Europe in Transformation
How to Reconstitute Democracy?

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RECONSTITUTING DEMOCRACY IN EUROPE

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Abstract

Europeanization and globalization are frequently held to undermine national democracy. What are then the prospects for democracy in the multi-level constellation that makes up the contemporary European political order? The European debate has taken the question of democracy beyond the nation state. But can there be democracy without nation and state? The authors present three different models for how democracy can be reconstituted within the multileveled European context. It can be reconstituted at the national level, as delegated democracy with a concomitant reframing of the EU as a functional regulatory regime. Democracy can be reconstituted through establishing the EU as a multi-national state based on a common identity(ies) and solidaristic allegiance strong enough to undertake collective action. Democracy can also be reconstituted through the development of a post-national Union with an explicit cosmopolitan imprint. This entails an EU with some governmental functions, and which actively takes measures to become a regional cosmopolitan entity in a reformed world order. These are the only viable models of European democracy, as these are the only ones that can ensure equal membership in a self-governing polity. They differ however with regard to both applicability and robustness.

Keywords

I. Introduction

The popular rejections of the Constitutional Treaty in France and the Netherlands in 2005 have stalled the immediate effort to equip the European Union (EU) with a formal constitution.[1] An obvious question that these events bring up is whether Europe's experiment, the attempt to forge supranational democracy, is unviable.

This question speaks to the challenge of *forging* democracy at the supranational level; it also brings up the challenge of *sustaining* national democracy within an altered European and global context. This two-fold challenge has been brought forth by the Union's political-institutional development, as this unfolds within a wider global(ising) context.

The present constitutional impasse occurred after a lengthy period of almost uninterrupted and rapid integration that greatly widened the territorial reach of the Union and to some extent also deepened it. The EU at present consists of 27 member states and wields influence over states and citizens through supranational institutions such as the Commission, the European Court of Justice and the Parliament, as well as through central so-called inter-governmental institutions, such as the Council of Ministers.[2] The EU, which was initially a creature of the member states, has contributed to transform them, directly through legally binding actions, as well as more indirectly, through unleashing processes of mutual learning and adaptation. The upshot is that European states' identities and even state-ness have come to resonate with their *European-ness*, as national law has become entangled in EU law practice to the extent that the states are no longer conventional 'nation states'. To dismantle the EU in order to forge a Europe of *independent* nation states today will represent a transformative project of near-revolutionary proportions.

The EU has – over time – extended its agenda, and obtained more power; and it formally embraces democratic principles and procedures (cp. Art. 6.1 TEU). The Union draws on these factors to bolster its claim to the effect that it can no longer be understood as a mere international organisation with legitimacy solely deriving from the member states – the Masters of the Treaties – but should instead be understood as *a polity in its own right* with direct links to its citizens. The assertion is that legitimacy initially established through domestic channels, through national democracy, has been supplemented with direct chains of influence from citizens to their supranational institutions. Supporters of integration argue that supranational democracy is necessary to handle the problems of interdependence; nation states have opted for integration as they cannot solve the problems they face on their own. Many critics counter this assertion by arguing that European integration is the problem, as it contributes to the hollowing out of national democracy, through executive dominance and technocratic governance, combined with unfettered marketisation – deregulation and 'negative integration'.[3] The sceptics, then, see the issue as one of *rescuing* national democracy from the threat posed by European integration.

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[1] The authors gratefully acknowledge constructive criticisms from members of the RECON project, and the participants at the ARENA Seminar, 27 March 2007.

[2] Note that with regard to 'Pillar I' issues, the Council is a supranational institution.

[3] See Storey 2006. A more nuanced analysis of the ambivalent relationship between globalisation and Europeanisation can be found in Snyder (2000).

Can the EU be counted on to somehow upload democracy to the European level? The standard solution is for the EU to develop into a federal European state, where the nation states are transformed into member states akin to Länder or provinces. Proponents of national democracy argue that a European federal state is neither feasible, nor democratically viable, as it would require a collective identity that the Union neither has nor should seek to obtain. These two positions suggest that there is a zero-sum relationship between national and European-level democracy. They do share a common underlying tenet, namely that democracy presupposes the nation state.

Transnationalists and cosmopolitans underline that Europe's experiment *challenges* democratic orthodoxy, which has the nation state as *the* institutional-communal mainstay of democracy. The question they pose is whethe*r* democracy can be disassociated from its putative nation-state foundation. One central research challenge is to figure out whether and, if so, how a complex multilevel system of governance that lacks core state attributes can nevertheless be democratic. Another is to clarify whether the Union represents something that novel as to require a new democratic theory.

There is no agreement on the precise character of the democratic *challenge* facing Europe; hence what is the most appropriate solution is also a contested matter. Is it to *rescue* national democracy from the throes of European integration; is it instead to somehow *upload national* democracy to the European level; or is it perhaps to opt for cosmopolitan democracy? Each solution has built into it a specific reading of the character of the challenge facing Europe.

We posit that the challenges can only be properly addressed by *reconstituting* democracy in Europe. European democracy is today steeped in a complex and multifaceted pattern of integration, which poses challenges, but also holds out possibilities and prospects. Our claim to the effect that Europe's challenge is that of reconstituting democracy, takes as its point of departure that the assessment of the prospects for democracy in Europe must start from this *recognition of complex interdependence embedded within a multi-level governance configuration*, with all the complexities and contradictions that this step-wise (through several rounds of enlargement) and large-scale process of continental integration entails.

We should further add that any effort to understand how best such a reconstitution can be attained is affected by the absence of a clear conceptual-theoretical 'map' specifically calibrated to suit the European experience. This has made it difficult for the mainstream debate on democracy to connect with the European debate so as to clarify what is at stake in overall terms. This disconnect between general democratic theorising and the European case shows up in many of the innovative proposals to capture the EU's complex character, as these are not attuned to the problem of democracy. Proposals such as *consortio* and *condominio* (Schmitter 2000), *deliberative supranationalism* (Joerges and Neyer 1997), *cosmopolitan empire* (Beck and Grande 2005: 81ff.), *empire* (Münkler 2005: 245ff), and forms of *multilevel governance* (Hooghe and Marks 2003), such as *hierarchical and plurilateral* (Zielonka 2007), are descriptive categories devoid of normative content. None of the forms of consortio, condomino or empire speaks directly to democracy. Further, how deliberative supranationalism or multi-level governance can be democratic, remains to be demonstrated. Their democratic orientation is either absent, or at least underdeveloped. What would then a democratic Europe look like?

Our objective in this article is to contribute to theoretical clarification through establishing and assessing different configurations for reconstituting democracy in Europe. We propose a yardstick for establishing a polity's democratic character, and a taxonomy of democratic forms, which encompasses the main options for democratic rule in Europe. These are presented as three analytical models of European democracy. All three models conceptualise democracy within an *integrated* Europe. The models differ in how they link up democracy and integration. But precisely because they start from the recognition that states are intertwined they all – to different degrees – see the challenge as one of reconstituting democracy within the multilevel European construct rather than simply returning to nation-state-based democracy.

The common democratic yardstick we use is based on the standards of deliberative democracy. Deliberative democracy lends itself to our investigation, as it is not confined to the nation-state template and its presuppositions of sovereignty, demos, territory, and identity; it can therefore also be applied to the study of alternative forms. Deliberative democracy, which has been held up as the democratic panacea for the EU,[4] holds that democratic legitimacy requires public justification of the results to those who are affected by them. This can be operationalised through the democratic principles of *congruence* and *accountability*: By congruence is meant the basic democratic principle that those affected by laws should also be authorised to make them. Accountability designates a relationship wherein obligatory questions are posed and qualified answers required. It speaks to a justificatory process that rests on a reason-giving practice, wherein the decision-makers can be held responsible to the citizenry, and that, in the last resort, it is possible, to dismiss, incompetent rulers.[5]

In the next section we revisit the main axes of the debate on democracy in the multilevel European constellation. Then we establish the core components of deliberative democracy, and set out the basic requirements of a democratic polity. When applying these to the multilevel EU configuration – which reflects intergovernmental, supranational and transnational principles and structures – we are able to reconstruct *three models* of European democracy. They represent possible solutions to the democratic challenge facing Europe. The first model-solution posits that it can be reconstituted as a combination of delegated democracy at Union level and representative democracy at member state level which entails a partial retrenching of existing integration; the second is that democracy can be reconstituted through establishing the EU as a *multinational* federation; and the third is that European democracy can be reconstituted through the EU set up as a *post-national* Union with an explicit cosmopolitan imprint. We consider which of these is the most robust in relation to the fundamental requirements of a democratic order. We see these models as the only normatively valid and analytically coherent options – from the point of view of a stable, democratically legitimate polity – as only these models can ensure the conditions of self-government among equal citizens under a common law; that is, equal membership for everyone in the sovereign body that is responsible for authorising the use of power.

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[4] The European Commission's *Plan D* highlights the need for dialogue and debate to foster democracy and citizens' engagement in Europe (European Commission 2005). Consider also the Constitutional Treaty Article I-47: 'The institutions shall maintain and open, transparent and regular dialogue with representative associations and civil society'. See also Cohen and Sabel 1997; Bohman 2005.

[5] On the debate on these criteria see Held 1995: 16, 224; Zürn 1998; Harlow 2002; Bovens 2006.

II. Democracy in Europe revisited

The academic debate on European democracy is multifaceted. It brings up the nature and character of the integration process; the issue of conceptualising democracy; the question of community and common values; political ambitions and possibilities; globalisation's many faces; and the character of the changing world order, etc. This debate cannot be pinned down to one single dimension of democratic order; the many conceptions of democracy that are put forth vary widely in scale and scope.

This comprehensive debate can be understood as revolving around three core axes. The first, most widespread and dominant, axis, takes as its key premise that the nation state is the harbinger of democracy.[6] The conundrum facing proponents of national democracy is that in today's Europe, a range of processes generally labelled under the heading of globalisation are seen to *undermine* the salience of the nation state as the embodiment of democratic government. Euro-sceptics, notably of a Conservative bent, see European political integration as synonymous with the factors that drain out the essence of nationhood.[7] Social democrats and communitarians claim that the European integration process sustains a neo-liberal supranational order, an order that undercuts both the systems of risk-regulation and the measures of solidarity that were such characteristic traits of the European welfare state.[8] Taken together these factors are seen to sustain a system of multi-tiered democratic deficits. Many students of democracy go further and argue that the democratic deficit is not merely a contingent matter relating to the effects of globalisation, but refers to lack of core democratic components such as a common European public sphere.[9] Others also see the problem as *structural* in that it highlights built-in limitations in the *scale* of representative democracy. Robert A. Dahl (1999), for instance, has argued that, beyond a certain scale, representative democracy simply cannot work; thus, extending representative democracy to the European level lengthens the democratic chain of legitimation and *heightens citizens' alienation*. The most obvious solution is to roll back integration. But can really the rolling back of European integration *rescue* national democracy under conditions of interdependence and globalisation?

The merit of this solution is disputed by other analysts who argue that the main challenge to national democracy does not emanate from European integration, but instead from decisional exclusion, as a result of denationalisation and globalisation under which international crime, environmental degradation, terrorism, and tax evasion thrive. Many of the decisions affecting national citizens are taken elsewhere, or are not made at all. Indeed, these processes reveal decreasing steering capacities on

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[6] The most sophisticated assessment of the EU's democratic quality to date, Christopher Lord's book on auditing democracy in the EU (2004), uses as one of its two standards 'modified' consociationalism, which is a variant of national democratic control of EU activities.

[7] For a selection of Euro-sceptical writings, see Holmes 1996.

[8] See Etzioni 2007; Greven 2000; Miller 1995; Offe 2000, 2003; Scharpf 1999; Streek 2000. The negative referenda results of the Constitutional Treaty can be construed as voters punishing the Union, as well as their own leaders, for actively taking measures to undermine both democracy and the ability to forge collective action (Nicolaïdis 2005: 14). See also post-referendum surveys in France and the Netherlands (Flash Eurobarometer, 'The European Constitution: post-referendum survey in France', available at: <ec.europa.eu/public_opinion/flash/fl171_en.pdf> and 'The European Constitution: post-referendum survey in The Netherlands', available at: <ec.europa.eu/public_opinion/flash/fl172_en.pdf>, both June 2005). Siedentop (2000) gives this argument a special twist. Whilst supporting a European federal state, he argues that the present integration process is an unhappy marriage of French *étatisme* and neo-liberal economism. This mixture threatens to undercut the prospect for democracy in Europe.

[9] Consider Offe 1998 and Grimm 1995.

the part of the nation state (Nielsen 2004).[10] When framed in this light, analysts such as Jürgen Habermas (2001, 2004) see European integration not as the nemesis of democracy, but as a means of *uploading* democracy to the European level.

Both positions in this debate take the nation state as their frame of reference and discuss the prospects for democracy in these terms. Proponents of a European federal state would for instance argue that instituting democracy at the supranational level is the best assurance of sustaining democracy also at the member-state level (e.g. Mancini 1998). Within such a configuration the member states could no longer be sovereign nation states. The question of nationalism's contribution to democracy remains a thorny and unsettled issue here. However, without a shared identity that can motivate actors to norm compliance and to collective action, there can be no democracy (Miller 1995).

The second axis of debate is made up of transnationalists and multilevel governance scholars who argue that the challenge facing Europe is neither to rescue the nation state nor to upload state-based democracy to the EU level. The EU has developed into a type of polity that raises the prospect for democracy *beyond* the nation state.[11] They conceive of the EU as a possible *alternative* to the nation-state model.[12] In this perspective the EU is seen as composed of a host of new governance structures and deliberation within transnational civil society – that together make up an alternative to a government above the nation state. To them, sovereignty resides with the problem-solving units themselves.[13] Dense transnational networks and administrative systems of co-ordination have been intrinsic to the legitimacy of the EU, and are seen to amount to *transnational constitutionalism*.[14] They are based upon the private law framework of legal institutions 'that claim legitimacy beyond their own will or self-interest' (Möllers 2004: 329). This debate focuses on the conditions under which such issue areas can be deemed to be legitimate. If the self-governing collectivity is part of several communities – national, international and global – the locus-focus of democracy becomes a puzzling matter (Held 1995: 225).

Do deliberation and problem-solving in transnational networks have democratic value? If so, what are the institutions and mechanisms we should look for? Can such structures bear the burden of legitimation, or can a political community only claim to be sovereign and justified when the laws are enacted correctly, and the rights are allocated on an equal basis? The crucial question that this debate brings forth is whether the state form and a collective identity are necessary preconditions for democracy to prevail, or whether a leaner structure made up of legal procedures and criss-crossing public discourse can ensure democratic legitimation. In short, can democracy prevail without state and nation?

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[10] Ruggie (1993) sees the EU as a case of unbundling of state authority and with this a change in the constitutive principle of territoriality. Bartolini (2004) sees this in weakened power of centres' ability to control peripheries. Against this view we find analysts who argue that European integration *strengthens* the state. See notably Moravcsik 1994; Milward 1992.

[11] See notably Schmitter 1996, 2000. See also Hoskyns and Newman 2000; Preuss 1996; Weiler 1999, 2001; Zürn 1998. Lord's (2004) second democratic standard, 'concurrent consent', is explicitly designed for a multi-level system of governance, without this necessarily being tied to the state form.

[12] Hooghe and Marks (2003) outline two models of multilevel governance, among which MLG II is the one closest to the non-state approach to governance.

[13] See for example Bohman 2005; Cohen and Sabel 1997, 2003; Dryzek 2006; Gerstenberg 2002. For an overview of the governance literature in a European context, see Kohler-Koch and Rittberger 2006.

[14] See Fischer-Lescano and Teubner 2007; Joerges et al. 2004; Möllers 2006; Slaughter 2004.

The third axis of debate, which we label 'cosmopolitan', focuses on Europe as a particularly relevant site, for the emergence of cosmopolitanism (Archibugi 1998; Beck and Grande 2005; Delanty and Rumford 2005). As such, the European Union is seen as part of, and as a vanguard for, an emerging democratic world order. It connects to the changed parameters of power politics through which sovereignty has turned conditional upon respecting democracy and human rights. It is seen to form one of several emerging regional-cosmopolitan entities that intermediate between the nation state and the (reformed) UN, and which become recognised as a legitimate independent source of law (Eriksen 2006; Habermas 2001; Held 1992, 1995). In the Westphalian order, states are sovereign with fixed territorial boundaries and are entitled to conduct their internal and external affairs autonomously; without any possibilities for external actors to control the protection of human rights. But legal developments over the last half-century have been remarkable, and one of their main thrusts has been to protect human rights. The development of the UN (and regional entities such as the ECHR), whose global entrenchment has been re-enforced through multilateral arrangements for regulating economic international affairs (such as Bretton Woods, the GATT and the WTO), and their accompanying set of institutions, first delimited, and later redefined, the principle of state sovereignty. Aggressors can now be tried for crimes against humanity, and offensive wars are criminalised. State sovereignty is in the process of becoming *conditional*; conditioned on compliance with *citizen's sovereignty*. Democracy can thus no longer stand for a national 'community of fate' that autonomously governs itself.

The debate on European democracy makes clear that the core issue is to establish what democracy *can mean* when the nation state can no longer serve as the taken-for-granted foundation. The most critical issue that the second and third axes of debate bring forth is what democracy can mean in a post-Westphalian global context. At a minimum democracy entails that binding decisions must be justified vis-à-vis the citizens who are bound by them and according to standards the citizens agree upon. In what sense can citizens become self-governing within such a complex structure? Deliberative theory holds that only decisions that have been critically examined by qualified and affected members of the community through a reason-giving practice can claim to be legitimate.[15]

Should we abandon the nation-state framework and instead focus on transnational or even cosmopolitan foundations? Or should we retain the nation state and seek to consider how it fares in a context marked by heightened pluralism, complexity and multilevel governance?

III. Back to basics

Given that we cannot take the nation state constellation of democratic rule as the *indisputable* point of departure, we need to be clear on what are the basic requirements of democracy.

Democratisation and the quest for legitimacy

Before we spell out the minimum set of basic components of a democratic polity it is

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[15] Cp. Gutmann and Thompson 1996: 55; Habermas, 1996: 110; Rawls 1993: 137 on principles of democratic legitimacy.

necessary to say something about the concept of democracy and how this figures in deliberative democratic theory. Any democracy harbours an inevitable gap between principle and practice. Any actual institutional arrangement that claims to be democratic is at most an approximation to the ideal of procedural democracy. Real democracy has never been realised.[16] The idea of democracy as a system of self-governing citizens does not come wrapped up in an explicit and exclusive institutional package, and democratic orders always contain non-democratic elements. Hence, the quest is for democratisation through constant trial and error of institutional forms, rather than for conclusive settlement through embrace of one particular institutional form of democracy. Democracy is a contested concept[17] – and even more so in a changing world.

We therefore need to make a distinction between justifying reasons for political orders, and forms of institutionalisation. This can be generalised into a distinction between democracy as a legitimation principle on the one hand, and democracy as an organisational form, on the other. Only by adhering to democratic procedures can power holders justify their decisions, and the citizens subject them to critical tests; only by employing these procedures can collective goals be achieved legitimately; and only through these procedures can laws be changed and new laws enacted correctly. In other words, democracy is not identical with a particular organisational form, but is rather a principle, which specifies what it means to get political results right. The democratic principle is operative as an ever-present critical standard. The *credo* of government by the people preserves its critical status as the principle through which proponents and opponents can come to understand each other's claims. Understanding democracy foremost as a legitimation principle, but whose effective operation has to take an organisational form, makes us attentive to the prospect for the democratic principle to take *several* possible forms of institutionalisation. This also helps explain why democracy has, historically, come in many different forms and shapes, even within the state-based frame. It has manifested itself in direct or participatory democracy, as well as in indirect, representative forms, such as parliamentary and presidential democracy.

Under modern conditions, representative democracy has been held up as key, since, democratic legitimacy cannot be based on the direct participation of all citizens in the making of all laws, as the people, is never present to make the choices. Moreover, it is difficult to pin democratic legitimacy to voting, as it is virtually impossible to find a democratic method that allows for the just aggregation of individual preferences to a collective decision. The counting of votes is an effective method to reach decisions, but this is a method that does not test the quality of the preferences. It is a poor substitute for deliberation (Goodin 2005: 12). The principle of majority vote, on its part, represents the winners, not the common will. It does not guarantee full political equality as the prevalence of permanent minorities testifies to.

Representative democracy is part of the modern democratic order, but it relies on deliberation to produce cogent results. Deliberative democracy, in its epistemic variant, holds that deliberation is a cognitive process for the assessment of reasons in

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[16] Which made R.A Dahl (1971) choose the term *polyarchy* for modern democracy.

[17] Democracy belongs to those concepts that are essentially contested and hence should not be understood as fixed but as open to challenge and dispute at the same time as they are inevitable for making sense of a practice.

order to reach just decisions and establish conceptions of the common good (Cohen 1997; Estlund 1993). This position underscores rationality, not participation, with regard to democratic legitimacy. From this perspective, the main argument for deliberative democracy is to be found in the presumption that a free and open discourse brings forth qualitatively better decisions, and that the decisions are justified to the affected parties. Deliberation carries moral weight, as a political system that guarantees conditions for autonomous public deliberation, gives us better reasons to believe that its decisions are morally correct. The theory of deliberative democracy is then an answer to the requirement that political decisions should be right. Further, a form of *political autonomy* is constituted, when actors have to seek justification in relation to what others can approve of, viz. everyone who is subject to collective decision-making must be able to find an acceptable basis for such decisions. Justice, in this perspective, is not a pre-political value or a substantive principle, but an inter-subjective category. What is just is decided in processes of deliberation among affected parties; hence, the notion of *justice as mutual recognition* based on impartial justification.[18]

For reasons of scale, scope and complexity, a modern democratic political order, to be legitimate, must *reconcile* the need for rational decision-making, with proper representation of affected interests. Hence, the assertion that public discourse and criticism improve the knowledge basis, increase the level of reflection, as well as the responsibility and accountability of the decision-makers, and are, together with party-competition and periodic elections, the best way for realising popular sovereignty (Gutmann and Thompson 1996: 144).

How are we then to apply these principles to the European setting? What are the minimal requirements for a democratic order?

A democratic political order

Does democracy presuppose the exclusive type of territorial control and recourse to force that we associate with the modern state? Or can democracy be ensured within a more general notion of political system, akin to for instance Easton's (1971: 134) definition as 'the authoritative allocation of values for society as a whole'? Notwithstanding the precise definition of democracy, at a minimum it, under modern circumstances, requires both a *polity* and a *forum*; hence the following two general conditions can be specified:

- authoritative institutions equipped with an organised capacity to make binding decisions and allocate resources; and

- a common communicative space located in civil society, where the citizens can jointly form opinions and put the power holders to account.

From a normative perspective, the public sphere located in civil society, holds a unique position, because this is where everyone has the opportunity to participate in the discussion about how common affairs should be attended to. It signifies that equal citizens assemble into a public, which is constituted by a set of civil and political

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[18] This concept rests on the insight that actor-neutral reasons are needed to justify a norm. Reasons based on self-interest do not fulfil the requirement of impartiality – morality entails upholding norms for the simple reason that they are right, and that violating them are wrong. It follows from this that some disputes cannot be settled simply with reference to mutual advantage. Simply establishing an equilibrium outcome does not imply that the outcome is right. See Habermas 1993; Scanlon 1998.

rights and liberties, and set their own agenda through open communication. A public sphere is an indispensable component for a political order to meet with the requirement of justifying norms and decisions to those affected, as well as for establishing a self-governing citizenry with 'final control over the agenda' (Dahl 1982: 6). A democratic order presupposes a polity with requisite resources for collective decision-making, such as a legally entrenched system of representation, and identity and legitimacy.

Public discourse is the medium through which members can address themselves reflexively and form collective opinions, and is connected to the polity through different channels of communication. For this to have decisional effects, a set of institutions and procedures that are equipped with the ability to convert goals into practical results are required. In modern polities, public deliberation is wed to systems of representation, as no system can accommodate the participation of all relevant stakeholders. Representation refers to procedures and processes for citizens to influence political decision making and the actions of public officials in manners generally considered to be legitimate. The modern conception of representation can be said to be parasitic on deliberation, as no person can consider herself to be legitimately represented unless the mandate and accountability terms are spelled out, and the represented are offered acceptable justifications for decisions taken on their behalf. Representation may be seen as a precondition for political rationality, as it secures institutional fora removed from local pressure, in which elected members of constituencies can peacefully and co-operatively seek alternatives, solve problems and resolve conflicts on a broader basis.[19]

To sustain a governmental entity a measure of territorial control is needed, as is the performance of certain functions, such as resource acquisition.[20] To ensure *exclusive territorial control* military and police powers are required. For the political system to comply with the core tenets of congruence and accountability, deliberative democratic theory posits that some degree of territorial-functional contiguity is required, but this need not sum up to *exclusive territorial control.* However, the importance that many democratic theories attach to *demos,* nation, a 'symbolic we' – directs us to the requirement of a common sense of identity. The political function of collective or shared identity is – due to its deeper ties of belonging and trust that make ethical-political processes of deliberation possible – to transform a collection of disjunct individuals and groups, into a collective that is capable of common action. Identity speaks to criteria and conditions for membership in a given community, as well as to the collective's interpretations of itself (or the collective's self-understandings). Identities may be deep or shallow; coherent or fragmented; genuine or manipulated; inclusive or exclusive (Peters 2005), and hence varies as a basis for trust and solidarity. Identity formation in a modern democratic context is mediated through public discourse and the institutions and procedures that regulate interpersonal interaction. In that sense all the variants of identity are made to straddle the line between universal principles and particular, distinctive contexts.

By legitimacy we do not simply mean the acceptance or support for an order, but that

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[19] This principle of parliamentary representation can be stated as follows: 'no proposal can acquire the force of public decision unless it has obtained the consent of the majority after having been subjected to trial by discussion' (Manin 1997: 190). See Pitkin 1972; Mansbridge 2003.

[20] Consider Stein Rokkan's model of state-formation and nation-building which is modeled on these two dimensions (Rokkan 1975; Flora et al. 1999). Schmitter (1996) was the first to apply these to the EU. See also Bartolini (2005) for a more detailed attempt to apply Rokkan's model to the EU.

there are good reasons to be given for why a political order deserves obedience. Legitimation serves to make sure that a polity is fit to make binding decisions on behalf of a *demos*; that, the policies and decisions chosen protect the integrity of the society and realise its vital values and goals in an adequate manner, and that therefore the citizens have a duty to comply. A system of power is not legitimate only because actors believe in its legitimacy, but because it can be justified in terms of their beliefs.[21] In democratic states there is a presumed link between the normative validity of a political order and the social acceptance of this order. Many students of modern politics today subscribe to the tenet that democracy is the sole remaining legitimation principle of political domination.[22]

Democratic systems require a public sphere as well as a polity. A democratic system that complies with the criteria of congruence and accountability presupposes a particular relationship between the public sphere and the polity. However, this relationship is not so specific as to give rise to one single institutional configuration or one distinctive combination of territory and function; they can be combined in different concrete institutional ways, and thus give rise to quite different political systems.

To function, a modern democratic polity presupposes popular legitimacy, collective identity, democratic representation and adequate governing capacity. Properly reconstituting democracy in Europe therefore presupposes that these functional requirements are fulfilled. But these functional requirements can be combined in different institutional ways, which would still be considered democratic. This means that there is scope for recalibrating these into different institutional configurations when we apply them to the extremely complex European setting. The Union today is made up of former nation states (which matters to the scope of European allegiance that is available). Further, the EU is marked by almost unprecedented cultural pluralism and institutional heterogeneity. There are huge discrepancies in the size of the member states (from Germany to Luxemburg); significant vertical institutional incongruence, through federal (Germany, Belgium and Austria) quasi-federal (Spain and the UK) and various forms of unitary arrangements at the member-state level; and a great amount of horizontal institutional heterogeneity, at the Union level through different systems of representation and accountability (entrenched in supranational and international structures), and far more so at the member-state level (various forms of presidential systems and parliamentary systems). The EU is facing a number of challenges pertaining to rival, competing, overlapping and even converging state-based and non-state based nation-building/sustaining efforts. To stay together and ensure legitimacy, it has to accommodate this complexity, in addition to manage tensions between national and European identities; between economic efficiency and social solidarity; between ensuring unity and respecting diversity; and between sovereign rule and basic rights protection.

Substantive complexity is amplified by the fact that there is contestation over how best to conceptualise democracy; over normative standards; and over appropriate terminology. There is, as noted, disagreement over how best to describe the Union in institutional terms and over how best to account for it in theoretical terms.[23] When

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[21] See Habermas 1976: 276ff, and further Weber 1921/1978; Beetham 1991; Buchanan 2004.

[22] Of the long-established authorities, religion, law, state and tradition, it is only democratically enacted law that has survived the corrosion process of modernity (Frankenberg 2003). See also Dryzek 2000.

[23] For different views, see: Abromeit 1998; Beck and Grande 2005; Beetham and Lord 1998; Bellamy et al.

applying our bare-bones notion of democracy to the multilevel constellation that makes up the EU we do not find one particular model of democracy. The multilevel constellation is made up of intergovernmental, supranational as well as transnational governing structures, which differ with regard to the main locus of the democratic unit. Intergovernmental structures point to the national level; supranational to the European level; and transnational to structures of civil society and cosmopolitanism. They reflect different ways of realising democratic values; while the last locates democracy closer to the forum - in civil society and in the protection of human rights;- the first places democracy closer to the polity and to the idea of a self-governing community. These give rise to tensions and to dilemmas that cannot necessarily be solved adequately within one model of European democracy. From this complexity we therefore reconstruct three ideal typical models of European democracy which in different ways and to different degrees comply with the criteria of congruence and accountability.

IV. Three models of reconstituting European democracy

We outline the three models of European democracy,and then assess them with regard to empirical fit and normative robustness. Lack of space entails that the empirical data we present has the character of stylised facts and serves an illustrative purpose only.

1) Delegated democracy

The first model envisages democracy as being directly and exclusively associated with the nation state. The presumption is that it is only the nation state that can foster the type of trust and solidarity that is required to sustain a democratic polity. On the basis of a well developed collective identity, the citizens can participate in opinion-forming processes and put the decision-makers to account at regular intervals, as well as continuously through public debate. The institutional-representative structure should in principle enable a reciprocal public justification process. In this model, the emerging structure in Europe is seen as a regulatory regime deeply embedded in extensive institutional arrangements of public (or semi-public) character (Eberlein and Grande 2005: 97).

In this model, the EU is envisaged as a functional regime that is set up to address problems, which the member states cannot resolve when acting independently. The model posits that the Union be mandated to act within a delimited range of fields. The relevant determinant for establishing which fields resides in the EU's ability to offload and compensate for the declining problem-solving ability of the nation state in a globalising context. This pertains, in particular, to the ability to handle cross-border issues (such as economic competition, environmental problems, migration and cross-border crime, etc.). The model presumes that the member states delegate competence to the Union, a competence that in principle can be revoked (cp. Pollack 2003). Although this entails a form of self-binding on the part of the member states, such delegation can come with a powerful set of controls imposed by the member states, in

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2006; Eriksen 2005; Eriksen and Fossum 2000; Gerstenberg 2002; Grimm 1995; Haas 1968; Joerges and Neyer 1997; Majone 2005; Schmitter 2000; Siedentop 2000. See also, Augustin 2000; Egeberg 2006; Habermas 2001; Hooghe and Marks 2003; Jachtenfuchs and Kohler-Koch 1996; Miller 1995; Middlemas 1995, Milward 1992; Moravcsik 1998; Morgan 2005; Olsen 2007; Scharpf 1999; Weiler 1999.

order to safeguard that they remain the source of the EU's democratic legitimacy. The member states both authorise EU action and confine and delimit the EU's range of operations through the provisions set out in the treaties, as well as through a set of institutions that permit each and every member state to exercise the power of veto. The model can thus be understood as a way of addressing the democratic incongruence that complex state interdependence and globalisation bring forth through establishing European institutions that are accountable to the national democratic systems.

In order for the EU to comply with the democratic tenets of the nation state model, the actual Union will have to be reformed in such a way as to ensure that its legitimacy is derived from the democratic character of the member states. The Union's structure must be set up in such a manner as to ensure that the member states retain core decision-making powers within the Union's institutional structure. The Union's own legitimacy would be based on its ability to produce substantive outcomes (Scharpf 1999: 237). According to Giandomenico Majone (1998, 2005), such a regulatory regime does not need popular legitimation proper, as politically independent institutions, such as specialist agencies, Central Banks, judicial review, and the delegation of policy-making powers to independent regulatory commissions, would provide the required legitimation of a unit constructed to resolve the perceived problems of the members.

Democratic authorisation by member states can take several institutional forms. It can take the form of intergovernmental bodies in which the contracting partners strike bargains on behalf of nationally fixed preferences and interests.[24] It can also take the form of a Union-wide representative body. Its democratic purpose would however be delimited to serve as an agent of *audit democracy*, not representative democracy. The representative body would, together with transnational and/or supranational institutions (such as a court and an executive), be set up to help member states supervise and control the Union's actions. These would be specifically mandated to hold intergovernmental decision-making bodies to account. They would be constitutionally barred from legitimising and authorising law-making, as well as from expanding Union competencies.[25] The EU's conferred competences would be foremost in the operation of the Common Market. The scope for common action in other policy fields would be quite narrow, as would be the scope for redistribution. Further, the EU would have a very limited scope for foreign and security policy, and it would be entirely subject to member states' preferences. The EU's fiscal base would be limited; it would be based on member state contributions, not EU taxing powers (see Table 1).

The EU-level would be based on a problem-solving strategy and a consequentialist notion of legitimacy. A problem-solving, derivative entity (from the member states) handles problems of a rather mundane, technical-economic nature and preferences

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[24] 'The broad lines of European integration since 1955 reflect three factors: patterns of commercial advantage, the relative bargaining power of important governments, and the incentives to enhance the crediability of inter-state commitment.' Thus European institutions are set up to improve the efficiency of interstate bargaining. '[G]overnments delegated and pooled sovereignty in international institutions for the express purpose of committing one another to cooperate' (Moravcsik 1998: 3-4).

[25] This term denotes a type of institutionalised discourse – strong publics – that promotes democracy through its monitoring and stock-taking role more than through its decision-making role (Eriksen and Fossum 2002).

that do not invoke 'strong evaluations'[26] or moral claims. In cases of conflict of interest, disputes will be resolved by reference to justice as mutual advantage. This concept of justice pertains to the benefits of mutual co-operation and stems from the constraints that self-interested parties may rationally impose upon themselves in order to realise their long-term interests (see Gauthier 1986).

Thus conceived, the EU would be a contractual order, an institutionally unique type of international organisation or regime, but one where democratic criteria do not apply, as the member states are the contracting parties. The states not the citizens make up the 'constituencies'; states are the sole sources of legitimacy. They act internationally, either on their own, or through their conferring powers upon the Union through delegation. The 'constitutional arrangement' is a contract with the 'pouvoir constituant', structured as a juridical relationship among separate parties. It would be akin to a 'gentlemen's agreement', which presupposes individual membership and sovereignty. The signatories represent individual modalities of government, not a social pact among citizens. Contractually based orders do not put up normative criteria of political legitimacy (Frankenberg 2000: 260f).

Beyond delegated democracy

Is the European Union based on this model's notion of delegated democracy? The model's core presumption is member-state based and institutionally entrenched democratic will-formation approximating the criteria of congruence and accountability. For this to work member states must have the last word; they must be placed on the same line and have the right to veto. The requirement of unanimity prevails; and there are neither trumps nor any supreme third party to resolve conflicts.

The European integration process has proceeded beyond this core model requirement. The institutionalisation of a 'High Authority' – later the Commission – with some regulatory competence as a third party distinct from the contracting parties – was an early indication of a legal-constitutional process that has gained momentum over time. The legal structure of the EC thus early on assumed supranational character (began with the acceptance of a constitutional reading of the founding treaties, implicitly in the 1950s, and explicitly in the 1960s),[27] which transformed the EC from an international regime to a quasi-federal legal system based on the precepts of higher law-constitutionalism. This was synthesised by the European Court of Justice in the combined doctrines of direct effect[28] and supremacy of Union law[29]. It has been coupled with a significant increase in the number of EU provisions and Court rulings, where the Court acts as a trustee of the Treaty, and not as an agent of the member states. The substantive contents of these developments also matters: the EU has become focused on fundamental rights as a founding principle of Union law (Weiler 1999; Eriksen et al. 2003a). The Union also confers citizenship rights, and Europeans are represented in the directly elected EP. Through co-decision with the

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[26] For this concept, see Taylor 1985.

[27] See the leading cases 26/62 *Van Gend en Loos* and 6/64 *Costa*. On the supranational character of EC law, see Alter 2001; Menéndez 2002; Stone Sweet 2004; Weiler 1999.

[28] Which affirms the full legal character, under certain conditions, of EC norms – first explicated in relation to Treaty provisions, later said to apply also to directives in the 1970s – and consequently implies that such norms might grant rights to European citizens *qua* Europeans.

[29] It was first explicated by the European Court of Justice in 1964, and stated that national norms must give way to Community ones if an irreducible conflict arises within *the scope of application of the Treaties*.

Council, the EP is set up to serve as a direct expression of the wills of European citizens. This is *confined* to the first pillar,[30] but this pillar has widened and has added a range of other policy areas.

The Union's supranational character has increased, and so has its democratic ambition, understood as part and parcel of the commitment to a Union based on *direct legitimacy*, which exceeds well beyond this model's notion of audit democracy, even in its stronger, supranational, version. This development reflects the dilemma facing delegated democracy: Effective democratic auditing requires supranational institutions that are able to 'open up' and render transparent the workings of intergovernmental executive bodies. At the same time, confining supranational bodies to the role of agents of delegated democracy, based on a bound mandate, is notoriously difficult, as the supranational body will argue – from efficiency and representative grounds – for the need for a supranational representative body. The European Parliament started out as a body of national parliamentarians, and hence bore some semblance to a European-based agent of national audit democracy. Since direct elections were introduced in 1979, however, the EP has emerged as a legislative body proper, a body whose authority to act is not bound up in and confined to acts of delegation by the member states. The EU's legal-institutional developments have thus resulted in a polity with:

> (a) an institutional arrangement with certain representative qualities;
>
> (b) a material constitution with basic rights protection;
>
> (c) transparency provisions and popular consultative mechanisms; and
>
> (d) some sort of an intermediary structure of civil and political organisations.

This development has taken place *together with* the retention of a comprehensive intergovernmental system, located in the complex Council structure. What are the more precise implications of these developments for *nationally based democracy*?

The EU affects the citizens in their capacities as customers, clients, users of public and private services, and in their role as political actors: voters and participants in public discourses. The Union's legal developments have also affected the identity of the member states, which have become exactly that, and are no longer solely Nation States (understood as a state responding exclusively to 'its' nation). The EU controls a significant amount of public funds; it takes decisions of major economic and social importance; it commits the member states through international agreements with third countries; and it makes laws and directives with direct effect on the member states and their nationals. The increase of decision-making power and scope combined with the expansion of majority voting at the European level affect the long-established national institutions of citizenship, representation and accountability, and disturbs national balances of powers. The EU is frequently held to favour executive over legislative power. It is also seen to empower the national judiciary arm – at the behest of the national legislative one – to privilege interaction with interest groups and NGOs over that of political parties (Craig 1999: 24).[31]

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[30] Pillar I is the European Community; together with Pillar II, the Common Foreign and Security Policy; and Pillar III, Police and Judicial Co-operation in Criminal Matters (which are outside of Community law) make up the European Union. Note also that JHA-related legislative acts such as the Biometric Passports Regulation are 'First-Pillar' measures.

[31] See also Weiler 1999; Moravcsik 1998; Schmitter 2000.

Union transactions are not merely functional problem-solving – they have turned 'political'. The presence of market-correcting or positive integration measures, such as certain redistributive schemes and means of standard-setting; the increased use of qualified majority voting; and the constitutionalisation process, testify to the EU as revolving around more than the politics of the lowest common denominator.[32] The European integration project, as many have pointed out, cannot be understood simply as a win-win situation, nor is this project merely about solving the perceived problems of the member states in line with the Pareto criterion.[33]

These observations suggest that a structure has been set up at the European Union level that affects the conditions for autonomous self-government at the national level. The main democratic challenge resides in executive dominance and technocratic governance and also in creeping juridification: the citizens have got rights but have not been able to give these rights to themselves. To ensure public scrutiny and democratic controls at the EU the member states would have to upgrade their political and legal institutions. On the other hand, for them to comply with the criteria of congruence and accountability, the EU would have to go through a major downscaling. It would have to roll back much of the legal order. Such a rolling back need not rescue democracy, as it may have destructive effects. It would entail removing much of the protective apparatus of human rights and the constraints on aggressive nationalism that have been established in the post-war period.[34] Moreover, such an order would lack the organised capacity to make binding decisions, such as majority vote and court rulings. It would not be very effective in resolving conflicts and achieving goals, and it would be unable to reallocate resources. The internal democracy of the nation states may increase, as the formal conditions for sovereignty would be re-established, but the states would have little control over the external factors that determine their range and freedom of action – as congruence between the actual decision-makers and the recipients would decrease. Without *input congruence*, that is participation in the making of the decisions that affect someone, there can be no self-determination; and without *output congruence*, that is, overlap between the polity and the territory it controls, there can be no effective participation. As the nation state is held to have become 'too small for the big problems, diversification and federation appear more and more necessary' (Smart 1992: 41)

The upshot is that the EU is not set up according to delegated democracy, and the act of rolling back the EU's democratic structures would in fact not rescue national democracy under conditions of complex interdependence and (economic) globalisation where the nation-state's autonomy is affected. In this situation the model of delegated democracy would at most ensure procedural accountability, not substantive accountability, as issue-complexity and issue-linkage would always leave discretionary room for delegates. The model of delegated democracy would also be prone to input-output incongruence, as the citizens would not be able to participate in all the decisions that affect them. Since the fate of national democracy is intrinsically linked to developments at EU level, another strategy is that of reconstituting democracy at the European level.

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[32] See e.g., Egan 2001; Joerges and Vos 1999. See Stone Sweet (2004) for the role of the European Court of Justice with regard to positive integration.

[33] This states that only decisions that no one will find unprofitable or that will make parties worse off, if not accomplished, will be produced, and hence lend legitimacy to international negotiations (Scharpf 1999: 237).

[34] Glyn Morgan (2005: 57-8) rightly observes that to argue for a Europe of independent nation states is to embark on a major transformative project of potentially revolutionary proportions.

2) Federal democracy

The democratic credo posits that all political authority emanates from the law laid down in the name of the people. The legitimacy of the law stems from the presumption that it is made by the people or their representatives – the *pouvoir constituant* – and is made binding on every part of the polity to the same degree and amount. This is so to say inherent in the legal medium itself, as it cannot be used at will, but has to comply with principles of due process and equal respect for all. A legally integrated community can only claim to be justified when the laws are enacted correctly, and the rights are allocated on an equal basis. The conventional shape of such a community is the democratic constitutional state, based on direct legitimation, and in possession of own coercive means.

This model applied to the EU, entails a Union that is institutionally equipped to claim direct legitimation, and that this be entrenched in legally binding form. It is widely held that a legally integrated state-based order is premised on the existence of a sense of common destiny, an 'imagined common fate' induced by common vulnerabilities, so as to turn people into compatriots willing to take on collective obligations to provide for each other's well-being. This is seen to be the solidaristic basis of the nation state, as well as of the welfare state (Offe 1998). To comply with this and be authoritative and legitimate, the EU needs a symbolic collective 'we'. A European identity is required to sustain an ability to make collective decisions over time (Grimm 1995; Miller 1995). A common European identity would provide a sound basis for citizenship, for specifying the rights and duties of its members, and for setting the terms of inclusion/exclusion. It would be a means of drawing bounds, by defining who are Europeans and who are not.

This model portrays the Union as a political community based on institutions that can sustain an identity-building process. The EU's legitimacy basis, from this perspective, would be based on the community of values that emanates from the revival of European traditions. Such common values, expressed through ethical-political self-interpretation processes, would underpin, and render collective decision-making at European level, possible. They would establish the preconditions for the unity of the law and the requisite basis for redistribution. In this model, justice as mutual recognition and formal equality – equal cases should be treated equally all across Europe – goes together with elements of distributive justice. A critical question pertains to whether Europe really possesses the requisite collective resources and political will to replicate the nation-state model of representative democracy at European level.

The model is premised on the tenet that the incongruence brought forth by globalisation and complex interdependence can be greatly reduced by federal democratic structures, which heighten congruence and helps alleviate the accountability problem of international and supranational institutions.

For this model to work within the complex European setting, we have to take proper heed of the existence of *multiple* nation-building/sustaining projects. The model has to be adjusted to accommodate the fact that nation-building at the EU level would be taking place *together with* nation-building at the member state (and partly even regional) level. The appropriate version of the model to capture this would be a *multinational federal European state*. In its institutional design, such an entity would have to coordinate the self-government aspirations and the rival nation-building projects that would occur within the European space (Norman 2006: 96). In

constitutional terms, a multinational federation presupposes that the principle of formal equality be supplemented with particular constitutional principles. These are intended to provide some form of 'recognitional parity', for national communities at different levels of governance (in the EU at Union and member state levels). They would lend symbolic and substantive credence to the federal notion of non-centralisation; that is, that each of the constitutionally entrenched levels of government is sovereign within its main sphere of competence.[35]

National identity is historically linked to the democratic constitutional state; it is however not a core precondition for it (Habermas 1998, 2001). The multinational federal state is compatible with *constitutional patriotism*, premised as it is on basic rights to ensure both an individual sense of self and a collective sense of membership. Constitutional patriotism is definitorially rooted in a particular context. Applied to the EU and given the resilience of the nation state, Habermas finds that the EU can at most become a Federation of Nation States. Habermas' prescription for the EU is thus weaker than is our model, as his does not need to result in a European federal *state* premised on an empowered Parliament.[36]

The federal model of democracy, as set out here, implies that the EU will be distinguished by a commitment to direct legitimacy founded on basic rights, representation and procedures for will-formation, including a European-wide discourse. The basic structural and substantive constitutional principles of Union law, as well as coercive measures required for efficient and consistent norm enforcement and policy implementation will be institutionalised at both core levels of government (member state and European). Schooling, symbolic measures and social redistributive means at both levels so as to render the process of socialising the people of Europe into 'Europeans', compatible with citizens retaining distinctive national identities will be established; as will be a set of clearly delineated criteria for who are Europeans and who are not. There will be onus on positively identifying Europe, and on distinguishing Europeans from others so as to make up the requisite social basis and 'we-feeling' for collective action – for regulatory and redistributive measures, and for a common European foreign and security policy. The EU will be legally recognised as a state with the right to police and military force for territorial control and protection of sovereignty, and with provisions for legal secession of any sub-unit from the Union (see Table 1).

The EU – *less than* a state

Is the EU based on federal state-based democracy? The model's core tenet is for the Union to entrench in state-based form legally binding democratic will-formation. This requires authoritative institutions at the Union (and member state) level, organised along federal lines and equipped with final word on those matters that fall under each level's respective jurisdiction.

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[35] Wayne Norman (2006: 163-9) cites seven such principles: (a) partnership; (b) collective assent; (c) commitment and loyalty; (d) anti-assimilationism; (e) territorial autonomy as national self-determination; (f) equal right of nation-building; and (g) multiple and nested identities.

[36] This stance is attributed to the position and legitimacy of the member states. The second chamber of government representatives – *the chamber of nations* – 'would have to hold a stronger position than the directly elected parliament of popular representatives, because the elements of negotiations and multilateral agreements between member states that are decisive today cannot disappear without a trace even for a union under a political constitution' (Habermas 2001: 99). See further Habermas 2004, at p. 32.

As noted in the assessment of Model I, the EU has undergone a process of integration. Nevertheless, when considered in terms of territorial control and functional reach and contiguity, it is still well short of statehood. Also, as community, it was from the outset, founded on the need to overcome the destructive effects of aggressive nationalism. This has led to many constraints on nationalism in Europe, rooted in a more universalistic perspective.

It is within a set of universal, not national, primordial principles that the EU seeks to locate its identity and legitimacy. Its *normative foundation* is the core (universal) principles that animate the democratic constitutional state, namely, democracy, rule of law, and human rights. The EU draws on symbols and language generally associated with nationalism – it has a flag, an anthem, and a common currency – but is nevertheless foreign to nationalism as doctrine. Many analysts also argue that the EU helps *redirect* national identitarian projects in a post-national direction.[37]

How effective such a redirection will be, is difficult to tell, given that the EU, as the multinational federal state, is marked by rival identitarian projects. Most of the member states insist on retaining their national identities, and the EU is also formally committed to retain such.[38] Further, the EU also has a significantly weaker socialising ability than does any multinational state. Although the EU by now affects most policy areas, it is nevertheless true that the member states still retain the most important traditional mechanisms for socialising their citizens (school systems, a national vernacular, etc.).[39] The post-Maastricht (1992) politicisation of the integration process has, if anything, been driven by *resistance* against Brussels-driven 'homogenisation', propelled by a fear that draws some of its impetus from the experience with nation-building processes in member states. Europe's recognition of diversity is reflected in a subtle shift in the Union's credo: from the 'ever closer Union' of the Rome and Maastricht Treaties to Laeken's 'united in diversity'.[40] The latter is a rhetorical vaccination against homogenisation and the stark image of 'Fortress Europe'.

The EU is neither a state nor is it a nation. Its coercive measures are far weaker than those of states. This is not to say that the EU lacks power. The EU's influence and *effects* are quite substantial, since the member states carry out its decisions. But the EU's own institutions for territorial control are *at their weakest* in the core state functions: military security, taxation, and police. The EU is still first and foremost a humanitarian-type power, as its own military capabilities are almost non-existent (although the member states possess very significant military capabilities) (Sjursen 2006a).

The EU also deviates from the statist tenet of territorial-functional contiguity; there

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[37] See e.g., Delanty 1995; Delanty and Rumford 2005; Fossum 2001, 2005; Habermas 2001; Viehoff and Segers 1999.

[38] See TEU Article 6.3: 'The Union shall respect the national identities of its Member States'. This is also clearly expressed in the Constitutional Treaty and in the European Charter.

[39] The EU's relative institutional weakness as compared to a state matters to identity-formation also in the sense that 'much of what comes to inform political cultures and identities is a consequence of policies, institutions, and activities that have been carried out for other reasons' (Norman 2006: 67). Ability to shape identities increases greatly with institutional impact and institutional density. The member states' opportunity to harness identitarian support through unintended effects also helps explain the nature and pattern of resistance to European integration in many quarters.

[40] This latter term entered the Union's vocabulary around 2000. See the Europa website at <europa.eu/abc/symbols/motto/index_en.htm> (accessed 1 March 2007).

are important elements of functionally variegated control of territory. Consider border control: the UK and Ireland are associate members, *not full members* of the Schengen-based system, whereas the non-member states Norway and Iceland are.[41] And far from all the member states have adopted the euro. The EU is far more institutionally diverse than the most diverse federal state (Schmitter 2000). The institutions at EU-level are also programmed along two modes of decision-making, generally labelled the Community Method and the Intergovernmental Method, which inject an important element of *poly-centricity* into the Union's workings. It is only the former that is based in a system of European-wide representative institutions (EP). The EP's core remit of action is the Common Market, but whereas it has expanded beyond this, it has little bearing on the core state functions of military security, police and taxation.

The EU's peculiar, and distinctive, institutional structure, has profound effects on the Union's democratic legitimacy. In the EU, there is no real chance for an all-inclusive public debate among all citizens, as the civic-institutional infrastructure is deficient (Trenz 2005; Grimm 1995; Peters 2005). The 'European people' is represented in 'pseudo elections' (often also referred to as second-order elections[42]) – with low turnout and without a proper European-wide party system – and a parliament that is not a fully-fledged and sovereign legislator. The upshot of all this is that the EU deviates clearly from the nation state. In its present form the EU has some traits of a *multinational non-state-based federation*, with the important proviso that its 'federalism' is organised around other issues and methods of territorial control than is the case with every state-based federation.

For the EU to comply with the tenets of this model, it would have to be reconstituted as a polity. That would not only entail *increased* competencies, but also institutional revamping, including the *establishment of direct*, representative, links with the citizens in *all* relevant functional domains. Any further move in such a statist, national direction, is bound to encounter strong resistance, as many are vehemently opposed, to a federal 'super-state'. In today's Europe, the resources required for such an order, for forging a common identity and for making us all good Europeans are in short supply. The upshot is that the model's presumption that increased congruence through lifting tasks to the European level has taken place in an uneven rather than in a coherent manner; has not been properly democratically authorised; and has not been matched with adequate measures of democratic accountability (as there is no functioning public sphere, no adequate party system as well as a deficient system of representation).

How close to statehood and nationhood the EU will need to come to comply with the federal model, requires attention to the character of the states system, as this model is premised on a system of democratic states. The multinational federal state model is steeped in a democratically tamed Westphalian states system, but where the democratic controls are still mainly internal to each state. In today's deeply interwoven world, where states are becoming increasingly interdependent, 'democracy in one country' is not sustainable. The issue is whether democracy can be

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[41] For details on the character of the countries' different forms of affiliation see 'The Schengen acquis and its integration into the Union', at <europa.eu/scadplus/leg/en/lvb/l33020.htm> (accessed 1 March 2007).

[42] Reif and Schmitt (1980) coined this phrase. The main difference between first and second order elections is that there is less at stake in the latter. Since European elections do not produce executive changes, they are really second-order national elections.

sustained through (horizontal) pressures from the system of states, or whether supranational bodies (above the state) that citizens can appeal to when their rights are threatened are necessary. In today's world, a range of such bodies have emerged. The EU, albeit deficient, is the most elaborate case of supranational democracy.

To sum up, the EU is less that a state. Its vocation is post-national rather than multi-national. In value terms, its commitment to universal principles suggests that it has a communal vocation that is broader and more universal than the multi-national state. The question that the EU brings up is whether the state model can still be seen as an adequate harbinger of democracy and solidarity in today's world. This pertains to which mode of allegiance, as well as to which institutional-structural make-up that democracy requires in a globalised world. Can cosmopolitanism offer a better, more suitable, version of democracy?

3) Cosmopolitan democracy

The third model envisages democracy beyond the template of the nation state. The model we discern here posits the European Union at the trans- and supranational level of government in Europe, and as one of the regional subsets of a larger cosmopolitan order. This implies that the Union will be a post-national government, a system whose internal standards are projected onto its external affairs; and further, that it will be a system of government that subjects its actions to higher-ranking principles – to 'the cosmopolitan law of the people'.

In a globalising world, the nation states suffer democratic deficits, as their citizens are in so many ways affected by decisions taken outside their borders, beyond national control.[43] The agenda over which the body of citizens exert exclusive control greatly diminishes. Decreased *output congruence* underpins the case for supranational government.

The EU has obtained competencies and capabilities that resemble those of an authoritative government, which we may define as the political organisation of society, or in more narrow terms, as the institutional configuration of representative democracy and of the political unit. The idea is that since 'government' is not equivalent with 'state', it is possible to conceive of a non-state, democratic polity with explicit government functions. Such a government structure can accommodate a higher measure of territorial-functional differentiation than can a state-type entity. The problem is how such an entity can be effective, in the absence of state-type coercive measures. When it is the member states that keep the monopoly of violence in reserve, such an order can only be effective to the degree that actors comply on the basis of voluntary consent. How can this come about in a polity that lacks the enabling conditions of sovereignty that confers stability on social relations in the form of a 'centralized authority to determine the rules and a centralized monopoly of the power of enforcement' (Nagel 2005: 116)? The answer is that such an order can ensure compliance and consent through a series of 'soft' mechanisms, ranging from a world-wide moral consensus on the protection of human rights, via consultancy, deliberation and problem-solving in transnational structures of governance, to the institutionalised procedures for authoritative decision-making in intergovernmental and supranational institutions, which are similar to the ones that at the national level

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[43] The extreme case is that of nuclear weapons: all citizens in the world can be affected by the actions of a mere handful of actors.

confer legitimacy upon results. When decisions are properly made, when they follow the authorised procedures of the constitutional state, the likelihood that they be respected is high (Tyler 1990).

This model thus, posits that the Union's democratic legitimacy can be based on the credentials of criss-crossing public debate, multileveled democratic decision-making procedures and the protection of fundamental rights to ensure an 'autonomous' civil (transnational) society. This is the clearest manifestation of democracy as a principle that is based on a post-conventional form of consciousness, one seen to have been generated by the struggles and processes that produced modern constitutions. Whereas such an entity holds traits that undermine the distinction between states and international organisations; it cannot do away with the modern legitimating principles that were established through democratic revolutions. Modern constitutions can be disconnected from the state form, insofar as they remain linked in with the project of modernity, whose normative telos is to make the addressees of the law also their authors (Frankenberg 1996). A true republic presupposes democracy, but democracy need not presuppose the state. A non-state entity can make up a system of government insofar as it performs the functions of authorised jurisdictions.

In this view, citizenship does not just entail a set of territorially confined rights, but is instead premised on 'the right to have rights', to borrow an expression from Hannah Arendt (1951/1986). That is, the subjects give themselves rights, and hence become co-legislating citizens. Herein is an implied right to fight oppression that goes with a conception of power founded on the democratic process.[44] Power then corresponds more to the ability to act in concert than to the disposal of coercive means (Arendt 1958). However, in the absence of the enabling condition of sovereign power, when the sanctioning mechanisms for enforcing the will of the majority, against the will of the minority, are weak; the system is therefore not institutionally geared to ensure distributive justice.

When we apply this model to the EU, there are two implications: first, that reconstituting democracy in Europe entails decoupling government as the democratic form of rule, from the state form – as a coercive system of power relations that is sovereign due to the codes of international law. International law has changed.[45] The EU has pooled sovereignty within a territory that it does not fully control. These developments have come to reflect a multi-dimensional conception of sovereignty.[46] State sovereignty has become conditional upon citizens' sovereignty. A cosmopolitan-

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[44] Power is only legitimate and effective when it belongs to no particular being. The idea of the rights of man implied a notion of legitimacy 'whose basis is beyond the grasp of human beings'. 'Modern democracy invites us to replace the notion of a regime governed by laws […], by the notion of a regime founded upon *the legitimacy of debate as to what is legitimate and what is illegitimate* – a debate which is necessarily without any guarantor and without any end.' (Lefort 1988: 38-9).

[45] A UN panel writes: 'In signing the Charter of the United Nations, States not only benefit from the privileges of sovereignty but also accept its responsibilities. Whatever perceptions have prevailed when the Westphalian system first gave rise to the notion of State sovereignty, today it clearly carries with it the obligation of a state to protect the welfare of its own peoples and meet its obligations to the wider international community.' (United Nations 2004: 17).

[46] Glyn Morgan (2005: 139) notes that sovereignty is an ordering principle, a status and a set of rights and privileges. It is a principle that states that an order is sovereign if it is not dominated by others, as well as an ordering principle of international affairs. A state does not cease to be sovereign even if it has delegated certain of its rights, powers and privileges to a supranational order whose decisions it cannot veto; but a state can reach a point wherein it has delegated so much that other states no longer recognise it as a sovereign state.

type EU would be based on non-violent settlement of disputes and legally authorised use of force, the entrenchment of institutions, rights and legal principles that subject actors to the constraints of a higher-ranking law – the cosmopolitan law of the people – and that empowers the citizens to take part in law-making processes at different levels. Policy-making, implementation and law enforcement would then take place through a variety of organisations, and the EU would be a sub-set of a cosmopolitan order that does not hold the means of legitimate violence in reserve, but is rather embedded within a system of multilevel commitments and constraints.

Second, the model posits that the borders of the Union are not drawn on essentialistic grounds. The EU can, therefore, only justify itself through drawing on the principles of human rights, democracy and rule-of-law – even when dealing with international affairs; hence, it underscores the cosmopolitan law of the people. In such a perspective, the borders of the EU are to be drawn both with regard to what is required for the Union itself in order to be a self-sustainable and well-functioning democratic entity, and with regard to the support and further development of similar regional associations in the rest of the world – namely, with regard to the viability of the African Union, MERCOSUR, ASEAN, etc. In this perspective, the EU's borders would be drawn with reference to functional requirements both for itself and for other regions, all within the framework of a democratised, rights-enforcing UN. The ensuing order would not aspire to become a world organisation, but would be cosmopolitan in the sense that its actions would be subjected to the constraints of a higher-ranking law (Eriksen 2006).

Regionally situated authoritative government within a cosmopolitan, non-state-based framework raises questions pertaining to institutional design and make-up. One particularly tricky issue is how to ensure democratic congruence and accountability within such a system. The short answer is that this requires a polity with a pyramidal conception of congruence and accountability, i.e., where the global level contains certain fundamental legal guarantees, the EU level handles a limited range of functions over which it has final authority, and that this again is subject to democratic oversight and accountability. Congruence has a different status in this model than in the previous ones, as it cannot simply refer back to a delimited democratic constituency but must always balance the requirements of a given constituency with the universal principles embedded in cosmopolitan law. The accountability issue is also very complex here. The 'many accounts' that such a system necessarily fosters presupposes a more central role for civil society and the public sphere in demanding and ensuring proper justificatory accounts; hence locates democracy more explicitly in civil society/public sphere than in the previous models.

Cosmopolitan democracy?

Is the EU based on cosmopolitan democracy? This model's core presumption is that European citizens will be able to consider themselves as self-legislating citizens within the functional domain that is the exclusive preserve of the European government. One obvious problem is to sustain this functional domain – and sustain this only – at the European level as the EU is functionally differentiated and without agreement on the demos, in other words, lacking in agreement on the criteria for inclusion/exclusion. Any such system will be unstable as it will be highly vulnerable to both centripetal and centrifugal pressures (to widen/deepen or narrow/delimit its operational scope).

Another problem is that cosmopolitanism holds individuals as morally ultimate in

both domestic and global contexts; they are the main legitimacy basis of political orders. But democracy presupposes some form of distinction between members and non-members. Democratic sustainability requires some form of identity, and identity thrives on exclusion, boundary-drawing and distinction. Identities are a condition of and a constraint on justice. Boundary construction, the dual processes of inclusion and exclusion, aims at establishing a particular balance between contextualised identities, democratic practice and global justice. Further, the outline of a given functional constituency must be considered in light of a collective identity's key role in instilling allegiance and loyalty. What is basic to us, what we share with one another and not with all the others, is what makes us special; something that arouses feelings and emotions, that we are committed to and that can motivate us to collective action, trust and solidarity. Collective identity stems from membership in a community of compatriots. Such is rather weak in an all-inclusive society. The world citizens do not have much in common apart from shared 'humanity' (Habermas 2001: 108; cp. Eriksen and Weigård 2003: 243ff).

The distinction between members and non-members is less absolute within a regional cosmopolitan entity, in the sense that people would be members of different functional constituencies. But for a viable European democracy along cosmopolitan lines to emerge, it is necessary to ensure a form of re-balancing of the membership in a community of compatriots with the inclusive requirements of the cosmopolitan society. What form of inclusion and what kind of rights protection does this then require at EU-level?

On membership, whatever reminiscences of primordial ties there are in Europe, these are weakly reflected at the European level, and a similar argument holds for collective identity. Today, there is a debate on where to draw the borders of the EU. This debate pits cosmopolitans against communitarians who argue for the need to confine the Union to Christendom. The debate on Turkish membership offers one important take on the Union's cosmopolitan vocation (Sjursen 2006b).

On rights, it is clear that today's Europe does not contain the balance between economic rights and social protection that this model sees as required for effective citizenship: to approximate such a balance there is need for retrenching market integration and drawing clear bounds on the operation of the market; whilst extending social guarantees across Europe. In this sense the cosmopolitan model presupposes clear bounds on integration, whereas the Union is marked by problems of democratically unauthorised 'creeping competence' (Pollack 1995) and *juridification* (Bohman 2005; cp. Blichner and Molander 2005).

The EU might also be too institutionally weak to serve as a proper *government*. It has inordinately weak enforcement mechanisms; as it relies mainly on the administrations of the member states to implement its policies. It is especially weak in the classical state-type functions: it has neither a police force, nor an army of its own, and there are no European prisons. This reduces both European legislators' and courts' leverage at the supranational level. This is a democratic problem insofar as it raises questions about its ability to uphold a system of rule which can be made effectively binding on every one to the same amount and degree. On the other hand, the self-proclaimed democratic system of law-making and norm interpretation at the European level, constrained by the member states, has built-in assurances that the EU not become an unchecked entity – an eventual 'world despotic Leviathan'.

From these observations we see that the EU holds traits suggestive of a nascent sub-type of cosmopolitan order. The implication of this observation for European democracy must take account of the fact that the cosmopolitan *model* is democratically weaker than the two previous models, both in terms of demos-foundation and in terms of self-rule. Cosmopolitans have thus far not offered a clear answer to the following thorny issues: How can goals be realised and rights protected *without* the sanctioning capacity of the state? A second critical question relates to the problem of achieving legitimacy for such an order that depends not only on a post-national identity but also on a public discourse with a global reach. How can the formal and informal conditions be made available at the transnational and global level? When functional constituencies become deeply entangled, the relevant distinctions break down and lines of accountability suffer. This is a problem that neither cosmopolitan theorists nor the EU has thus far adequately addressed.

Cosmopolitanism restrained

This model of reconstituting democracy in Europe emanates from the debate on the EU's cosmopolitan dimension.[47] Some, notably Cohen and Sabel (1997, 2003), and Bohman (2005), have opted for a version of 'cosmopolitanism restrained' through blending elements of cosmopolitanism with (a regional notion of) transnational governance. They argue for the normative validity of a kind of polycentric system of directly-deliberative polyarchy (Bohman 2005). This entails a model of direct participation and public deliberation in structures of governance wherein the decision-makers – through 'soft law,' benchmarking, shaming, blaming, etc. – are connected to larger strata of civil society. The claim is that transnational civil society, networks and committees, NGOs and public forums, all serve as arenas in which EU actors and EU citizens from different contexts – national, organisational and professional – come together to solve various types of issues and in which different points of access and open deliberation ensure democratic legitimacy. Local problem-solving, the institutionalisation of links between units, and agencies to monitor decision-making both within and between units make this structure conducive to democratic governance. The EU is seen as a multilevel, large-scale and multi-perspectival polity based on the notions of a disaggregated democratic subject and of diverse and dispersed democratic authority.

There are observations to support such a view and also the notion of the EU as a non-coercive deliberative system, with re-regulatory and market redressing effects (Joerges and Vos 1999). The system of comitology has managed to combine market integration with social measures, such as the protection of health and safety; has raised the standards of environmental protection; and has fostered consent and integration. Positive integration has been made possible, as solutions have been found that are more than just the politics of the lowest common denominator. Deliberation in committees has, thus, facilitated Pareto-improvements. This is because such interaction facilitates the pooling of competences, and moulds preferences and knowledge to such a degree that there is no basis for collective decisions other than those that leave things better or at least as well off as they were before.[48] The critical question pertains to whether transnational governance structures can meet with the

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[47] This debate has sought to address the weaknesses identified in the two former models, and there are several attempts to integrate them on a higher level (Beck 2003; Bellamy and Castiglione 1998; Delanty 1995; Held 1995).

[48] See Cohen and Sabel 2003; Eriksen et al. 2003b; Gerstenberg 2002; Joerges and Neyer 1997; Joerges and Vos 1999; Neyer 2003, 2004; Wessels 1998.

democratic requirements of public accountability and congruence. Can the democratic requirements of equal access, transparency and openness be met or is citizens' participation restrained to *a limited segment of the citizenry*? Can there really be democracy without democratic institutions?

Proponents of directly-deliberative polyarchy see deliberation primarily as a co-operative activity for intelligent problem-solving in relation to a cognitive standard; they are not conceiving of it as a vehicle to argue over what is correct in the sense that it can be accepted by all those potentially affected. In this perspective, publicity is needed merely for detecting and solving social problems; deliberation is seen as a fact-finding device. However, even if the legitimising force of the democratic procedure draws on the public acceptability of reasons and not on the direct participation of the citizens (Habermas 2001: 110), deliberation and governance structures cannot replace institutionalised forms of control (including veto-positions), and participation that are equally open to all.[49] Only the possibility to block and to revise on the basis of egalitarian structures of lawmaking, which make up the representative form of constitutional democracy, can (fully) redeem the claim of the moral value of democratic procedures, viz., that decisions have been justified to all affected parties: Hence, the need for legal formalism and the coercive means for guaranteeing equality, and empowering citizenship (Brunkhorst 2004: 98; 2006). Only with an enforcement capacity in place, can the laws of the citizenry be implemented and upheld efficiently and legitimately, according to 'realists' and constitutionalists.[50]

An additional problem: what is there to prevent slippage back to the (nation) state? In what sense is this approach substantially more than the intergovernmentalist approach outlined under model I, which envisages democracy as being directly and exclusively associated with the nation state? Another problem is that the directly-deliberative polyarchy perspective does not adequately recognise the political-institutional – constitutional – importance of the EU's focus on fundamental rights as a founding principle of Union law, a commitment that has also helped fuel the quest for EU-level and EU-wide representative structures. Transnational governance structures are based upon a private-law framework and cannot constitute an independent source of legitimation. They can supplement and help coordinate national institutions, but do not represent an independent level of legitimation that in democratic terms can be seen as separate from the member state to which citizens will owe their allegiance.

Directly-deliberative polyarchy has some merits, but it does not adequately capture the present state of affairs in European integration. In our view, directly-deliberative polyarchy straddles the line between our first and third models, but does not have sufficient merit to serve as a model unto itself.

V. Conclusion

This article started from the premise that the European integration process challenges democracy. However, the EU does not only pose a democratic challenge it also represents possibilities for coping with interdependence and diversity. The European

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[49] Transnational governance cannot rule out the dangers of *epistocracy* and the problem of governance without democracy (Schmalz-Bruns 1999).

[50] For example, Morgan 2005 and Grimm 1995.

integration process represents a solution to a number of the problems facing the nation states; hence reversing the process will reintroduce these problems. The question is therefore not to rescue national democracy, but to *reconstitute* it within a complex multilevel and pluralistic European setting. There are three answers to how democracy can be possible under such conditions. One implies retrenching the EU in order to re-equip the member state as the stalwart of democracy within an intergovernmental context. This option takes Europeanisation into account and refers to the need for reconstituting democracy rather than unravelling integration and rescuing nation-state democracy. It still carries obvious risks: If pursued to full (intergovernmental) model prescriptions, it would entail a major transformation of the current European political landscape. Even if such were successfully achieved, what is to guard against Europe becoming privy to the democratic limitations inherent in nationalism and the Westphalian order? Hence, Europe might be saddled with the initial problem that helped spark the European endeavour in the first place. If the less radical option, that of retention of nationally delegated supranational institutions, is chosen, Europe would still be facing massive accountability problems.

The option, we have tried to demonstrate, is not to embrace the obverse: to abandon the vocabulary and normative standards associated with the democratic constitutional state. The state is required to constitute and protect the demos. We found the multinational federal state a possible democratic alternative; however Europe's institutional diversity, the asymmetries built into its institutional configuration, coupled with its polycentric character, end up exceeding what this model can accommodate. Further, many Europeans are opposed to a European 'superstate'. Moreover the EU in its present form falls well short of this notion; it is neither state nor nation. The Union in its present form has entrenched a set of institutions that deviate from several of the key tenets of the nation-state model, even in its multinational trappings.

The quest for democracy in today's Europe has to take into consideration that there are different kinds of political allegiances and communities – thick and thin – corresponding to different levels of governance and their adjacent allocation of responsibilities. In the complex European system of multilevel governance, the rights and duties vary, and so do the requirements for allegiance that are conducive to the generation of obligations. There is in Europe an emerging institutional division of labour for the assignment of rights and duties.

In line with this, and with reference to the Union's universalist vocation, we proposed an alternative non-state cosmopolitan model that was set up to help tailor democracy to these conditions. It was brought about by the post-war legal developments in the wake of the UN, which made state sovereignty conditional and which can draw on a world wide consensus on human rights and democracy. This undertaking, we found, encounters its own problems and challenges. The vocabulary, normative standards and empirical indicators that this model embodies transcend the nation-state framework, but it comes with weak coercive means. How can such an order 'deliver'; how can it bring about changes required by justice, and how can it ensure equal access and public accountability in the complex multilevel constellation that makes up the EU?

Thus, all three options for a democratic Europe have strengths and weaknesses, and it is not clear which one is best adapted to the present context and contingencies. The multinational state-based federation offers the best contemporary assurance of legally

entrenched self-legislation. The cosmopolitan model represents our attempt to construct a viable conception of democracy beyond the state and the nation. Any attempt to set up such a system in one corner of the world, only, with Europe as vanguard, is likely to be a fickle construction, given that it will have to be sustained in a world system that is still largely made up of nation states. The isomorphic pressures towards national homogenisation would lend a constant threat to this construction. Material as well as ideational factors are at work in the European integration process. It reflects struggles over outcomes as well as the search for the proper institutionalisation of political power; historical learning processes of a conflict-ridden continent as well as the utopian aspects of modernity. Thus, it is hard to predict which one of the three models would be the outcome of the ongoing struggle for a democratised Europe; if no single model, may adequately capture the Union, then a combination of them may. However, the Union's political order will be unstable – and in drift – insofar as it cannot be defended by a valid principle, understood as approximating one or the other of the three models.

Our brief assessment has suggested that the Union today holds traits from all three models, and as such, is a reflection of the many paradoxes, aporias and dilemmas that haunt the integration process in Europe, and global processes, more generally. For example, they reflect the problem of overcoming nationalism without doing away with solidarity, with establish a single market in Europe without abolishing the welfare state; of achieving unity and collective action without glossing over difference and diversity; of preserving identity without neglecting global obligations; of achieving efficiency and productivity without compromising rights and democratic legitimacy; and of ensuring law-based rule as well as popular sovereignty.

The European experiment represents a major political challenge; it is no less of an intellectual challenge. We have quite a conceptual toolkit from centuries of democratic experience; but the European experiment requires us to consider carefully whether the different tools are properly calibrated to the task at hand, as well as consider whether new ones will be better suited to handle the challenges we confront.

Table 1. Indicators for Three Democratic Orders in Europe

Criteria	Delegated democracy	Federal democracy	Cosmopolitan democracy
Sovereignty	The member states are formally sovereign entities The Union is derived from the member states	The Union is recognised as a sovereign state, in accordance with international law	Polity sovereignty is multi-dimensional and shared among levels, subject to cosmopolitan principles of citizens' sovereignty
Coercive capabilities	The Union level has no own coercive capabilities Military and police forces are controlled at the member-state level	The Union level has state-type military and police capabilities The member states have police functions	Military and police authority shared among all levels.
Authoritative decision-making	• Constitutional limits on union-level competencies • Union level: Problem-solving on the basis of delegated authority ; • Union level: Decision-making and sanctioning ability confined to Common Market matters • Member states: Sustain final authority in all matters, in accordance with national constitutions	• State-based constitution delineating the competencies of the Union and the member states. • Institutions for authoritative decision-making at both core levels (Union/member states) within their respective areas of competence • Sanctioning ability available for norm enforcement and policy implementation, at both core levels of government (member state and European)	• Constitutionally entrenched delineation of powers and responsibilities along both horizontal and vertical lines, • Union sanctioning ability is limited; • Union subjects its actions to higher-ranking principles • Authoritative law-making through democratically regulated deliberative procedures
Resource acquisition and allocation	• EU level: no independent taxing powers and limited scope for redistribution • Member states decide autonomously over tax and redistribution within their territories	• EU level: redistributive measures; independent fiscal policy and taxing ability • Member-state level: redistributive and taxing powers	• EU level: no independent taxing powers and limited redistributive powers • All levels: committed to global redistribution
Membership/ border-setting	The Union is open to all European states that qualify in functional terms	The Union's borders are set in accordance with designation of Europeanness	The Union's borders are drawn in accordance with democratic criteria for a self-sustainable democratic entity and with regard to the development of similar regional associations.
Territorial exit	Provisions for exit – subject to approval from Union (majoritarian support required)	Provisions for legal secession of any sub-unit from the Union – subject to constitutional provisions	The Union has provisions for territorial exit for sub-units (subject to the constraints of cosmopolitan law)
Mode of legitimation	• Audit (derivative) democracy at Union level • Representative democracy at member-state level	• Popularly elected bodies based on representative democracy at all levels; competencies divided in bi-polar federal manner	• Popularly elected bodies within a system of legally 'hierarchicalised' competences
Identity formation and sustenance	• EU level: weak and with legal constraints on Union's scope of action • Member-state-based: strong but 'Europeanised'; subject to each member state's own provisions	• EU level: strong and founded on constitutional patriotism. • Member-state level: provisions for citizens' retention of distinctive national identities • Mechanisms for mutual recognition of European and national identities	• EU level: post-national and based on universal norms, fundamental rights and democratic procedures • Member-state level: respect for diversity; significantly constrained by European and cosmopolitan norms and values
Public sphere	Public sphere confined to the nation state	European-wide public sphere	Multiple overlapping (European and global) discourses

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RECON seeks to clarify whether democracy is possible under conditions of complexity, pluralism and multilevel governance. Three models for reconstituting democracy in Europe are delineated and assessed: (i) reframing the EU as a functional regime and reconstituting democracy at the national level; (ii) establishing the EU as a multi-national federal state; or (iii) developing a post-national Union with an explicit cosmopolitan imprint.

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