

Europe's Challenge: Reconstituting Europe or Reconstituting Democracy?

By

Erik Oddvar Eriksen and John Erik Fossum

ARENA Centre for European Studies

University of Oslo

P.O. Box 1143 Blindern, N-0317 Oslo

e.o.eriksen@arena.uio.no

j.e.fossum@arena.uio.no

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Abstract

The European Union harbours a democratic deficit. Euro-sceptics argue that the main issue is to rescue national democracy; thus the solution to the EU's democratic deficit is to "roll back" the European integration process. Is this possible *without* simultaneously encountering the democratic problems that warranted European integration in the first place? Euro-federalists see the solution in the "uploading" of national democracy unto the European level. Is this a feasible solution? Transnationalists and cosmopolitans see the EU as a democratic experiment which requires rethinking democratic theory. At stake is whether the proper handling of the EU's democratic deficit can be pinned down to constitutional or institutional reconfiguring or whether it actually requires a new democratic theory. In this article, we devise a set of democratic criteria. These are applied to the main positions in the literature, which yields three *democratic polity models*, each of which is assessed for its democratic viability and feasibility. On balance, the article finds that the third model, the regional-European government version, holds the greatest potential.

Introduction

The popular rejections of the Constitutional Treaty in France and the Netherlands in 2005, and the recent Irish rejection of the Lisbon Treaty, have reignited scepticism and self-doubt as to whether Europe's experiment, the attempt to forge supranational democracy, is viable. The challenge is to *forge* a viable democracy at the supra-national level; this issue must be considered in light of the challenge of *sustaining* national democracy within an altered European and global context. The point is that the European integration process has reshaped the workings of the member states' democratic orders to such an extent that we can neither properly understand, nor adequately assess, member-state-based democracy unless we take the EU's influence directly into account.

The EU has – over time – extended its agenda, and obtained more power. It 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 European Parliament, as well as through so-called inter-governmental institutions, such as the Council of Ministers. The EU, initially a creature of the member states, has contributed to transform them, directly through legally binding actions, and more indirectly, through unleashing processes of mutual learning and adaptation. European states' identities and even state-ness have come to resonate with their *European-ness*, as national law has become so entangled in EU law practice 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 formally embraces democratic principles and procedures (cp. Art. 6.1 TEU)¹ and draws on these 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. The standard solution they propose is for the EU to develop into a federal European state, where the nation states are transformed into member states akin to the (German) *Länder* or provinces. Critics counter this by arguing that European integration is the problem, as it contributes to the hollowing out of national democracy. The sceptics, then, see the issue as one of *rescuing* national democracy from the throes of European integration.² A third group of scholars, transnationalists and cosmopolitans, challenge both these positions by arguing that Europe's experiment *challenges democratic orthodoxy*, which has the nation state as *the* institutional-communal mainstay of democracy.³ The question they pose is whether democracy in its nation-state trappings is an adequate foundation for Europe. In today's world the conditions for democratization have changed. There is democratic merit in the European integration process. This implies that the challenge is less with Europe and more with the presuppositions of democracy. According to James Bohman, a major revamping of democratic theory is required to ensure a democratically viable EU in today's more transnational world.⁴

Is the challenge facing Europe that of devising a democratically viable constitutional and institutional framework (reconstituting Europe), or rather that of fashioning a new theory of democracy (reconstituting democratic theory) that is suitable to the particular character of the EU? This brings up several important questions. Is it possible to "roll back" the European integration process so as to rescue national democracy, *without* this process simultaneously producing the democratic problems that warranted European integration in the first place? Or is it possible to "upload" a viable conception of national democracy unto the European level? In other words, we need to consider whether these two "orthodox" solutions are democratically viable and feasible in contemporary Europe. The result of this assessment should then be compared and contrasted with the third, experimental (also in democratic theory terms), solution. To establish the relative merits of these solutions, they must be formulated in such a manner as to render them comparable. We do so by developing them as three *democratic polity models*. Each model contains a distinct application of a set of democratic criteria to the complex

European setting. Taken together, these three models offer a "map" of the most important democratic options facing contemporary EU. The map is *encompassing* in that it contains the main intellectual positions in the debate; it is also *original* in that all three models are innovations on existing scholarship.

In the following pages we first present the conception of democracy that informs this undertaking. The experimental position presupposes that it is possible to spell out a democratically viable conception beyond the nation-state. We approach this by establishing a set of baseline democratic criteria which can be used to assess state-based and non-state based solutions alike. Thereafter we specify these in organisational terms along three distinct democratic polity models, and assess the merit and suitability of each.

The first model-solution posits that democracy can be reconstituted as a combination of audit democracy at the Union level and representative democracy at the member state level. The second model posits that democracy can be reconstituted through establishing the EU as a *multinational* federal state. The third posits that European democracy can be reconstituted through the EU serving as a regional *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 find that Model II is the strongest in normative terms; thus raising questions as to the need for a new theory of democracy. But this model is highly contested; hence there is a major question of feasibility. The EU holds a number of experimental traits. Thus it is necessary to take the critique by transnational and cosmopolitan scholars seriously. But when we apply our democratic criteria to the EU we end up with a democratic polity model that differs from what they would have ended up with. Discussing these three models is important in terms of clarifying the *feasibility* of EU democracy. It is also important in terms of clarifying whether, and if so, how much of a change in democratic theory the EU requires.

Democracy: legitimisation principle and organisational form

Democracy is a contested concept, and notably so in a rapidly changing world. Every democratic system

harbours an inevitable gap between principle and practice. Every actual institutional arrangement that claims to be democratic is at most an approximation. Real democracy has never been realised. 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 for democratisation through constant trial and error of institutional forms, rather than for conclusive settlement through embrace of one particular institutional form of democracy.

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 legitimisation 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 their rulers to critical tests; only by employing the democratic 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 legitimisation principle has several important implications. First is the onus on justification. Second, is that the effective operation of the democratic principle has to take an organisational form, but the democratic principle can take *different* forms of institutionalisation. This also helps explain why democracy has, historically, come in many different forms and shapes, even within the state-based frame (direct or participatory democracy, and indirect, representative forms, such as parliamentary and presidential democracy).

In practice, democratic legitimacy cannot be based on the direct participation of all the citizens in the making of all the laws, as the people, is never present to make the choices. Hence, under modern conditions, representative democracy has been held up as key. It is however 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 principle of majority vote represents the winners, not the common will. It does not guarantee full political equality as the prevalence of permanent minorities testifies to. The counting of votes is an effective method for reaching decisions, but this is a method that does not test the quality of the preferences. It is a poor substitute for deliberation.⁵

Representation is part of the modern democratic order, but it relies on deliberation to produce cogent results. Deliberative democracy comes in several forms and trappings. In its epistemic variant, it holds that deliberation is a cognitive process for the assessment of reasons in order to reach just decisions and establish conceptions of the common good.⁶ 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. A form of *political autonomy* is constituted, when actors have to seek justification in relation to what others can approve of, that is, everyone who is subject to collective decision-making must be able to find an acceptable basis for such decisions. Deliberation thus carries moral weight, as a political system that guarantees conditions for autonomous public deliberation, gives us better reasons to believe that its decisions are correct. The theory of deliberative democracy is then an answer to the requirement that political decisions should be right.

Democratic legitimacy derives from the public justification of the results to those affected by the results. This constitutes the normative thrust of the democratic principles of *autonomy* and *accountability*. By autonomy is meant the basic democratic principle that those affected by laws should also be authorised to make them. This criterion posits that publicly authorized bodies of decision-making react adequately in the determination of the political community's development, insofar as the citizens can be seen as acting upon themselves. 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.⁷ These two conditions are the core components of deliberative democracy. They are the basic requirements for a democratic polity that all organisational arrangements must approximate to the greatest extent possible.

As a matter of scale, scope and complexity a modern democratic political order, to be legitimate, must *reconcile* the need for rational deliberation with proper representation of affected interests. Public discourse, inquiry, 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.⁸ A set of minimum organisational requirements for a democratic order can be set out.

A democratic political order

Although there are many different theoretical conceptions of the EU in the literature,⁹ these offer less guidance than what might have been expected to the task of clarifying what is at stake for democracy in Europe. There is still a certain disconnect between general democratic theorising and the European case. Many of the innovative proposals to capture the EU's complex character are *not* properly attuned to democracy. Hence, proposals such as *consortio* and *condominio*,¹⁰ *deliberative supranationalism*,¹¹ *cosmopolitan empire*,¹² *republican empire*,¹³ *empire*,¹⁴ and forms of *multilevel governance*,¹⁵ such as *hierarchical and plurilateral*,¹⁶ are mere descriptive categories.¹⁷ None of the forms of *consortio*, *condominio* or *empire* is democratic, and adding "cosmopolitan" or "republican" to the latter makes it an oxymoron. Further, how deliberative supranationalism or multilevel governance can be democratic, remains to be demonstrated. Their democratic point of reference is either absent, or underdeveloped.

One contentious issue in this debate is how much "state-ness" a viable European democracy presupposes. Is it the exclusive type of territorial control and recourse to force that we associate with the modern state; or can deliberative democracy be ensured within a more general notion of political system, akin to for instance Easton's definition as "the authoritative allocation of values for society as a

whole”¹⁸ As an organisational form, modern democracy, at a minimum, requires both a *polity* and a *forum*:

- authoritative institutions equipped with an organized 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.

The *public sphere* located in civil society holds a unique position, because this is where everyone has the opportunity to participate in the discussion of how common affairs should be handled, and where decision-makers can be held to account. It signifies that equal citizens assemble into a public. It is constituted by a set of civil and political rights and liberties, where the citizens set their own agenda through open communication, and address an indefinite audience. Public discourse is the medium, through which members can reflexively address themselves, and form collective opinions. It connects to the polity through different channels of communication. For this, a set of institutions and procedures equipped with the ability to convert goals into practical results is required. At a minimum a democratic order would require a legally entrenched governmental system of *representation*; some version of a common *identity*; and popular *legitimacy*.

Legitimacy does not simply mean acceptance or support for an order, but that there are good reasons 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 is, the policies and decisions chosen protect the integrity of the society and realise its vital values and goals in an adequate manner, and this is why 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.¹⁹ 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.²⁰

To function, a modern democratic polity also requires some form of collective identity, representation and governing capacity. To sustain a governmental entity a range of functions must be carried out. Such are resource acquisition and territorial control.²¹ For ensuring *exclusive territorial control*, military and police powers are required. The question of democratic quality hinges on the communicative and justificatory relationship between the polity and the forum; on the character of this structure; and on citizens making use of it. In addition to the notions of legitimacy, identity and public sphere that pertain to the civic-democratic aspects of a political order; a modern democratic polity relies on functional requirements pertaining to sovereignty, coercive ability, authorisation of collective decision-making, resource allocation, membership/border setting, and thresholds for territorial exit. (Table 1)

Properly reconstituting democracy in Europe presupposes that the functional and normative requirements are fulfilled. But a major lesson from the European debate is that these can be combined in different institutional ways. In other words, when we apply the basic requirements of a democratic order to the complex "constitutional essentials" of the multilevel constellation that makes up the EU, we find considerable scope for variation. The EU multilevel constellation's essentials are made up of intergovernmental, supranational and 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.

Three models for reconstituting European democracy

The EU is a dynamic and contested entity; hence to understand the debate and the choices facing Europe – notably whether what is required is reconstitution along familiar institutional-constitutional lines or rather along a reconfigured theory of democracy – we spell out three polity models. These have been developed from the three main positions in the debate on the EU as an intergovernmental organisation, a

federation or a transnational system of governance, but are all innovations on existing scholarship.

Model 1 – Audit democracy

The first model envisages democracy as being directly 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. 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.²² 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, terrorism and cross-border crime, etc.). The model presumes that the member states delegate competence to the Union, a competence that can in principle be revoked.²³ 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 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 problems that complex state interdependence and globalisation bring forth, through establishing European institutions that are accountable to the national democratic systems.

To comply with the democratic tenets of this model, the EU 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 *own legitimacy* would be based on its ability to produce substantive outcomes in line with the principle of Pareto optimality, which states that only decisions that no one will find unprofitable and that will make at least one party better off, will be produced, and hence lend legitimacy to international negotiations.²⁴ According to Giandomenico Majone, such a regulatory regime does not need popular legitimisation 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 legitimisation of a unit constructed to resolve the perceived problems of the members.²⁵

Some scholars understand democratic authorisation by member states to take the form of intergovernmental bodies in which the contracting partners strike bargains on behalf of nationally fixed preferences and interests.²⁶ However, the present level of discretion for decision makers at the European level leaves open the problem of *agency drift*: what assurances do member states have that the Union - whose decision-makers need decisional freedom to solve problems rationally - operates in accordance with their interests? The other problem is that of EU integration-fostered technocracy and executive dominance: under such conditions democratic institutions at both the Union and Member State level would be by-passed.

We therefore find that the proper application of the democratic principle to this institutional configuration requires the presence of an EU-wide representative body. But to ensure the continued prominence of national democracy, the body's democratic purpose would be delimited to serve as an agent of *audit democracy* not representative democracy. The representative body – the European Parliament - would, together with 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 supranational decision-making bodies to account. They would be constitutionally barred from legitimising and authorising law-making, as well as from expanding Union competencies. In accordance

with the logic of democratic delegation, that is, which issues can be delegated without severe loss of democratic self-governing ability, 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.²⁷ A problem-solving, derivative entity (from the member states) handles problems of a rather mundane, technical-economic nature and preferences that do not invoke moral claims or affect identities. Thus conceived, the EU would be a contractual order, an institutionally unique type of international organisation or regime, where the member states are the contracting parties. The states not the citizens make up the "constituencies", and are the sole sources of legitimacy. They act internationally, either on their own, or through their conferring powers on 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.²⁸

Reconstituting member state based democracy

The model's core presumption is member-state based and institutionally entrenched democratic will-formation approximating the criteria of autonomy 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; there are neither trumps nor a supreme third party to resolve conflicts.

For this model to work, today's EU will have to go through a process of reconstitution, mainly through a significant *downscaling* of the system at the EU-level. It will have to roll back much of the

legal order, including removing much of the protective apparatus of human rights and the constraints on aggressive nationalism that have been established in the post-war period.²⁹ Moreover, a down-scaled order would lack the organized capacity to make binding decisions, such as majority vote and court rulings. It would not be set up to solve deep conflicts, and it would be unable to reallocate resources. Within such a down-scaled order, the internal democracy of the nation states may increase, as the formal conditions for sovereignty would be re-established, but the states would have limited control over the *external* factors that shape 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.”³⁰

It is difficult to strike a viable balance between autonomy/accountability and congruence within a setting of delegated sovereignty: Heightened interdependence among states means that to ensure autonomy, the scope of the constituency must be increased. But this comes at the expense of accountability: Effective democratic auditing requires supranational institutions that are able to “open up” and render transparent the workings of intergovernmental executive bodies. Confining supranational bodies to the role of agents of delegated sovereignty, based on a bound mandate, is notoriously difficult. The members of a supranational body will need leeway and discretion in order to facilitate cogent decision-making. 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.³¹

It is also not clear that a process of rolling back the EU will adequately address the democratic challenge facing interdependent nation-states: creeping juridification (the expansion of jurist-made norms

to new social domains), executive dominance, and technocratic governance. At a minimum, then, this model's proposal for reconstituting democracy in Europe presupposes that the member states upgrade their own political and legal institutions so as to ensure public scrutiny and democratic control of the EU.

The conundrum is that the act of rolling back the EU's political structures may not rescue national democracy under conditions of (economic) globalisation where the nation-state's autonomy is diminished. The model of audit democracy may ensure procedural accountability, but not substantive accountability, as issue-complexity and issue-linkage always leave discretionary room for delegates. Audit democracy would also be prone to *input-output incongruence*. Since the fate of national democracy is intrinsically linked to developments at the EU level, the other orthodox strategy is to argue for the need to reconstitute democracy at the European level.

Model 2 – Federal multinational 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 its own coercive means.

A federal European state would be institutionally equipped to claim direct legitimation, and entrench this in legally binding form. Federal state structures not only heighten autonomy and accountability, but can also greatly reduce the incongruence that globalisation and complex interdependence produce.

A legally integrated state-based order is often seen as 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 constitutes the solidaristic basis of the nation state, as well as of the welfare-state.³² To comply with this and to be authoritative and legitimate, an EU organised as a federal state would need a symbolic collective "we". A European identity is required to sustain an ability to make collective decisions over time.³³ A common European identity would provide a sound basis for citizen-ship, for specifying the rights and duties of the 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. 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 the European level, possible. They would establish the preconditions for the unity of the law and the requisite basis for redistribution.

This conception of a European federal state which most Euro-federalists subscribe to, will not find the necessary support within the complex European setting. The Union today is made up of former nation states (which matters to the scope of European allegiance that is available). 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's integration process may converge or overlap with, or it can run up against, rival and competing nation-building/sustaining efforts from member states and regions. The Union is made up of democratic states, the sum of which amounts to a *multitude* of nation-building/sustaining projects. The federal model must

therefore be modified to accommodate to 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 modified version 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. 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). Wayne Norman 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.³⁴ This model is premised on the tenet that a uniform national identity is *not* a core precondition for the democratic constitutional state.³⁵ The multinational federal state requires citizens' allegiance in the form of a *constitutional patriotism*, which portrays loyalty in political terms; it hinges on the validity of legal norms, the justification of policies, and the wielding of power in the name of fairness.

The multinational 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 opinion and 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). The model presupposes that 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 recognized 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).

Reconstituting the EU as a federal 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.

The EU's peculiar, and distinctive, institutional structure, has profound effects on its 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.³⁶ The "European people" is represented in "pseudo elections" (often also referred to as second-order elections)³⁷ – 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 provisos that its "federalism" is organised around other issues and methods of territorial control than is the case with every state-based federation, and that the EU's own vocation is *post-national* as it is set up to fight aggressive nationalism.

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. This could make for a European democracy that complies with the criteria of autonomy and accountability, but the feasibility is low. Such a reconstitution requires the *consent* of every member state, which the recent treaty processes show is not easily forthcoming. Any further move in such a statist, national direction, is likely 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 model presupposes increased congruence through lifting tasks to the European level. Insofar as this has occurred, it has been in an uneven rather than in a coherent manner; it has not been properly democratically authorized; and it has not been matched with adequate measures of democratic accountability.

How close to statehood 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 posits 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 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 has emerged. The EU, albeit deficient, is the most elaborate case of supranational democracy.

To sum up, the EU's commitment to universal principles suggests that it has a communal vocation that is broader and more universal than even that of the multi-national state. The question brought up by the EU is whether the state model can still be seen as an adequate harbinger of democracy and solidarity in today's world. This pertains to the mode of allegiance, as well as to the institutional-structural make-up that democracy requires in a globalized world. Can a move beyond Westphalia, towards cosmopolitanism offer a better, more suitable, version of democracy?

Post-national democracy

The normative yardstick that we have derived from *deliberative democracy* is not confined to the nation-state template and its presuppositions of sovereignty, demos, territory, and nation; it can therefore also be applied to the study of alternative forms. It enables us to establish a polity's democratic character beyond

the confines of the nation state. Democracy applies not only to non-state contexts but also to a cosmopolitan order. This point is important because international law has changed, and the EU has pooled sovereignty within a territory that it does not itself fully control. In Europe the question: “who is sovereign here?” has increasingly come to be asked”.³⁸ These developments manifest themselves in an altered conception of sovereignty: from denoting singular state territorial control to a more multi-dimensional and disaggregated conception.³⁹ The cosmopolitan dimension manifests itself in the extent to which state sovereignty has become conditional upon citizens’ sovereignty.

Some, notably Cohen and Sabel,⁴⁰ and Bohman,⁴¹ argue for the normative validity of a *polycentric system of directly-deliberative polyarchy* modelled on the European system of governance. They see the EU as a multilevel, large-scale and multi-perspectival polity based on the notions of a disaggregated democratic subject and patterns of diverse and dispersed democratic authority. Their 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, organizational and professional – come together to solve various types of issues and where different points of access and open deliberation ensure democratic legitimacy. Local problem-solving, the institutionalization of links between units, and agencies to monitor decision-making both within and between units make this structure conducive to democratic governance.

Any system of rule beyond the state is privy to distinct challenges. One such pertains to weak coercive means. How can goals be realized and rights protected *without* the sanctioning capacity of the state? Another speaks to the ability to “deliver”; how can it bring about changes required by justice? Further, how can it ensure equal access and public accountability in the complex multilevel constellation that makes up the EU without effective rights protection? Any attempt to set up such a system in one corner of the world, only, with Europe as a vanguard, may be an unsustainable construct, given that it will have to be sustained in a world system that is still largely made up of nation states. The crucial question that this debate brings forth is: whether the state form and a state based 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? However conceived of democracy requires some minimum institutional requirements, as deliberation in itself cannot bear the burden of democratic legitimation. Authorized jurisdictions and egalitarian structures of decision-making based on voting and periodic elections are also required. The minimum institutional requirements we have discerned in the above do not require a state-type structure but they *clearly exceed beyond* and are *different from* the transnational governance networks that Cohen and Sabel and Bohman put their trust in.

In our view, then, short of state, some version of *government* is nevertheless required. According to MacIver, we ought to “distinguish between the government and the state and regard constitutional law as binding, not for the state, but the government. It binds the legislator in the making of law itself.”⁴² Government refers to the political organization of society and to the fact that a state is not merely a Hobbesian coercive order, as Weber’s definition alludes to, but notably also an expression of the common will.⁴³ 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.⁴⁴ 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. By government we therefore refer to a system of authorized rule which depicts the political organisation of society, or construed in more narrow terms, as the institutional configuration of representative democracy and of the political unit. In this modified conception, however, both the basic requirements of representation and of collective identity need to be clarified.

In modern polities, public deliberation is wed to systems of representation, as no system can accommodate the participation of all the 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 that affect them. 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.⁴⁵

The core tenets of autonomy and accountability presuppose congruence between political and social space, but need not sum up to *exclusive territorial control*. The importance that many democratic theories attach to *demos*, nation, a "symbolic we", nevertheless, directs us to the requirement of a common sense of identity. The political function of collective or shared identity is its ability to transform a collection of disjunct individuals and groups into a collective that is capable of common action. This is due to its deeper ties of belonging and trust that make ethical-political processes of deliberation possible. Identity speaks to criteria and conditions for membership in a given community, as well as to the collective's self-understanding(s). Deliberative democracy posits that trust and solidarity can be developed through legal-institutional means; type of identity and degree of attachment will then also depend on systemic factors such as degree of imposition, degree of inclusion, functional range of operations, etc.

Model 3 – Regional-European democracy

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. The agenda over which the body of citizens exerts exclusive control is greatly diminished. *Decreased output congruence* underpins the case for supranational government. As noted above, cosmopolitans and transnational governance scholars envisage democracy *beyond* the template of the nation state and the states' system. Europe is then also held up as a particularly relevant site for the emergence of cosmopolitanism.⁴⁶ This

multidisciplinary cast of scholars draws variously on transnationalism; on the notion of the EU as a new form of Community; and on the EU's global transformative potential through acting as a "civilian power".⁴⁷ Even though cosmopolitanism "is not part of the self-identity of the EU",⁴⁸ scholars nevertheless recognise the EU as a part of, and as a vanguard for, an emerging democratic world order.

Little systematic effort has however been put on specifying *how* a European Union imbued with cosmopolitan norms can comply with the core democratic principles of autonomy and accountability. In our view, such a Union must be set up as *a non-state entity*, and yet retain some of the hierarchical attributes of government. 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-type structure can accommodate a higher measure of territorial-functional differentiation than can a state-type entity, as it does not presuppose the kind of "homogeneity" or collective identity that is needed for comprehensive resource allocation and goal attainment. Such a governmental structure is based on a division of labour between the levels that relieves the central level of certain demanding decisions. The EU has obtained competencies and capabilities that resemble those of an authoritative government. When further entrenched in this direction, we believe the EU can serve as a regional subset of a larger cosmopolitan order, which in today's world also entails that it has to serve as the foremost promoter of a world-wide cosmopolitan order: 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".

The problem (currently experienced by the EU) is how an entity with a nascent government-order can be effective: implementing decisions against a dissenting minority, 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 to ensure compliance in a polity that lacks the enabling conditions of sovereignty that confer stability on social relations in the form of a "centralized authority to determine the rules and a centralized monopoly

of the power of enforcement”?”⁴⁹ Proponents of this model may contend 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 and deliberation in transnational structures of governance and their concomitant civil society mechanisms of shaming and blaming; to the institutionalised procedures for authoritative decision-making in intergovernmental and supranational institutions, which are similar to the ones that at the national level confer legitimacy upon results. When decisions are properly made, when they follow the authorized procedures of the constitutional state, the likelihood that they be respected is high.⁵⁰ When norms or rules are contested, formal compliance mechanisms fail at the international level.⁵¹

The EU holds traits that compel the imagination beyond the nation-state template. The European Union is certainly not a state. 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).⁵² The institutions at the EU-level are also equipped with far weaker coercive measures than those of states. But this is not to say that the EU lacks power. The multilevel configuration that makes up the EU wields quite substantial influence with notable effects, because the *member states* carry out the decisions. Collective decision-making and implementation in the EU take place within a setting of already legally institutionalised and politically integrated orders, which help to ensure compliance.

The model of European democracy that we can discern from these observations, seeks to reconcile transnational insights with institutional conditions, notably the need for a government-type organisational structure. The model, thus, posits that the European Union’s democratic legitimacy can be based on the credentials of criss-crossing public debate, multilevel democratic decision-making procedures and the protection of fundamental rights to ensure an ”autonomous” civil (transnational) society. This is the clearest manifestation thus far of democracy as a principle 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. The concept of government highlights the *moral authority* of the procedures entrenched in the democratic *Rechtsstaat* – as a legitimating, trust and compliance-generating mechanism.

Two implications follow from how we apply these insights to the EU: 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. A cosmopolitan-type EU would be based on non-violent settlement of disputes, 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 in 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. This conception of democracy can draw on a near world-wide consensus on the norm-set associated with human rights and democracy. 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 the 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 organization, but would be cosmopolitan in the sense that its actions would be subjected to the constraints of a higher-ranking law and be committed to the fostering of similar regions in the rest of the world.

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 autonomy and accountability within such a system. The short answer is that this requires a polity with a *pyramidal* structure of autonomy 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 the member states the rest. Autonomy 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 complicated 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 is the case in the previous two models.

Reconstituting the EU as a regional 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, that is, human rights protection, risk regulation, environmental policy, and social security (see Table I).

For the EU to comply with this model, reconstitution is required. Present-day EU does not fully comply with the standards of a proper *government*. It has weak enforcement mechanisms and as noted 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 the Union's 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".

Present-day EU also does not contain the balance between economic rights and social protection that the cosmopolitan model sees as required for effective citizenship: to approximate such a balance there is a 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 unauthorized "creeping competence"⁵³ and *juridification*.

The debate on the EU's bounds and who should be offered EU membership reflects on the one hand that reminiscences of primordial ties are weakly reflected at the European level, and a similar argument holds for collective identity. On the other hand, the debate on where to draw the borders of the EU pits cosmopolitans against communitarians, where some of the latter argue for the need to *confine* the Union to European Christendom. The debate on Turkish membership offers one important take on the Union's value-basis.⁵⁴ There is clearly no political consensus on a cosmopolitan vocation for the EU.

The instantiation of a regional-European version of democracy along cosmopolitan lines raises questions also for cosmopolitan-democratic theorizing: viable regional-European democracy requires a form of re-balancing of the membership in a community of compatriots with the inclusive requirements of the cosmopolitan society. 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 both a condition of, and a constraint on, justice. Boundary construction, the dual processes of inclusion and exclusion, aims at establishing a particular balance between contextualized 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 valuable 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".⁵⁵

We have seen that the EU holds traits suggestive of a nascent sub-type of cosmopolitan order. However, its effectiveness in pursuing cosmopolitan principles hinges not only on internal resources but also on external. There are no equivalent orders established in the world. Insofar as the EU is an agent for a cosmopolitan world order, the EU faces the problem of becoming overburdened with tasks and normative expectations.

Conclusion

This article started from the widely expressed notion that the European integration process challenges democracy. The EU's role, as we have sought to demonstrate, is ambiguous: it poses challenges to democracy, but it also offers democratic possibilities for coping with interdependence and diversity. The European integration process helps to solve a number of the problems facing the nation states; hence reversing this process reintroduces these problems. The question facing Europe is therefore not to rescue national democracy, but to *reconstitute* democracy within a complex multilevel and pluralistic European setting. Drawing on the main positions in the debate on EU democracy, we have formulated three answers to how democracy can be reconstituted under such conditions. Each of these models is original in that it is an innovation on existing scholarship. One implies retrenching the EU in order to re-equip the

member state as the stalwart of democracy within an intergovernmental context. This option seeks to take Europeanisation into account and refers to the need for reconstituting democracy, through installing a system of *audit democracy* at the EU-level rather than completely unravelling integration in order to rescue nation-state democracy. The model's prescriptions on EU retrenchment would nevertheless entail a major transformation of the current European political landscape. This option carries obvious risks: Even with such a transformation, what is to guard against Europe becoming privy to the limitations inherent in nationalism and the Westphalian order? Hence, if Europe opts for this model, it might be saddled with the problem that helped spark the European endeavour in the first place.

The option need not be to abandon the vocabulary and normative standards associated with the democratic constitutional state. The state is required to constitute and protect the demos. But it must be suitably modified to find acceptance in Europe. 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. The Union, in its present form, has entrenched a set of institutions that deviate from several of the key tenets of this model, even in its multinational trappings. The EU is neither a state, nor is it a nation and European citizens are not prepared to accept a European "super-state".

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, as do the requirements for allegiance, that are conducive to the generation of obligations. In Europe we see the emergence of an institutional division of labour for the assignment of rights and duties between levels.

In line with this, and with reference to the Union's universalist vocation, we proposed an alternative *non-state regional model* that was set up to help tailor democracy to these conditions. It took as its point of departure the transnationalists' plea to the effect that democracy in Europe is as much an

intellectual as it is a substantive (constitutional) challenge: it requires a new conception of the presuppositions of democracy, not the mere application of existing conceptions to European circumstances. In order to meet with this concern we decoupled democracy from the presupposition of a state and a fixed demos and located it in the procedures of the modern form of government within authorized jurisdictions and the manner in which it is connected to a criss-crossing public debate. We also pointed to accommodating global developments: post-war legal developments in the wake of the UN have helped to make state sovereignty conditional on compliance with basic human rights.

There are, we have argued, two main solutions to Europe's democratic conundrum, corresponding to our second and third models. Our second, federal, model draws on democratic orthodoxy in slightly (multinational) modified form. The main challenge to its realisation in Europe is political, not intellectual. The other possible solution, as set out in the third model, seeks to navigate the path between mere institutional reconstitution on the one hand and reconstituting democratic theory on the other. The post-national regional-European *government* model configuration retains much of the core tenets of the democratic constitutional state, albeit in a somewhat reconfigured form: it retains authorised jurisdiction but relaxes sovereign territorial control. On balance, particularly because it is a more feasible alternative for Europe, we conclude by opting for this third model.

Table 1. Requirements for Three Democratic Orders in Europe

Requirements	Audit democracy	Federal multinational democracy	Regional-European democracy
Sovereignty	The Member States are formally sovereign entities The Union is derived from the Member States	The Union is recognized 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	<ul style="list-style-type: none"> • 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 	<ul style="list-style-type: none"> • 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) 	<ul style="list-style-type: none"> • 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	<ul style="list-style-type: none"> • EU-level: no independent taxing powers and limited scope for redistribution • Member States decide autonomously over tax and redistribution within their territories 	<ul style="list-style-type: none"> • EU-level: redistributive measures; independent fiscal policy and taxing ability • Member-state level: redistributive and taxing powers 	<ul style="list-style-type: none"> • 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 legitimization	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 "hierarchicalized" competences
Identity formation and sustenance	<ul style="list-style-type: none"> • 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 	<ul style="list-style-type: none"> • 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 	<ul style="list-style-type: none"> • 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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- ¹ Treaty on European Union (1992), “Consolidated version of the Treaty on European Union.” *Official Journal* C 321 E/5-36, 29 December 2006.
- ² For a selection of Euro-sceptical writings, see Martin Holmes, *The Eurosceptical Reader* (Basingstoke: Macmillan, 1996).
- ³ See for example, James Bohman, *Democracy Across Borders: From Dêmos to Dêmoi* (Cambridge: MIT Press, 2007); Joshua Cohen and Charles Sabel, “Directly-Deliberative Polyarchy,” *European Law Journal* 3, no. 4 (1997): 313-42; Joshua Cohen and Charles Sabel, “Sovereignty and Solidarity: EU and US,” in *Governing Work and Welfare in the New Economy: European and American Experiments*, eds. Jonathan Zeitlin and David M. Trubek (Oxford: Oxford University Press, 2003), pp. 345-75; John Dryzek, *Deliberative Global Politics* (London: Polity Press, 2006).
- ⁴ Bohman, *Democracy Across Borders: From Dêmos to Dêmoi*.
- ⁵ Robert E. Goodin, *Reflective Democracy* (Oxford: Oxford University Press, 2005), p.12.
- ⁶ Joshua Cohen, “Procedure and Substance in Deliberative Democracy,” in *Deliberative Democracy*, eds. James Bohman and William Rehg (Cambridge: MIT Press, 1997); David Estlund “Making Truth Safe for Democracy,” in *The Idea of Democracy*, eds. David Copp, Jean Hampton and John R. Roemer (Cambridge: Cambridge University Press, 1993), pp. 71-100.
- ⁷ David Held, *Democracy and Global order: From the Modern State to Cosmopolitan Governance* (Cambridge: Polity Press, 1995), p. 16; Mark Bovens, “New Forms of Accountability and EU Governance,” *Comparative European Politics* 5 (2007): 104-20, p. 107.
- ⁸ Amy Gutmann and Dennis Thompson, *Democracy and Disagreement* (Cambridge, MA: The Belknap Press of Harvard University Press, 1996), p. 144.
- ⁹ Heidrun Abromeit, *Democracy in Europe: Legitimising Politics in Non-State Polity* (New York: Berghahn Books, 1998); Ulrich Beck and Edgar Grande, *Das kosmopolitische Europa* (Frankfurt: Suhrkamp, 2005); David Beetham and Christopher Lord, *Legitimacy in the European Union* (London: Longman, 1998); Richard Bellamy, Dario Castiglione and Jo Shaw, eds., *Making European Citizens: Civic Inclusion in a Transnational Context* (Basingstoke: Palgrave Macmillan, 2006); Oliver Gerstenberg, “The New Europe: Part of the Problem – or Part of the Solution to the Problem?,” *Oxford Journal of Legal Studies*, 22, no. 3 (2002): 563-71; Dieter Grimm, “Does Europe Need a Constitution?,” *European Law Journal* 1, no. 3 (1995): 282-302; Ernst B. Haas, *The Uniting of Europe: Political, Social and Economic Forces 1950-57* (Stanford, CA: Stanford University Press, 1968); Christian Joerges and Jürgen Neyer, “From Intergovernmental Bargaining to Deliberative Political Processes: The Constitutionalisation of Comitology,” *European Law Journal* 3, no 3 (1997): 273-99; Giandomenico Majone, *Dilemmas of European Integration* (Oxford: Oxford University Press, 2005); Philippe C. Schmitter,

How to Democratize the European Union ...And Why Bother? (Oxford: Rowman and Littlefield, 2000); Larry Siedentop, *Democracy in Europe* (London: Penguin: 2000). See also, Lisbeth Hooghe and Gary Marks, “Unravelling the Central State, but How? Types of Multi-level Governance,” *American Political Science Review* 97 (2003): 233-43; Markus Jachtenfuchs and Beate Kohler-Koch, eds. *Europäische Integration* (Opladen: Leske & Budrich, 1996; Keith Middlemas, *Orchestrating Europe* (London: Fontana Press, 1995); Alan S. Milward, *The European Rescue of the Nation State* (London, Routledge, 1992); Andrew Moravcsik, *The Choice for Europe* (London: UCL Press, 1998); Glyn Morgan, *The Idea of a European Superstate: Public Justification and European Integration* (Princeton, NJ: Princeton University Press, 2005); Johan P. Olsen, *Europe in Search of Political Order* (Oxford: Oxford University Press, 2007); Fritz Scharpf, *Governing in Europe: Effective and Democratic?* (Oxford: Oxford University Press, 1999); Vivien A. Schmidt, *Democracy in Europe: The EU and National Politics* (Oxford: Oxford University Press, 2006); Joseph H. H. Weiler, *The Constitution of Europe: “Do the New Clothes Have an Emperor?” and Other Essays on European Integration* (Cambridge: Cambridge University Press, 1999).

¹⁰ Schmitter, *How to Democratize the European Union ...And Why Bother?*

¹¹ Joerges and Neyer, “From Intergovernmental Bargaining to Deliberative Political Processes: The Constitutionalisation of Comitology”.

¹² Beck and Grande, *Das kosmopolitische Europa*, pp. 81ff.

¹³ Claus Offe and Ulrich K. Preuss, “The Problem of Legitimacy in the European Polity: Is Democratization the Answer?,” in *The Diversity of Democracy: Corporatism, Social Order and Political Conflict*, eds. Colin Crouch and Wolfgang Streek (Cheltenham: Edward Elgar, 2007), pp. 175-204.

¹⁴ Herfried Münkler, *Imperien* (Berlin: Rowohlt, 2005), pp. 245ff.

¹⁵ Hooghe and Marks, “Unravelling the Central State, but How? Types of Multi-level Governance”.

¹⁶ Jan Zielonka, “Plurilateral Governance in the Enlarged European Union,” *Journal of Common Market Studies* 45, no. 1 (2007): 187-209.

¹⁷ The most sophisticated assessment of the EU’s democratic quality to date, Christopher Lord’s book on auditing democracy in the EU, *A Democratic Audit of the European Union* (Basingstoke: Palgrave Macmillan, 2004) assesses ‘modified’ consociationalism and concurrent consent. Neither of these complies wholly with the democratic idea of freedom as collective self-determination.

¹⁸ David Easton, *The Political System*, 2nd.ed. (New York: Alfred Knopf, 1971), p. 134.

¹⁹ Jürgen Habermas, “Legitimationsprobleme im modernen Staat,” in *Zur Rekonstruktion des Historischen Materialismus*

(Frankfurt: Suhrkamp, 1976), pp. 276ff.

- ²⁰ Of the long-established authorities, religion, law, state and tradition, it is only democratically enacted law that has survived the corrosion process of modernity (Günter Frankenberg, *Autorität und Integration* (Frankfurt: Suhrkamp, 2003); see also John Dryzek, *Deliberative Democracy and Beyond: Liberals, Critics, Contestations* (Oxford: Oxford University Press, 2000).
- ²¹ Consider Stein Rokkan's model of state-formation and nation-building which is modelled on these two dimensions (Stein Rokkan, "Dimensions of State Formation and Nation Building: A Possible Paradigm for Research on Variations within Europe," in *The Formation of National States in Western Europe*, ed. Charles Tilly (Princeton: Princeton University Press, 1975); Peter Flora, Stein Kuhnle and Derek Urwin, *State Formation, Nation-building, and Mass Politics in Europe: The Theory of Stein Rokkan: Based on his Collected Works* (Oxford: Oxford University Press, 1999)). Philippe C. Schmitter ("Imagining the Future of the Euro-Polity with the Help of New Concepts," in *Governance in the European Union*, eds. Gary Marks, Fritz W. Scharpf, Philippe C. Schmitter and Wolfgang Streeck (London: Sage, 1996)) was the first to apply these to the EU. See also, S. Bartolini, *Restructuring Europe: Centre Formation, System Building, and Political Structuring between the Nation State and the European Union* (Oxford: Oxford University Press, 2005) for a more detailed attempt to apply Rokkan's model to the EU.
- ²² Burkard Eberlein and Edgar Grande, "Beyond Delegation: Transnational Regulatory Regimes and the EU Regulatory State," *Journal of European Public Policy* 12, no. 1 (2005): 89-112, p. 97.
- ²³ Cp. Mark A. Pollack, *The Engines of European Integration: Delegation, Agency and Agenda Setting in the EU* (New York: Oxford University Press, 2003)
- ²⁴ Scharpf, *Governing in Europe: Effective and Democratic?*, p. 237.
- ²⁵ Giandomenico Majone, "Europe's 'Democratic Deficit': The Question of Standards," *European Law Journal* 4, no. 1 (1998): 5-28; Majone, *Dilemmas of European Integration*.
- ²⁶ Moravcsik, *The Choice for Europe*.
- ²⁷ Erik O. Eriksen and John Erik Fossum, "Europe in Search of Legitimacy; Strategies of Legitimation Assessed," *International Political Science Review* 25, no. 4 (2004): 435-59.
- ²⁸ Günter Frankenberg, "The Return of the Contract: Problems and Pitfalls of European Constitutionalism," *European Law Journal* 6, no. 3 (2000): 257-76, pp. 260f.
- ²⁹ Today, Union transactions are about far more than functional problem-solving – they have turned 'political'. The EU has market-correcting or positive integration measures, such as certain redistributive schemes and means of standard-setting;

there is increased use of qualified majority voting; and there is a constitutionalization process. These and other traits testify to the EU as revolving around more than the politics of the lowest common denominator. See e.g., Michelle Egan, *Constructing a European Market: Standards, Regulation and Governance* (Oxford: Oxford University Press, 2001); Christian Joerges and Ellen Vos, eds., *EU Committees: Social Regulation, Law and Politics* (Oxford: Hart, 1999). On the role and status of European law and the European Court of Justice, see for instance Karen Alter, *Establishing the Supremacy of European Law* (Oxford: Oxford University Press, 2001) and Alec Stone Sweet, *The Judicial Construction of Europe* (Oxford: Oxford University Press, 2004).

³⁰ Barry Smart, "Europe Today and the Post-modern Paradox," in *The Idea of Europe*, eds. Brian Nelson, David Roberts and Walter Veit (Oxford: Berg, 1992), p. 41.

³¹ Berthold Rittberger, *Building Europe's Parliament* (Oxford: Oxford University Press, 2005), p. 2.

³² Claus Offe, "'Homogeneity' and Constitutional Democracy: Coping with Identity Conflicts through Group Rights," *Journal of Political Philosophy* 6, no. 2 (1998): 113-41.

³³ Grimm, "Does Europe Need a Constitution?"; David Miller, *On Nationality* (Oxford, Oxford University Press, 1995).

³⁴ Wayne Norman, *Negotiating Nationalism: Nation-building, Federalism and Secession in the Multinational State* (Oxford: Oxford University Press, 2006), pp. 163-9)

³⁵ Jürgen Habermas, *The Inclusion of the Other: Studies in Political Theory* (Cambridge MA: MIT Press, 1998); Jürgen Habermas, "The Postnational Constellation and the Future of Democracy," in *The Postnational Constellation: Political Essays* (Cambridge, MA: Polity Press, 2001), pp. 58-112.

³⁶ Grimm, "Does Europe Need a Constitution"; Bernard Peters, "Public Discourse, Identity and the Problem of Democratic Legitimacy", in *Making the European Polity: Reflexive Integration in the EU*, ed. E. O. Eriksen (London: Routledge, 2005); Hans-Jörg Trenz, *Europa in den Medien: Die europäische Integration im Spiegel nationaler Öffentlichkeit* (Frankfurt: Campus, 2005).

³⁷ 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 (Karlheinz Reif and Hermann Schmitt, "Nine Second Order National Elections: A Conceptual Framework for the Analysis of European Election Results", *European Journal of Political Research* 8, vol. 1 (1980): 3-44).

³⁸ Robert H. Jackson, *The Global Covenant: Human Conduct in a World of States* (Oxford: Oxford University Press, 2000), p. 346.

- ³⁹ Morgan, *The Idea of a European Superstate: Public Justification and European Integration*; Slaughter, Anne-Marie, *A New World Order* (Princeton, NJ: Princeton University Press, 2004).
- ⁴⁰ Cohen and Sabel, “Directly-Deliberative Polyarchy”; Cohen and Sabel, “Sovereignty and Solidarity: EU and US”.
- ⁴¹ Bohman, *Democracy Across Borders: From Dêmos to Dêmoi*.
- ⁴² Robert M. MacIver, *The Modern State* [reprint, 1964] (London: Oxford University Press, 1928), p. 277.
- ⁴³ Georg W. F. Hegel, *Philosophy of Right* [reprint, 1967] (Oxford: Oxford University Press, 1821).
- ⁴⁴ Günter Frankenberg, *Die Verfassung der Republik – Autorität und Solidarität in der Zivilgesellschaft* (Baden-Baden: Nomos, 1996).
- ⁴⁵ 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’ (Bernard Manin, *The Principles of Representative Government* (Cambridge: Cambridge University Press, 1997), p. 190. See, Hanna F. Pitkin, *The Concept of Representation* (Berkeley, CA: University of California Press, 1972); J. Mansbridge, “Rethinking Representation,” *American Political Science Review* 97, no. 4 (2003): 515-28.
- ⁴⁶ Daniele Archibugi, “Principles of Cosmopolitan Democracy,” in *Re-imagining Political Community: Studies in Cosmopolitan Democracy*, eds. Daniele Archibugi, David Held and Martin Kohler (Cambridge: Polity Press, 1998); Beck and Grande, *Das kosmopolitische Europa*; Gerard Delanty and Chris Rumford, *Rethinking Europe* (London: Routledge, 2005).
- ⁴⁷ Chris Rumford, “Cosmopolitanism and Europe: Towards a new EU studies agenda?,” *Innovation* 18, no. 1 (2005): 1-9; Ian Manners, “Normative Power Europe: A Contradiction in Terms?,” *Journal of Common Market Studies* 40, no. 2 (2002): 235-58.
- ⁴⁸ Rumford, “Cosmopolitanism and Europe: Towards a new EU studies agenda?,” p. 5.
- ⁴⁹ Thomas Nagel, “The Problem of Global Justice,” *Philosophy and Public Affairs* 33, no. 2 (2005): 113-47, p. 116.
- ⁵⁰ Tom Tyler, *Why People Obey the Law* (New Haven, CT: Yale University Press, 1990).
- ⁵¹ Michael Zürn and Jürgen Neyer, “Conclusions: The Conditions of Compliance,” in *Governance and Law in Postnational Constellations: Compliance in Europe and Beyond*, eds. Michael Zürn and Christian Joerges (Cambridge: Cambridge University Press, 2005).
- ⁵² Helene Sjursen, “What Kind of Power? European Foreign Policy in Perspective,” *Journal of European Public Policy* 13, no. 2 (2006): 169-81.
- ⁵³ Mark A. Pollack, “Creeping Competence: The Expanding Agenda of the European Community,” *Journal of Public Policy*

14, no. 2 (1995): 95-145.

⁵⁴ Helene Sjursen, ed., *Questioning EU Enlargement: Europe in Search of Identity* (London: Routledge, 2006).

⁵⁵ Habermas, "The Postnational Constellation and the Future of Democracy," p. 108.