accountability in a Democracy must Appeal to a Range of Alternatives to Traditional Political Representation and thus Strengthen rather than Compete with Indirect Accountability*

Europe's democracy operates in the shadow of national representative democracy, with indirect accountability as its primary focus, but only insofar as modes of domestic majoritarian aggregation do not systematically bypass the interests of groups most affected by integration. Concurrently, pluralities across countries are preferred to aggregative methods when it comes to direct links between citizens and union. In this spirit, national parliaments should be more directly involved in EU politics. If a democratic lens applauds the current albeit precarious entrenchment of an EU participatory norm, capture needs to be avoided. Power-scrutinizing mechanisms at EU level can be multiplied, including through the Internet, and made to trickle down to the domestic level. Horizontal accountability mechanisms must be refined to reflect negative political externalities.

*Guiding Principle 9 (Co-citizenship): In a Democratic Light, European Citizenship can Serve as a Political, Legal and Cultural Referent to Enmesh rather than Replace Existing Citizenships in the Union*

In the spirit of democracy, Europeans need to radically rethink the tenets of citizenship in a polity of multiple demoi where patterns of empowerment and disempowerment concern

Figure 2: On the Rubicon



Source: Author.

politics *tout court* and not just the politics of movement across borders. EU citizenship should expand the rights, opportunities and obligations of all its citizens via Europeanized national citizenships, without superimposing an autonomous new ‘citizenship granting and monitoring’ authority.

*Guiding Principle 10 (Diversity): Advocates for a Demoicratic Union must Counter the Messianic Discourse Calling for ‘Oneness’ and Advocate a Shared Ethics of Transnational Mutual Recognition*

The commitment to diversity in a democracy should serve as a mental beacon to resist the pull to oneness – be it one people, one state, one voice on the world stage or one story for the EU. Instead, radical democratic openness calls for drawing strength from legitimate differences, be they between European accents on the international stage or between national consumption and supply patterns to create a Euro-wide energy grid. To be sure, the balance between convergence and autonomy can change over time since in a consistent demoicratic polity, diversity is what the peoples make of it.

**Conclusions: On the Rubicon?**

In this article, I have sought to lay out some broad parameters for discussion for an eventual ‘demoicratic 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 ‘demoicracy’ 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, deploying the concept as an autonomous normative benchmark by which to assess its evolving legal, political and economic order, and explaining the evolution of the enterprise.

If metaphors can be of help, the challenge of democracy story is to stay on the Rubicon (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 by borrowing from traditional notions of domestic law and democracy, that is, democracy of the kind we are familiar with and whose vocabulary has become second nature to most Europeans – predicated on the constructed existence of a ‘people’. They are bound instead by the basic injunction of democracy: thou shalt not cross the Rubicon which separates a Union ruled by and for multiple *demoi* from 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*.

*Correspondence:*

Kalypso Nicolaidis  
 Department of Politics and International Relations  
 University of Oxford  
 Manor Road  
 Oxford OX1 3UQ  
 United Kingdom  
 email: kalypso.nicolaidis@sant.ox.ac.uk

## References

- Azmanova, A. (2012) *The Scandal of Reason: A Critical Theory of Political Judgement* (New York: Columbia University Press).
- Balibar, E. (2005) *Europe, Constitution Frontieres* (Paris: Editions du Passant).
- Beck, U. and Grande, E. (2007) *Cosmopolitan Europe* (Cambridge: Polity Press).
- Besson, S. (2006) ‘Deliberative Demoi-cracy in the European Union: Towards the Deterritorialization of Democracy’. In Besson, S. and Marti Marmol, J.L. (eds) *Deliberative Democracy and Its Discontents* (Aldershot: Ashgate).
- Bohman, J. (2007) *Democracy across Borders: From Demos to Demoi* (Cambridge, MA: MIT Press).
- Castiglione D., Bellamy, R. and Shaw, J. (2006) *Making European Citizens: Civic Inclusion in a Transnational Context* (Basingstoke: Palgrave Macmillan).
- Cheneval, F. (2011) *The Government of the Peoples: On the Idea and Principles of Multilateral Democracy* (Basingstoke: Palgrave Macmillan).
- Cheneval, F. and Schimmelfennig, F. (2013) ‘The Case for Democracy in the EU’. *JCMS*, Vol. 51, No. 2. Available at: <http://onlinelibrary.wiley.com/doi/10.1111/j.1468-5965.2012.02262.x/>.
- Cohen, J. and Sabel, C. (1997) *Directly-Deliberative Polyarchy* (New York: Columbia University Press).



- Collignon, S. (2004) *Vive le République Européenne!* (Paris: Éditions de la Martinière).
- Dahl, R. (1989) *Democracy and Its Critics* (New Haven, CT: Yale University Press).
- Dryzek, J. (2000) *Deliberate Democracy and Beyond: Liberals, Critics, Contestations* (Oxford: Oxford University Press).
- Fabbrini, S. (2010) *Compound Democracy* (Oxford: Oxford University Press).
- Habermas, J. (1998) *The Post-National Constellation* (Cambridge, MA: MIT Press).
- Habermas, J. (2001) 'Why Europe Needs a Constitution'. *New Left Review*, Vol. 11, September/October, pp. 11–32.
- Hix, S. (2008) *What's Wrong with the European Union and How to Fix It* (Cambridge: Polity Press).
- Honneth, A. (1996) *The Struggle for Recognition: The Moral Grammar of Social Conflicts* (Cambridge: Polity Press).
- Hooghe, L. and Marks, G. (2001) *European Integration and Multi-level Governance* (Lanham, MD: Rowman & Littlefield).
- Howse, R. and Nicolaïdis, K. (2002) 'Legitimacy through "Higher Law?" Why Constitutionalizing the WTO is a Step Too Far'. In Cottier, T., Mavroidis, P. and Blatter, P. (eds) *The Role of the Judge: Lessons for the WTO* (Bern: World Trade Forum).
- Joerges, C. (2011) 'Unity in Diversity as Europe's Vocation and Conflicts Law as Europe's Constitutional Form'. In *After Globalisation*, RECON Report 15 (Oslo: Reconstituting Democracy in Europe).
- Keene, E. (2012) 'Social Status, Social Closure and Europe as a Normative Power'. *European Journal of International Relations*, doi: 10.1177/1354066112437768.
- Keohane, R., Macedo, S. and Moravcsik, A. (2009) 'Democracy-Enhancing Multilateralism'. *International Organization*, Vol. 63, No. 1, pp. 1–31.
- Kohler-Koch B. and Rittberger, B. (eds) (2007) *Debating the Democratic Legitimacy of the European Union* (Lanham, MD: Rowman & Littlefield).
- Kumm, M. (2009) 'The Cosmopolitan Turn in Constitutionalism: On the Relationship between Constitutionalism In and Beyond the State'. In Dunnof, J. and Trachtman, J. (eds) *Ruling the World: International Law, Global Governance* (Cambridge: Cambridge University Press).
- Lacroix, J. (2009) 'Does Europe Need Common Values: Habermas against Habermas'. *European Journal of Political Theory*, Vol. 8, No. 2, pp. 141–56.
- Lacroix, J. and Nicolaïdis, K. (eds) (2010) *European Stories: Intellectual Debates on Europe in National Contexts* (Oxford: Oxford University Press).
- Linklater, A. (1998) *The Transformation of Political Community* (Columbia, SC: University of South Carolina Press).
- Lord, C. and Pollak, J. (2010) 'The EU's Many Representative Modes: Colliding? Cohering?' *Journal of European Public Policy*, Vol. 17, No. 1, pp. 117–36.
- Lowe, K. (2012) *Savage Continent: Europe in the Aftermath of World War II* (New York: Viking)
- Maduro, M. (2003) 'Europe and the Constitution: What if This is as Good as It Gets?' In Weiler, J.H.H. and Wind, J. (eds) *European Constitutionalism beyond the State* (Cambridge: Cambridge University Press).
- Manent, P. (2007) *Democracy without Nations: The Fate of Self-Government in Europe* (Wilmington, DE: ISI Books).
- Margalit, A. (1996) *The Decent Society* (Cambridge, MA: Harvard University Press).
- Marks G. (2011) 'Europe and Its Empires: From Rome to the European Union'. *JCMS*, Vol. 50, No. 1, pp. 1–20.
- Menon, A. (2008) *The State of the Union* (London: Atlantic Books).
- Menon, A. and Schain, M. (eds) (2006) *Comparative Federalism* (Oxford: Oxford University Press).

- Miller, D. (2009) 'Democracy's Domain'. *Philosophy and Public Affairs*, Vol. 37, No. 3, pp. 201–28.
- Moravcsik, A. (2002) 'Reassessing Legitimacy in the European Union'. *JCMS*, Vol. 40, No. 4, pp. 603–24.
- Morgan, G. (2005) *For a European Superstate: Public Justification and European Integration* (Princeton, NJ: Princeton University Press).
- Mouffe, C. (2000) *The Democracy Paradox* (London: Verso).
- Mueller, J.-W. (2010) 'The Promise of Demoi-cracy: Diversity and Domination in the European Public Order'. In Neyer, J. and Wiener, A. (eds) *The Political Theory of the European Union* (Oxford: Oxford University Press).
- Nicolaidis, K. (2003) 'Our European Demoi-cracy: Is this Constitution a Third Way for Europe?' In Nicolaidis, K. and Weatherill, S. (eds) *Whose Europe? National Models and the Constitution of the European Union* (Oxford: Oxford University Press).
- Nicolaidis, K. (2004a) 'The New Constitution as European "Demoi-cracy"?' *Critical Review of International Social and Political Philosophy*, Vol. 7, No. 1, pp. 76–93.
- Nicolaidis, K. (2004b) 'We the Peoples of Europe'. *Foreign Affairs*, Vol. 83, No. 6, pp. 97–110.
- Nicolaidis, K. (2006) 'Notre Demoi-cratie européenne: la constellation post nationale à l'horizon patriotisme constitutionnel'. *Politique Européenne*, No. 19, pp. 45–70.
- Nicolaidis, K. (2012) 'The Idea of European Democracy'. In Dickson J. and Eleftheriadis, P. (eds) *Philosophical Foundations of EU Law* (Oxford: Oxford University Press).
- Nicolaidis, K. and Howse, R. (eds) (2001) *The Federal Vision: Legitimacy and Levels of Governance in United States and the European Union* (Oxford: Oxford University Press).
- Nicolaidis, K. and Pelabay, J. (2008) 'One Union, One Story? In Praise of Europe's Narrative Diversity'. In Warleigh-Lack, A. (ed.) *Reflections on European Integration* (Basingstoke: Palgrave Macmillan).
- Nicolaidis, K. and Viehoff, J. (forthcoming) 'The Choice for Sustainable Solidarity in Post-Crisis Europe'. In *Solidarity for Sale, Europe in Dialogue 1*.
- Nicolaidis, K. and Weatherill, S. (eds) (2003) *Whose Europe? National Models and the Constitution of the European Union* (Oxford: Oxford University Press).
- Pelabay, J. (2011) 'L'Europe des "valeurs communes" et le recul du multiculturalisme: la diversité supplantée par l'unité?' *Revue Philosophique de Louvain*, Vol. 109, No. 4, pp. 747–70.
- Pettit, P. (1997) *Republicanism: A Theory of Freedom and Government* (Oxford: Oxford University Press).
- Rawls, J. (1993) *Political Liberalism* (New York: Columbia University Press).
- Rawls, J. (1999) *The Law of Peoples, with the Idea of Public Reason Revisited* (Cambridge, MA: Harvard University Press).
- Risse, T. (2010) *A Community of Europeans? Transnational Identities and Public Spheres* (Ithaca, NY: Cornell University Press).
- Scharpf, F. (2009) 'Legitimacy in the Multilevel European Polity'. *European Political Science Review*, Vol. 1, No. 2, pp. 173–204.
- Schmidt, V. (2006) *Democracy in Europe: The EU and National Politics* (Oxford: Oxford University Press).
- Schure, P. and Verdun, A. (2008) 'Legislative Bargaining in the European Union: The Divide between Large and Small Member States'. *European Union Politics*, Vol. 9, pp. 459–86.
- Taylor, C. (1994) 'The Politics of Recognition'. In Gutman, A. (ed.) *Multiculturalism: Examining the Politics of Recognition* (Princeton, NJ: Princeton University Press).
- Van Parijs, P. (1998) 'Should the EU Become More Democratic?' In Follesdal, A. and Koslowski, P. (eds) *Democracy and the European Union* (Berlin: Springer).

- Van Parijs, P. and Rawls, J. (2003) 'Three Letters on the Law of Peoples and the European Union'. *Revue de Philosophie Economique*, Vol. 7, No. 3, pp. 7–20.
- Walker, N. (2002) 'The Idea of Constitutional Pluralism'. *Modern Law Review*, Vol. 65, No. 3, pp. 317–59.
- Walzer, M. (1997) *On Toleration* (New Haven, CT: Yale University Press).
- Weiler, J.H.H. (1991) 'The Transformation of Europe'. *Yale Law Journal*, Vol. 100, No. 8, pp. 2403–83.
- Weiler, J.H.H. (1998) *The Constitution of Europe: 'Do the New Clothes Have an Emperor?' and Other Essays on European Integration* (Cambridge: Cambridge University Press).
- Weiler, J.H.H. (2000) 'Fischer: The Dark Side'. In Joerges, C., Mény, Y. and Weiler, J.H.H. (eds) *What Kind of Constitution for What Kind of Polity?* (Florence: Robert Schuman Centre).
- Weiler, J.H.H. (2001) 'Federalism and Constitutionalism: Europe's Sonderweg'. In Nicolaïdis, K. and Howse, R. (eds).
- Weiler, J.H.H. (2012) 'Deciphering the Political and Legal DNA of European Integration: An Exploratory Essay'. In Dickson, J. and Eleftheriadis, P. (eds) *Philosophical Foundations of EU Law* (Oxford: Oxford University Press).