

## **The European Synarchy: New Discourses on Sovereignty**

Dimitris N. Chrysochoou\*

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\* Dimitris N. Chrysochoou is Associate Professor of International Organization at the University of Crete. He has held visiting posts at the LSE, Cambridge, Columbia, Athens and Panteion Universities, as well as the Hellenic Center for European Studies and the Center for European Constitutional Law in Athens.

## Preface

Half a century since its inception as a community of western European democracies, limited in scope and competences, the European Union (EU) is taken to denote a composite polity that combines unity and multiplicity while having the capacity to produce publicly binding decisions and allocate values in European society. It is thus possible to capture the endemic systemic complexity of the regional process through the lens of new theoretical perspectives with a view to developing a series of novel understandings of EU governance in the early twenty-first century. So far, the EU polity refers to a system of institutionalized shared rule among multiple state and non-state actors, characterized by the dispersal of political authority among various levels and the transcendence of hierarchical forms of power distribution. Thus different notions of democracy, legitimacy and representation produce novel accounts of post-national politics. Accordingly, a new democratic concept for the EU project should entail a balanced mix of social and political forces that share in the emerging sovereignty of the larger unit. Within the latter, public authority should not reside within a single decision-making centre, but rather should be diffused among different governance levels and forms of social, political and cultural contention that can combine territorial and substantive public issues.

At the same time, recent changes in the workings of the EU polity have not affected its nature as an essentially statecentric project, preserving a balance between state sovereignty and a relatively moderate yet discernible deepening of integration by means of producing a system of political co-determination; in other words, a new form of *synarchy* between states and *demoi* – an ensemble *sui generis* of highly interdependent systems – is created, its structural and functional interaction resulting in a multilogical system of entwined sovereignties.<sup>1</sup> Yet, the EU polity still remains a treaty-constituted body politic and not the unilateral act of a single and undifferentiated *demos*. Moreover, it does not derive its political authority from its citizens directly and has not – as yet – resulted in a complete fusion among different levels of public authority. Also, its constituent parts, in the form of historically constituted nation-states, are free to dissociate themselves from the larger unit. Finally, its emerging yet nebulous and even controversial constitutional identity rests heavily on the domestic orders of states, although the EU already projects a profound

<sup>1</sup> Dimitris N. Chrysschoou, *Theorizing European Integration*, 2<sup>nd</sup> ed. (2009).

intertwining of democracies regarding the joint exercise of fundamental powers. Arguably, all of the above is crucial to understanding the changing conventions regarding state sovereignty that may now be interpreted as the right to be involved in the joint exercise of competences with other states.

Linked to the question of sovereignty is that of democracy, which currently points to a negative side-effect of European integration: the growing dissonance between the requisites of democratic rule and the actual conditions on which the political management of EU affairs is largely based. The crucial distinction here concerns an institutional and a socio-psychological perspective. Whereas the former focuses on power-sharing and on institutional reform as a solution to the actual or perceived problems of democracy in the EU, the latter is concerned with questions of European identity and the formation of a composite European *demos* that is nonetheless distinct as a collectivity. As the current debate raises fundamental questions about the future form of the EU as a polity of highly interrelated states and *demoi* – a *synarchy* of entwined sovereignties – recent reforms, including the Lisbon Treaty<sup>2</sup>, whose ratification is still pending, failed to enhance the democratic properties of the general system, leaving the EU to resemble a system of democracies more than a democratic system in its own right.

In a period when transnational pressures are challenging both intrastate and interstate relations, it may no longer be enough to confine democracy within state boundaries to deal effectively with the implications of new forms of polity. This raises new questions such as how to hold transnational decision-makers to account to citizens who belong to different national political systems. Such questions reflect substantive concerns that have grown as the regional process has evolved from an interstate diplomatic forum to a fully-fledged polity. This development, otherwise known as a “normative turn” in EU studies, has led to scholarly interest in the idea that the EU might one day transform itself into a democratic political system. While there is some measure of agreement that the EU is not democratic, there is no consensus on how it might become so. Indeed, there are two different understandings of what the EU’s democratic deficit comprises. The first focuses on institutional properties, arguing that the problem of democracy in the EU is tied to the flawed interinstitutional interactions that characterize the functioning of a non-state polity like the

<sup>2</sup> Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, 13 December 2007, OJ 2007/C 306/01.

EU. In this context, proposals for further reform speak of the EU's "institutional imbalance" and of the need to enhance the public accountability as well as the representative nature of EU policy-makers and decision-takers. The second focuses on sociopsychological factors and makes the case for a new sense of European "demos-hood". It argues that the EU's present democratic pathology occurs because of the absence of a European *demos*. As a consequence, this second perspective is more interested in collective civic identity and the extent to which there is "a feeling of community" amongst Europeans. Acknowledging that the absence of a European *demos* – assuming that a legal or economic *demos* already exists – is a barrier to a democratic Europe, proposals for further reform tend to suggest paths to transnational *demos*-formation based on a common European civicness<sup>3</sup>. These notions of plural citizenship give rise to the idea of a "Republic of Europeans", to which we now turn.

## A. A Republic of Europeans

Linking the question of the EU polity with different democratic perspectives helps us confront some of the central puzzles of integration theory today. One such example that merits our attention is neo-republican theory, in that new normative understandings of shared democratic rule have sought to nurture a paradigm of social and political organization for the EU, defined as a mixed and composite polity. In its basic conception, a *res publica* aims at three primary objectives which, taken together, capture the imagination of a virtue-centred life: justice through the rule of law; the common good through a mixed and balanced constitution; and liberty through the norms of active citizenship. More than 2500 years since the founding of the Roman Republic, an anniversary that passed largely unnoticed by present-day Europeans, the above features still constitute the *raison d'être* of an idealized notion of *res publica*, marking their impact in the interminable search for "the good polity".<sup>4</sup>

Reviving a republican tradition constitutes a complicated enterprise, for it involves clusters of internally coherent arguments, values, and employments of concepts that facilitate reflection on present political arrangements.<sup>5</sup> As Lavdas<sup>6</sup> notes, liberty and civic participation have been

<sup>3</sup> Dimitris N. Chrysschoou, *Democracy in the European Union* (1998).

<sup>4</sup> John J. Schwarzmantel, *Citizenship and Identity: Towards A New Republic* (2003).

<sup>5</sup> Quentin Skinner, *Liberty before Liberalism* (1998), 101-120.

interpreted and combined in a number of ways, yet the challenge for today's republican scholarship is to develop a pluralist rather than a populist republicanism in which tolerance would be guaranteed in diverse societies. This revival of republican thinking reflects a wider concern with the construction of a socially legitimized ordering founded on the notion of "balanced government" and "undominated" (or quality) choice. But it is not the latter that causes liberty, as liberty is constituted by the legal institutions of the polity – the republican state.<sup>7</sup> As Brugger<sup>8</sup> explains, "whereas the liberal sees liberty as essentially pre-social, the republican sees liberty as constituted by the law which transforms customs and creates citizens". Thus, participation should not be taken as a democratic end in itself, but rather as a means of ensuring a dispensation of non-domination by others (or non-arbitrary rule). In short, the rule of law, opposition of arbitrariness and the republican constitution are constitutive of civic freedom.

The notion of "balanced government" is also central to republicanism. It is forged in two related ways: negatively, by associating the constitution of "a proper institutional balance" with the prevention of tyranny; and positively, by ensuring a deliberative mode of civic rule whereby "the differing 'constituencies' which made up civil society would be encouraged to treat their preferences not simply as givens, but rather as choices which were open to debate and alteration"<sup>9</sup>. Liberty was expected to be best preserved under a mixed form of polity through certain constitutional guarantees, with no single branch of government being privileged over the others. Here, republicanism strikes a balance between civic participation and the attainment of the public good by allowing for "a stable form of political ordering for a society within which there are different interests or constituencies".<sup>10</sup> A republican form of European governance refers, first and foremost, to the range of normative qualities embodying the construction of an extended civic space where citizens share among themselves a sense of a "sphere of spheres" (an element of civic virtue that is a valuable resource for the polity) and a regard for good governance (a training ground for civic learning) at the same time as taking part in different public spheres. A republican account of liberty and mixed

<sup>6</sup> *Kostas A. Lavdas*, *Republican Europe and Multicultural Citizenship*, *Politics*, 21 (2001), 1-10.

<sup>7</sup> *Philip Pettit*, *Republicanism: A Theory of Freedom and Government* (1997), 106-109.

<sup>8</sup> *Bill Brugger*, *Republicanism Theory in political thought: virtuous or virtual?* (1999), 7.

<sup>9</sup> *Paul P. Craig*, *Democracy and Rule-making within the EC: An Empirical and Normative Assessment*, *European Law Journal*, 3 (1997), 105, 114.

<sup>10</sup> *Id.* 116.

government can thus contribute in a constructive manner to the problems of constructing a European polity. In particular, with reference to the ongoing debate on the incorporation of the Charter of Fundamental Rights into the formal Treaty framework, it has been shown that the discussion is pregnant with frustrated potentialities, indicating the need for a more extensive, if thin, institutional public space through which to expand civic competence and transform citizens into a European *demos*.<sup>11</sup>

Given the absence of an engaging European *demos*, republicanism emanates as a means of disentangling “the issue of participation in an emerging polity from the cultural and emotional dimensions of citizenship as pre-existing affinity and a confirmation of belonging”.<sup>12</sup> The point is that “some elements of the real and symbolic *res publica* may sustain a degree of political motivation *vis-à-vis* the EU and its relevance for peoples’ lives while also allowing for other and more intense forms of motivation and involvement at other levels of participation”.<sup>13</sup> But given the lack of organic unity among the member *demoi*, the republican challenge is one of institutionalizing respect for difference and group rights, whilst sustaining “a shared sense of the public good”.<sup>14</sup> This is more likely to emerge through Pettit’s third concept of freedom as “non-domination”, as it combines “the recognition of the significance of the pluralism of cultural possibilities for meaningful choice and a framework based on a minimal set of shared political values”.<sup>15</sup> To the extent that the EU cannot motivate extensive public engagement through emotions and sentiments of community, the making of a European *demos* calls for another approach. The question is how to disentangle the issue of civic participation from its cultural and emotional dimensions, which are based on pre-existing affinities and confirmations of belonging. From a different angle, Eriksen<sup>16</sup> prompts us to “decouple citizenship and nationhood” from the prism of the discourse-theoretical concept of deliberative democracy and to view the constitution

<sup>11</sup> Kostas A. Lavdas & Dimitris N. Chrysoschoou, Public spheres and civic competence in the European polity: a case of liberal republicanism?, in: Iseult Honohan and Jeremy Jennings (eds), *Republicanism in Theory and Practice* (2006).

<sup>12</sup> Lavdas, 4 (*supra* note 6).

<sup>13</sup> *Id.* 5.

<sup>14</sup> Richard Bellamy, *Liberalism and Pluralism: Towards a politics of compromise* (1999), 190.

<sup>15</sup> Lavdas, 6 (*supra* note 6).

<sup>16</sup> Erik Oddvar Eriksen, Deliberative Supranationalism in the EU, in: Erik Oddvar Eriksen and John Erik Fossum (eds), *Democracy in the European Union* (2000), 51.

as “a system for accommodating difference”.<sup>17</sup> As most aspects of active citizenship can be reduced to “emotional citizenship” or the expression of rational and deliberative capacities, the question is how to strengthen the latter in a context where the weakness of the former presents opportunities and constraints; one expects various asymmetries to emerge between polities with different state traditions, constitutional cultures and patterns of multicultural or monocultural legitimations of authority.<sup>18</sup>

This civic conception of Europe contributes to the making of a large-scale political order steered by an active community of citizens belonging to different nations but sharing a genuine interest in their common future. Here, the emphasis is not on the crystallization of liberal-democratic norms in Europe’s emerging political constitution, but rather on the search for an inclusive civic space, and the belief that democratic reform is not really the cause, but rather the consequence of popular aspirations to democratic rule: a desire to participate in a socially legitimized polity. From this perspective a Republic of Europeans requires deliberative decisions to promote certain public goods whose relevance extends far beyond the politics of democratic election; a republican polity should not be seen as representing just any kind of union set up “for narrowly instrumental purposes”, but rather as a civic association based on virtue-centred practices to serve the common good, where freedom comes first. By pointing to a mixed sovereignty regime – a *synarchy* of highly interrelated polities – new republican theorizing aptly makes the point that the polity currently emerging in Europe rests on a primarily political rather than judicial constitution, and that the notion of republican citizenship could foster a shared sense of civiness among the constituent publics. In this sense as well, new republican thinking seems to be better equipped to offer a plausible answer to the question as to whether the present-day European formation can be seen as “a community united in a common argument about the meaning, extent and scope of liberty”.<sup>19</sup>

## B. Theorizing Integration

It seems fair to suggest that, after six decades of uninterrupted theorizing, the study of this uniquely observed political formation in the history of international organization has reached a high *plateau*. This is not

<sup>17</sup> *Lavdas*, 5 (*supra* note 6).

<sup>18</sup> *Id.*

<sup>19</sup> *Michael Ignatieff*, Republicanism, Ethnicity and Nationalism, in: *Catriona McKinnon and Iain Hampsher-Monk* (eds), *The Demands of Citizenship* (2000), 265.

to say, however, that EU scholarship should start looking for new integrative experiments of a comparable potential; the idea is that the challenges facing the future of democracy in a non-state polity like the EU that advances post-statist forms of rule should not take place in a theoretical vacuum, but should strive towards a balancing act between explanation and understanding or between “first” and “second order theorizing”. Legitimately though, one asks whether Puchala’s<sup>20</sup> cynical prophecy that the study of the EU will amount to “a rather long but not very prominent footnote in the intellectual history of twentieth century social science” will prove as accurate as the author would have us believe.

A first response from a normative standpoint is that theory matters, for familiarity with it helps test our analytical tools and appreciate their relevance in real-life situations, leading “to unique insights which are valid starting points for the purpose of comparison and evaluation”.<sup>21</sup> This view is shared by the likes of Church<sup>22</sup>, in that “awareness of theory is a necessary ground-clearing measure”; Rosamond<sup>23</sup>, in that “theorizing intellectualizes perceptions”; Groom<sup>24</sup>, in his notion of theory as “an intellectual mapping exercise which tells us where we are now, from where we have come and to where we might go”; and Unger<sup>25</sup>, in arguing that theorizing links “the order of ideas” (as conceptual entities) with “the order of events” (as actual occurrences). The aim is to transcend purely descriptive approaches and tackle fundamental (post-)ontological issues facing a historically unprecedented polity, which remains subject to diverse interpretation. This, in turn, requires “structured ways of understanding changing patterns of interaction”<sup>26</sup>, free from the fragmented boundaries of microanalysis. In other words, it is necessary to project a macroscopic view of the relationship between democracy and integration based on systematic conceptual

<sup>20</sup> Donald J. Puchala, *The Integration Theorists and the Study of International Relations*, in: Charles W. Kegley & Eugene R. Wittkopf (eds), *The Global Agenda: Issues and Perspectives* (1984), 198.

<sup>21</sup> Paul Taylor, *International Co-operation Today: the European and the Universal Patterns* (1971), i.

<sup>22</sup> Clive H. Church, *European Integration Theory in the 1990s*, European Dossier Series, 33 (1996), 8.

<sup>23</sup> Ben Rosamond, *Theories of European Integration* (2000), 5.

<sup>24</sup> A.J.R. Groom, *The Setting in World Society*, in: A.J.R. Groom & Paul Taylor (eds), *Frameworks for International Cooperation* (1990), 3.

<sup>25</sup> Roberto M. Unger, *Knowledge and Politics* (1975), 13.

<sup>26</sup> Church, 8 (*supra* note 22).



explanation. Church<sup>27</sup> notes: “We need to be aware of the conceptions we use since they determine our perception of things”. Or, as Hamlyn<sup>28</sup> asserts, “one cannot get at reality except from within some system of concepts”.

This methodological pathway provides greater access to reality or offers the basis from which “a hierarchy of realities” might emerge.<sup>29</sup> The hypothesis here is that a continuum of accessible knowledge domains might bridge the distance from the study of specialized issue-areas to the understanding of collective political conduct and the exercise of specific institutional choices. Important links will thus be established between knowledge acquisition and knowledge evaluation. Integration theory may thus be seen as the systematic study of links between wholes and parts or between universals (totalities) and particulars (substructures). But there exists variation in the way scholars ascribe different meanings to concepts whose examination is crucial for furthering our understanding of complex social and political phenomena. Also, there are those who are interested in the larger picture (the hierarchy); others who aim at capturing part of the overall image (a particular reality); others who focus on the relationship of different realities; and others who focus on the art of theorizing itself. As Rosamond<sup>30</sup> notes: “Theories are necessary if we are to produce ordered observations of social phenomena”. In Stoker’s<sup>31</sup> words: “theories are of value precisely because they structure all observations”.

The validity of the above arguments is further justified when identifying the common values of distinct polities and the emergence of new ones; when shedding light on the union between an interactive society of states and new sources of democratic legitimacy; and when assessing the allegedly *sui generis* nature of a polity based on interlocking and overlapping authority structures. But theory also helps to assess the changing conditions of sovereignty and its implications for states: sovereignty has not been surrendered to a statist regional “centre”; rather, the delegation of competences to common institutions is determined by the capacity of states to control the depth and range of the regional process, hence the need to place sovereignty within a context that accounts for the consensus-seeking norms embodied in joint decisions, which in turn affect

<sup>27</sup> *Id.*

<sup>28</sup> David W. Hamlyn, *Metaphysics* (1995), 31.

<sup>29</sup> *Taylor*, 149 (*supra* note 21).

<sup>30</sup> *Rosamund*, 4 (*supra* note 23).

<sup>31</sup> Gerry Stoker, Introduction, in: David Marsh & Gerry Stoker (eds), *Theory and Method in Political Science* (1995), 17; quoted in: *Rosamund*, 4 (*supra* note 23).

state behavior in ways that promote synergy and even co-constitution, not conflict and contestation. These norms do not promote the retreat of the European nation state, nor do they enhance its capacities at the expense of an overarching federal authority. A symbiotic relationship has thus emerged, where the growth of central competences is not seen as a direct challenge to sovereign statehood and its assorted notions of polity-building. As Taylor<sup>32</sup> put it: “Any assertion of the former was likely, in the pattern of the historical evolution of the latter, to be accompanied by its countervailing development”.

A major scholarly challenge for EU theorists is to assess an ever-expanding corpus of literature that often defies the categories of conventional thinking about polity-building, identity-holding and *demos*-formation. This assessment must be carried out while trying to make sense of the future of the European state system; the viability of democracy both within and across boundaries; novel forms of plural citizenship and multiple loyalty-holding; complex processes of “meta-rule-making” in a non-state polity; formal and informal interactions between the functional scope, territorial scale and integrative level of the regional process; and the institutionalization of new avenues of political communication across a plurality of national *demos*. “And yet”, Pentland<sup>33</sup> notes, “we need not be routed by the apparent diversity and chaos of the field”. In this light, whatever lessons are to be drawn from the current state of play regarding integration in the early 2000s both as a project and a process, this essay argues that the ordering of relations among the subunits amounts to a politics of co-determination and co-constitution. The question to raise here is whether the EU strikes a balance between becoming the main locus of political decision-making for a plurality of national *demos* and becoming the dominant focus of citizen identification within an extended European civic space.

It takes no specialist in international theory to reach the conclusion that, more than any other regional formation, the present-day EU has installed a cooperative ethos in both the political and administrative workings of the constituent units, amounting to a complex learning process of peaceful social change combined with a remarkable degree of systemic political stability. Elements of this enduring capacity for governance offer the intellectual and cognitive capital needed to capture the dynamics of

<sup>32</sup> Paul Taylor, *The European Union in the 1990s* (1996), 97.

<sup>33</sup> Charles Pentland, *International Theory and European Integration* (1973), 189.

change “from a diplomatic to a domestic arena”, “from policy to polity” and, perhaps, “from democracies to democracy”. Although no shortage of available theory exists that might be used to guide EU scholarship, the field is embroiled in theoretical controversy compounded by conceptual complexity and a propensity to adopt a logic of methodological individualism. In some interpretations, the EU political system is called complex not because it is seen as a polity mix of multiple state and non-state actors and institutions but because it defies any easy notions as to how it is organized in relation to other polities, hence the question as to whether the existing theories of integration are in a position to reconcile two apparently contradictory principles: preserving segmental autonomy within a multilevel regional order. In this regard, the challenge for integration scholarship is to capture the dynamics of two complementary objectives: strengthening the viability of separate state orders (as opposed to idealized notions of the Westphalian sovereignty regime) through the institutionalization of joint sovereignty, that is through novel forms of *synarchy* that can transcend state sovereignty without subsuming their parts under a federally inspired political authority.

The problem associated with the ambitious task to organize sovereignty relations along the lines of a *synarchy* of democratic polities, rests in the differing treatment of such “general concepts” as sovereignty and integration, democracy and diplomacy, policy and polity, order and fragmentation and, crucially, unity and diversity. The question arises as to which of the many interpretations these concepts invite should be utilized to deepen our understanding of the EU polity, all the more so given its capacity for institutional self-renewal, which is of importance when employing different lines of theoretical inquiry. Whatever the mixture of evidence and the method embedded in existing models of integration, whether their emphasis is on conflict or equilibrium, and irrespective of their preference for the familiar (concrete) or the unique (unidentified) in prescribing a more or less democratic end point, it is fair to suggest that their systematic examination becomes a prime theoretical requisite for crossing a qualitative research threshold. Many discourses on EU polity-building lead “to an unhelpful focus on the formal characteristics of the actors at the expense of the processes which characterize, and flow from, their interactions, making the latter entirely dependent on the former”<sup>34</sup>

<sup>34</sup> Ann P. Branch & Jacob C. Øhgaard, Trapped in the supranational-intergovernmental dichotomy: a response to Stone Sweet and Sandholtz, *Journal of European Public Policy*, 6 (1999), 123-124.

Also, competing approaches tend to disagree on background conditions and process variables, the need for more or less integration, the impact of informal structures on integrative policy outcomes, and the feasibility or even desirability of ascribing a political *telos* to an otherwise common enterprise. In the past, this "battle" of theories has often led to zero-sum notions of EU politics coupled with unjustified confidence regarding how the system "actually" works and what it is developing into. The "elephant" though, to recall Puchala's<sup>35</sup> colorful metaphor, is not easy to manipulate in theoretical terms; it often turns into a "chameleon", adjusting itself to the very requirements of the day. Thus, not only is it possible that integration theorists are aware of a limited picture of an elusive political animal with nebulous democratic characteristics, the creature itself may also change so rapidly and even profoundly as to render its study an exercise that is ultimately misleading.

While the EU remains, in large measure, an unresolved social-scientific puzzle, it nonetheless represents a novel form of regionalism that, more than any other form of deep regionalism "has displayed the potential to alter the relative congruence between territory, identity and function which characterized the nation state".<sup>36</sup> These defining properties of contemporary sovereign statehood are subjected to change: territories are gradually but steadily embedded within wider socio-political spaces, if not constitutional orders; identity displays the potential of multiple loyalties and affiliations; while traditional statist functions are influenced by a dramatic increase in the levels of interdependence and internationalization.<sup>37</sup> It follows that "the EU is more than an expression of modified interstate politics: it is the focus for processes that bring together new varieties of identity and need".<sup>38</sup> These issues are compounded by the fact that, although the EU is taken as something more than the aggregate of its parts, sovereignty as ultimate responsibility has not moved toward a new regional "centre", thus becoming a systemic property of the whole. The EU is not an international organization proper, nor is it becoming an ordinary state with a monopoly (or a delegated panoply) of law-making/enforcing powers.

<sup>35</sup> *Donald J. Puchala*, Of Blind Men, Elephants and International Integration, *Journal of Common Market Studies*, 10 (1972), 267-284.

<sup>36</sup> *Brigid Laffan*, The European Union: a distinctive model of internationalization, *Journal of European Public Policy*, 5 (1998), 235, 238.

<sup>37</sup> *Brigid Laffan, Rory O'Donnell & Michael Smith*, *Europe's Experimental Union: Rethinking Integration* (1999), 39.

<sup>38</sup> *Id.*

Equally puzzling is its legal nature; for some, it still rests on a system of international treaty-based rules, while others prefer the conceptual analogy of a metaconstitutional system driven by procedural innovation and political aspirations akin, but not identical, to statist forms of order-building.

All that we know with a certain degree of confidence is that the EU's final vocation – presuming there will be one – is yet to become discernible in political and institutional terms. Even taking into account the series of neologisms invented over the last few decades to capture its elusive political and legal ontology, to simply argue that the present-day EU is yet another political formation *sui generis*, which should thus be examined only through the lens of new conceptual paradigms, runs the risk of complying with undisciplined formulations. Yet, there is the danger of perpetuating its present stance in the gray area of "normal interstate" and "normal intrastate relations" as the two extreme poles of a continuum on which polities are conventionally located.<sup>39</sup> Herein lies a major scholarly challenge: to focus on the study of more likely intermediate institutional outcomes whose format may differ from "the forms of political domination that we are used to dealing with".<sup>40</sup> The aim is to conceptualize "the transient results of an ongoing process, rather than the [imagined] definitive product of a [presumed] stable equilibrium"<sup>41</sup> for what is more likely to emerge will differ markedly both from the constitutional properties attributed to a federal state and the type of policy competences delegated to an international organization. As to the question of what kind of terminology we can employ to arrive at a more realistic image of the EU, a plausible answer is that real-life events outstrip theories: "as language precedes grammar, so politics precedes political theory".<sup>42</sup> Wessels<sup>43</sup> aptly makes this point, linking the EU's conceptual conundrum with Tocqueville's view of the early United States: "[T]he human mind invents things more easily than words; that is why many improper terms and inadequate expressions gain currency [...]. Hence a form of government has been found which is neither

<sup>39</sup> Murray Forsyth, *Unions of States, The Theory and Practice of Confederation* (1981), 6.

<sup>40</sup> Philippe C. Schmitter, *Examining the Present Euro-Polity with the Help of Past Theories*, in: Gary Marks, Fritz W. Scharpf & Philippe C. Schmitter (eds), *Governance in the European Union* (1996), 14.

<sup>41</sup> *Id.* 6.

<sup>42</sup> Walter Hallstein, *United Europe: Challenge and Opportunity* (1962), 25-29, quoted in: Pentland, 106 (*supra* note 23).

<sup>43</sup> Wolfgang Wessels, *An Ever Closer Fusion? A Dynamic Macropolitical View on Integration Processes*, *Journal of Common Market Studies*, 35 (1997), 267, 292.

precisely national nor federal; [...] and the new word to express this new thing does not yet exist.”

### C. The Concept of Synarchy

The term “*synarchy*” offers the possibility to think about the constitution of a novel form of polity that is called upon to reconcile the quest for segmental autonomy (and diversity) with a sense of political unity for the whole. The theory chimes well with the idea of extending the sharing of authority into new areas of collective symbiosis, but does not imply a process of regional state-building towards an integrated and self-regulated polity, superimposed over the pre-existing ones. This qualification is fully in line with Tsatsos’<sup>44</sup> account of the EU as a “*sympolity*”, as well as with Kontogiorgis’<sup>45</sup> view of the EU as a system that “does not invalidate the capacity of the member-states to operate, at the same time, as independent political entities”. The analogy of the *sympolity* implies a sense of moral order in relation to an understanding of the EU as a community of values, even though the absence of a common European public culture prevents the EU from becoming an “ecumenical commonwealth”.<sup>46</sup> It also suggests “a transition from statecentrism to an ecumenical order and relates to the feasibility of developing a polysemous ‘polityhood’ – taken as a totality, contrary to the imperfect conception of a statecentric form of polityhood – with pre-representative referents, where politics occurs as a right, not as a freedom and, naturally, not as a good”.<sup>47</sup> Central to this is the extent to which a democentric view of integration can bring about the transcendence of statecentrism and the construction of a post-sovereign or even a post-statist condition at the level of the general system.

The analysis of Kontogiorgis favors a kind of *sympolity* that can be extended to the widest possible level, resulting in a post-statecentric and civic-minded “*cosmopolis*”. This is indicative of the conceptual synergies that normative theory allows in a post-statist direction. The synarchical model advocates a system of political co-determination for composite,

<sup>44</sup> *Dimitris Th. Tsatsos*, *The European Sympolity: Innovations in Democratic Thinking* (2008).

<sup>45</sup> *Georgios Kontogiorgis*, Preface, in: Jean-Louis Quermonne (ed.), *The Political System of the European Union* (2005), 10.

<sup>46</sup> *Id.*

<sup>47</sup> *Georgios Kontogiorgis*, *Citizen and Polis: Concept and Typology of ‘Polityhood’* (in Greek) (2003), 108.

mixed and polycentric forms of union based on the idea that the partners to it co-constitute, as co-sovereigns, the larger polity; the critical element is not an attempt at building organic links between *synarchy*, as a post-sovereign union, and the composite *demos*, as a self-regulated polity, but the ability of the general system to perform functions that favor the sharing of sovereignty. *Synarchy*, as a post-statecentric quality and, hence, as a transcendent projection of authority away from the classical doctrine of sovereignty, does not invalidate the constituent sovereignties, nor does it threaten their legitimizing role in relation to the democratic quality of the national political spheres. Similarly, it does not threaten the civic culture of the segments with a view to creating a single locus of political authority. Rather, it refers to a participative form of governance that does not presuppose the end of the nation-state or its ability to guide the future of its *demos*. It advances a commonly shared perception of the member polities as discrete yet constituent units. It does not replace or substitute the member sovereignties, but recomposes them politically and legally: politically, by extending the scope and level of collective symbiosis; legally, through a commonly formulated law. It thus refers to an organized “multiplicity of autonomies” and not to an “autonomous multiplicity”.

The term “*synarchy*” derives from the Greek verb *συνάρχω* and is defined as “co-governance by two governors”. It suggests a form of collective governance, which accords with the post-statist reality of the EU order, and links the praxis of co-determination with the idea of organized co-sovereignty. In the discussion about the modern transmutations of sovereignty, *synarchy* sketches out a transition from the classical example of interstate relations to a post-statist system of shared rule, operating within the structural logic of “co-governance”: the joint exercise of sovereign competences at multiple territorial and functional areas and at multiple levels of social and political organization. This view is in harmony with Aalbert’s<sup>48</sup> recent account of the future of state sovereignty in Europe’s emerging multilevel ordering in that, however resilient the concept proves to be “despite its alleged empirical decline”<sup>49</sup> – signifying, in classical Westphalian terms, “an international ‘living-apart-together’ of states”<sup>50</sup> – the EU has shifted the locus of control away from the exclusive domain of states, influencing the status of sovereign statehood in terms of “actual

<sup>48</sup> *Tanja E. Aalbert, The Future of Sovereignty in Multilevel Governance Europe – A Constructivist Reading, Journal of Common Market Studies, 42 (2004), 23-46.*

<sup>49</sup> *Id. 23.*

<sup>50</sup> *Id. 24.*

authority”<sup>51</sup> (in relation to the empirical realities of EU politics and governance), rather than of formal competences:

To date, national state sovereignty has not disappeared to make way for a European sovereign state ... Yet, with the advance of institutional features way beyond the original design, and the development of a huge and extensive body of shared norms and commonly accepted rules and decision-making procedures, the EU is more than just a regime. It is at the very least a ‘saturated regime’, founded on the core institution of the ‘embedded *aquis communautaire*’.<sup>52</sup>

Turning to the concept of *synarchy*, it should be stressed that synarchical Europe does not form a new type of *stato* beyond (or for that matter to the detriment of) the nation-state and capable of transcending the historical reality of nation-building. It does not point to the emergence of a new sovereignty as in the process of creating a federal state, nor does it sweep away the constituent *demos* in the trajectory of imposed homogenization, thus building a new legal and political subject devoted to a new hierarchy. On the contrary, a synarchical configuration rests on the ascent of a cooperative culture among the subunits, being developed within a densely institutionalized framework of shared competences and mutually reinforcing perceptions about the organization of collective life. This allows the member collectivities to acknowledge the idea of “co-sovereignty” – the latter being exercised through consensual practices of shared rule that produce mutually acceptable political compromises. “Co-sovereignty” is the basic principle around which a new form of unity is being built: a cooperative culture that is the expression of not only an advanced institutional partnership but also a sense of political co-ownership, allowing for the development of a non-territorially defined political space. What is being carried out within a system of synarchical rule is the search for higher levels of symbiosis and co-determination among the co-sovereigns.

This notion of *synarchy* differs from the utopian approach developed by the French philosopher Saint-Yves, putting forward the creation of a world government guided by a single central institution: a “synarchical

<sup>51</sup> *Id.* 31.

<sup>52</sup> *Id.* 32.



federation of states". This is an elite-driven process of exercising public power through "closed" groups of illuminated people, who are inspired by the need to establish a new social ordering on the basis of their intellectual and, as it was often claimed, spiritual supremacy. Saint-Yves' model of *synarchy* was directed against the threatening phenomenon of anarchy – i.e., the absence of governing rules – in the early 1870s. It professed an opaque governing structure, where a dominant intellectual leadership controls the operations of society on the basis of its members' abilities. In this elitist scheme, social relations, and, consequently, social institutions and roles, fall under the intellectual guardianship of a hierarchical group of initiates: a kind of aristocratic oligarchy influencing public governance. Although this sociopolitical outline was developed during the latter half of the 19<sup>th</sup> century, a time when new and challenging ideas to the intellectual *status quo* were flourishing, it transcended the logic of a political movement, referring instead to an elaborate design for the evolution of humanity through "social norms" that favor a leadership-centred view of social governance. *Synarchy*, however, is not restricted to this interpretation but acquires various connotations like the one recorded by the English clergyman Stackhouse in 1737 in his two-volume work *New History of the Holy Bible from the Beginning of the World to the Establishment of Christianity*, which defines *synarchy* as a form of "co-sovereignty".

It is precisely this version that presents a challenge to the future of international theory in relation to the study of emerging categories of post-statist forms of politics. The EU, taken as a post-statist synarchical formation, resembles the concept of *respublica symbioticum*, developed by Althusius in his *Politica Methodice Digesta*, which is pre-sovereign as it precedes the Westphalian arrangement but post-sovereign as to the extended (and institutionalized) sharing of political authority. According to Hueglin<sup>53</sup>, the complex form presented by Althusius is a "confederal commonwealth" – a *consociatio consociatorum* – composed of autonomous subgroups operating through mutual recognition and agreement within a legally-constituted order. The relation between synarchical co-sovereignty and Althusius' political theory becomes apparent at two levels; first, in the emphasis placed on structures of sovereignty-sharing between politically-linked communities –through a "double contract" among the participating

<sup>53</sup> Thomas O. Hueglin, *Modern Concepts for Late Modern Worlds: Althusius on Community and Federalism* (1999), 5.

polities and among them and their populations<sup>54</sup> – referring to the concept of *communicatio* (sharing), which was advanced at that time; second, in the Althusian design of a commonwealth, whereby the various interactions that take place among the segments, as well as between them and the common institutions, result in a multilevel system of shared rule that guarantees the actors' access to multiple arenas of governance. Hueglin<sup>55</sup> aptly summarizes the relevance of the two models to the EU:

For Althusius, the ownership of sovereignty is shared by the narrower and wider political communities constituting the universal commonwealth. It is, in other words, a kind of co-sovereignty shared among partially autonomous collectivities consenting to its exercise on their behalf and within the general confines of this consent requirement. The only modern political system coming somewhat close to this notion of confederal sovereignty may be the European Union, the supranational powers of which ultimately rest on negotiated agreement [...].

Today, one could perceive the constitution of the European *synarchy* as an expression of political co-determination with a post-statist analogy, paving new paths in debating the transmutations of sovereign statehood to a form of organized co-sovereignty. To the extent that the idea of co-determination offers an instrumental approach to understanding the nature of “co-governance” in the EU political system, *synarchy* indicates a wider frame which preserves a dynamic equilibrium between the collectivity and the segments. In this light, the changing conditions of sovereignty can now be interpreted as the right of states to be involved in the process of co-exercising a set of common competences and to claim an active role in the representation of their interests in the general system while retaining ultimate authority in critical decision-taking. As Taylor<sup>56</sup> notes with reference to the EU in the 1990s:

Something remarkable had happened: sovereignty was now a condition, even a form, of participation in the larger entity. What

<sup>54</sup> *Id.* 4.

<sup>55</sup> *Id.*

<sup>56</sup> Paul Taylor, *International Organization in the Age of Globalization* (2003), 47.

was stressed in the role taken on by being sovereign was the right to be involved, to participate in the mechanisms of international society and to represent there the interests of the state. It was even possible to imagine states which were sovereign but which normally exercised no exclusive competences.

Keeping in mind that every discussion on sovereignty should take into account the actual conditions of a given historical moment, the point made by Taylor on the transmutations of sovereignty at the beginning of the 21<sup>st</sup> century is that, as in the classical doctrine of sovereignty, a higher normative order was said to exist – a superior authority which Bodin referred to as „divine order”– that legitimized the terms of sovereignty in the secular power structures of the day, so states are recognized as sovereign not on the basis of what they can actually do on their own, but on the basis of their ability to participate in the mechanisms of the international community and to abide by the demands of a higher value system: a set of principles, rules and norms that constitute the international culture of the community of states<sup>57</sup>. This critical factor relates to the idea of a “political society of states”, whereby states can now be taken as ”citizens” of a world community.<sup>58</sup> Only to the extent that a state *qua* citizen fulfils its international obligations and abides by the rules of international legality is it possible to be considered as sovereign: as a full and equal member of a politically organized and rule-governed society of states – even of a ”cosmopolitan moral community”– to which the state is accountable for its actions. Hence there is a new participatory quality in contemporary sovereignty relations, confirming the capacity of international institutions to produce binding rules, manage complex interdependencies, offer institutionalized forms of co-determination, and take authoritative decisions with immediate consequences for the behavior of states.

A typical expression of this dialectical quality is the EU, in that it transcends any pre-existing category of interstate organization, projecting the image of a composite polity. The latter, by offering a *polyarchival* form of co-governance, consolidates the ability of the parts to safeguard their autonomy without negating the ability of the general system to reach higher levels of collective symbiosis: ”it came to seem persuasive that the survival

<sup>57</sup> *Id.* 27, 28, 53.

<sup>58</sup> *Id.* 53.

and development of the state as completely compatible with the strengthening of the common arrangements”.<sup>59</sup> As Taylor<sup>60</sup> explains: “Integration involved the adjustment of national sovereignty to new circumstances, but not its abandonment”. Central institutions, and the European legal system, had been strengthened without weakening the states”. Although sovereignty is still being created by the subsystems, the latter are also constituted by the general system to which they belong; their sovereignty becomes an expression of their participation in the working arrangements of the collectivity, whose operations may well exceed the state framework, but whose governance requires the consent of states: “The EU’s arrangements were a unique way of managing a system of sovereign states, the like of which had not been seen before [...]. Membership in the European project had always been sought in order to restore the nation states of Europe [...]. It was necessary to understand this to see that further integration need not lead to the creation of an overweening superstate”.<sup>61</sup> In Taylor’s summary of the discussion, the sovereignty of the parts can be seen as a reflection of the constitutive role of the collectivity as well as an acknowledgement of the need of the member publics for self-determination.<sup>62</sup> As a *synarchy* of co-sovereigns, the EU directs the transmutations of sovereignty towards complex but politically viable systems of co-determination, thus advancing a philosophy of collective governing that reconciles the political tradition of Europe – as the cradle of state sovereignty– with its transcendence. This dialectical relationship between the whole and the parts rests on a common learning process, which in turn depends heavily on mutual trust, “in which”, as Wallace notes, “ideas as well as interests shape the search for consensus”.<sup>63</sup>

These dynamic properties make the present-day EU the most advanced application of the principle of “consonance”; the institutional components of the general system do not exist independently of the member units, nor do they operate, as equal parties to the regional *synarchy*, independently of the institutional arrangements of the whole.<sup>64</sup> The

<sup>59</sup> Paul Taylor, *The End of European Integration: Anti-europeanism examined* (2008), 103.

<sup>60</sup> *Id.* 7.

<sup>61</sup> *Id.*

<sup>62</sup> Taylor, 52 (*supra* note 56).

<sup>63</sup> William Wallace, *Collective Governance*, in: Helen Wallace & William Wallace (eds), *Policy-Making in the European Union*, 4<sup>th</sup> ed. (2000), 523.

<sup>64</sup> Taylor, 213 (*supra* note 56).

sovereignty of states thus makes the latter follow a set of systemic and behavioral norms that they themselves have established and have applied to a considerable range of policy domains within a collective governance system, courtesy of their sovereign statehood. In a word, the sovereignty of states has taken on new shapes and has come to serve more and increasingly complex functions that were once at the core of domestic politics. Thus emerges a post-Westphalian understanding of the EU order as an exercise in organized *synarchy*.

#### D. Constitutional Regression

In a high-stakes public campaign, the French and Dutch publics rejected, in May and June 2005 respectively, the Constitutional Treaty, previously approved by EU Heads of State and Government on 29 October 2004 in Rome. Such major blows to the ratification process threw the EU into a profound political crisis. Interestingly though, the Constitutional Treaty, which was meant to be replaced by a Reform Treaty after the decision of the Brussels European Council in June 2007, was viewed by many as a relatively modest step toward the full constitutionalization of the formal Treaty framework. Most analysts have asserted that the constitutional project would contribute to a more functional and balanced form of decision-making in an enlarged EU of 27, coupled with a strengthening of the EU's institutional capacity to act in a more coherent and coordinated manner in its external relations, mainly through a European Foreign Affairs Minister - a provision that did not make it to the Lisbon Accords.

Much to their detriment, there were predominantly nationally-driven causes for rejecting the Constitutional Treaty that, taken together, produced an ideologically incoherent voting block against ratification. This is not to imply that greater democracy in the EU can only be an outcome of integration, as the respective publics exercised their equally democratic right to oppose the coming into force of a major treaty reform, to which they had little democratic input, as it was ultimately determined by Europe's political leaders. Were the Treaty to have been ratified by all its signatories, the fact would remain that the EU would have still rested more on an international treaty or, at best, a quasi-constitutional system of checks and balances designed to organize political authority in a non-state polity than on a Constitution "proper". Yet, by virtue of its integrative and symbolic nature, the Constitutional Treaty aimed at a new constitutional ordering, albeit of a (much) less federalist kind as compared with a formal

constitutional settlement. At this point, the following questions are in order: Did the innovative Convention on the Future of Europe act as a “constituent assembly”? Has the outcome of deliberating on the Constitutional Treaty been legitimized by European public opinion? Would the envisaged “Constitution” take the whole system further down the road to federalization? Arguably, the answer to these questions is closer to a “no”, mainly for three reasons. First, the whole drafting process was characterized by the lack of a European constituent power; let us recall that the Convention was composed of appointed delegates, albeit drawn from a wider socio-political spectrum than has previously been the case. Second, the outcome of the Convention was liable to amendments by an Intergovernmental Conference (IGC), which retained the right of states to a final say over the end product through classical forms of interstate bargaining; a good case in point is the final voting arrangement, where qualified majority voting (QMV) requires the support of 55% of (at least 15) participating states and 65% of the population. Third, following the argument about the lack of a genuine European constituent power, the reform process failed to produce a kind of European *Grundgesetz* that derives its social and, by extension, democratic legitimacy directly from a European *demos*.

Given the above, the general assessment may be that the agonizing search for a new constitutional ordering in Europe comes in direct contrast to the democratic means available for creating it. Statecentrism seems to have been the order of the day, as was the case with previous treaty reforms when it came to bestowing the EU with “basic law” provisions. Nor does the integrative nature of a Constitutional Treaty suffice to transform a constellation of democracies into a democratic polity. The Constitutional Treaty would have to be based as much on the domestic orders of states as on a new kind of ordering for the EU to retain its character as a mixed and balanced association of states and *demoi*. At best, the outcome of constitutionalizing the Treaties can follow the logic of constitutional engineering – as opposed to formal constitution-making – which has been part and parcel of the EU’s *acquis conferencielle*. It thus emerges that EU constitutionalism follows the path of sovereign-conscious states wishing to bring about a moderate re-ordering of the existing Treaties, which may well lead to a new and perhaps more viable and democratic constitutional equilibrium. But this should not be taken as a substantive transformation of the EU’s constitutional order.

The Constitutional Treaty was not meant to endow the EU with a new base of sovereignty able to transcend the sovereignty of its parts, contrary to

early federalist predictions during the (early) drafting stage. Instead, Art. 5 para.1 of the Treaty states: “The Union shall respect the national identities of its Member States, inherent in the fundamental structures, political or constitutional [...]. It shall respect their essential State functions, including those of ensuring the territorial integrity of the State, and for maintaining law and order and safeguarding internal security”. This provision epitomizes the dynamic, yet unstable, interplay between coordinated interdependencies and diffused political authority, suggesting that the political evolution of the EU is not part of a linear process toward a discernible federal end. Rather, it is about the preservation of those state qualities that allow the member units to survive as distinct polities whilst engaging themselves in a polity-building exercise that transforms their traditional patterns of interaction. Although this allows for the transformation of a community of states into the most advanced scheme of voluntary regional integration the world has ever witnessed, it should not carry with it the assumption of the end of the European nation-state.

The EU has not therefore taken us “beyond the nation-state” and toward a post-national state of play. Whether or not its logic of power-sharing can be explained through a theory of institutional delegation based on the principle of conferral, the most compelling evidence for the lack of a European sovereignty *per se* is that EU citizens are still taken as “sovereign” only within their national context. Thus the set of constitutional arrangements advanced by the Constitutional Treaty were confronted with the same old challenge: the level of support the EU would enjoy by the public and the means through which its institutions would open up new participatory opportunities for citizens. In this regard, effective governance for managing an integrated political order based on output-legitimacy is a poor substitute to the democratic norms of governance in relation to a *demos*. What is needed is a deliberative and civic-minded process of union as a platform from which a European constituent power can emerge. Title IV of the Constitutional Treaty on “The Democratic Life of the Union” enlists a set of principles to guide the EU, such as democratic equality, representative democracy and participatory democracy. The latter is an interesting addition in that the central institutions should “give citizens and representative associations the opportunity to make known and publicly exchange their views on all areas of Union action”. An “open, transparent and regular dialogue” is envisaged between the EU, representative associations and civil society, coupled with a citizens’ initiative inviting the Commission “to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of

implementing the Constitution". These provisions, however, do not amount to a constitutional democratic order, although a shift in emphasis has taken place from the more traditional forms of representation, expressed mainly through parliamentary channels of political deliberation and contestation, to a framework of politics allowing for greater and more active public engagement in EU affairs.

At a time when the EU retains its character as a *via media* between different forms of polity, governance and representation, the initial prospects for a smooth and uncontroversial ratification of the Constitutional Treaty raised the expectations of endowing a fragmented European *demos* with a common civic identity that would nurture a sense of "*demos-hood*". Such aspirations did not in the end prove realistic enough. Instead, the nebulous and rather unceremonious outcome of Europe's constitutional project revealed that the exclusion of citizens from the drafting stages of the process, namely the absence of a participatory method of EU constitution-making, has been at the expense of elevating their status to a system-steering agency. The whole enterprise has thus acted against the interests of better equipping citizens to become the decisive agents of civic change and further enhance their horizontal integration within a nascent pluralist order composed of entangled arenas for action. Anything less would perpetuate a predominantly elitist operation that is detrimental to legitimate forms of polity. It would also deprive the EU from acquiring a distinct political subject whose civic identity exists independent of national public spheres but whose politics extends to both EU and national civic arenas, signalling a shift in the basis of legitimation to a European *demos*. Even the new dialectic between sovereignty and integration, carrying the implication of an explicit right to political co-determination, failed to produce a credible commitment to democratizing the EU. As in previous treaty reforms, the outcome of the process, far from representing a *cause célèbre* for a democratic Europe, amounted to a cautiously negotiated deal of "partial offsets" to key democratic problems facing the future of the EU. What these reforms failed to produce was not only a common democratic vision *per se* but a belief that such a vision remains without reach, at least in the foreseeable future. This is further justified by perceiving the outcome of treaty reforms as a product of a predominantly utilitarian calculus among the divergent preferences and expectations of the dominant national political elites.

Such trends were also evident in the June 2007 European Council in Brussels, where a decision was taken for the setting up of a new IGC to prepare a Reform Treaty by the end of 2007 (so as to have been ratified by



2009). The new mandate culminated in the signing of the Lisbon Treaty on 12 December 2007, which was to be ratified by January 2009, a year of European Parliament (EP) elections followed by the appointment of a new Commission. At that time, no one had anticipated the negative verdict of the Irish public on 12 June 2008, which represented an equally major blow to the whole ratification process, as did the previous French and Dutch referenda on the Constitutional Treaty. Whatever the strategy to overcome the Irish "no" may be, it is fair to say that the end result of the review process, which culminated in the signing of the Lisbon Treaty on 13 December 2007, represented the long-awaited response of the EU to a prolonged crisis, which EU officials conveniently termed, if not camouflaged as, a "reflection period" The new Treaty classified the areas of actual or potential EU involvement into the following categories: exclusive competences (allowing the EU to issue directives and to conclude an international agreement when provided for in a piece of EU legislation – applied in the fields of customs union; competition policy; monetary policy for members of the euro-zone; the conservation of marine biological resources under the fisheries policy; and common commercial policy), shared competences (applied in the areas of the internal market; economic, social and territorial cohesion; agriculture; fisheries, environment; consumer protection; transport; trans-European networks; energy; area of freedom, security and justice; and common safety concerns in public health matters), and supporting actions (allowing the EU to carry out actions to support, coordinate or supplement state action – applied in areas relating to the improvement and protection of human health, industry, culture, tourism, education, youth sport and vocational training; civil protection; and administrative cooperation).

Other pro-integrationist elements to be "rescued" from the aborted Constitutional Treaty, such as those relating to the EU's democratic life and the abolition of the three-pillar structure, included an extension of qualified majority voting in some 40 new instances (most crucially in the area of police and judicial cooperation in criminal matters, with Britain and Ireland having secured the right to pick and choose whether to participate therein and the European Court of Justice gaining broad oversight for the first time); a single legal personality for the EU; a full-time standing President of the European Council (elected for a 2.5 year term, renewable once); a smaller Commission with fewer Commissioners than states, as of 2014 (a rotation system would apply every five years, with each country having a Commissioner for 10 of the first 15 years); a strengthening of the EP's co-legislative rights; and an enhanced role for national parliaments in their

dealings with the Commission (with reference to the application of the principle of subsidiary). But, as noted above, there was no mention of a European Foreign Affairs Minister, nor was an integrated treaty text replacing all earlier Treaties. Moreover, all references to EU symbols, including the term "constitution", were dropped (flag, anthem, motto), while the new Treaty made a legally binding reference to the Charter of Fundamental Rights, but did not include it in the formal text, as had the Constitutional Treaty – to mention but a few instances of constitutional regression.

The overall assessment to be drawn is that the Lisbon Treaty represented, much like previous reforms, a compromised structure among divergent, ambivalent and, more often than not, conflicting national preferences and interests, accommodating in the end the demands of the more skeptical actors like Britain and Poland. Too many reservations, opt-outs, references to the retention of states' prerogatives in relation to competences and reform practices, along with a considerable delay of applying the double majority system of the Constitutional Treaty (not before 2017, although as of 2014 a new version of the 1994 Ioannina Compromise will take effect), deprived the EU from consolidating its political identity and failed to signal a shift in the basis of legitimation towards more active and inclusionary virtues of belonging. Once again, instead of politicization becoming a weapon in the strategic arsenal of pro-integrationist forces, the new Treaty has exacerbated the possibilities to achieve a democratic equilibrium between the EU and "the civic", thus depriving the larger unit from consolidating its political identity while failing to transform itself from a states-led and essentially elitist operation to a genuine European public process founded on a shared sense of *demos*-hood.

## E. Conclusion

It is true that for a polity that was founded and is still based on a system of international treaty-based rules, and whose incipient but fragmented *demos* still lacks effective civic competence, the transition "from democracies to democracy" and, by extension, from an aggregative to a deliberative model of governance is neither easy nor linear, let alone automatic. Yet, recent trends in EU treaty reform seem to give credit to those who argue that the general system is closer to a statecentric form of governance than to a democentric form of polity. This is far from an ideal state, as it hinders the emergence of a European *demos*. In other words, political pragmatism, if not cynicism, as the Lisbon Accords have shown,

seems to have had its day at the expense of a visionary project to re-ignite the public's interest in EU affairs. Like any other polity that aspires to become a democracy, the EU has to engage itself in a constitutive process to bring about a new framework of participatory politics by inventing and, where necessary, re-inventing, a sense of *res publica*. Hence, it is increasingly important for the EU to address issues of democracy and to ensure that its decisions are informed by a principled public discourse. This is because the EU will continue to be confronted with the reality of multiple polities and *demoi* as well as the fact that its present structure invests more in accommodationist types of reforms than in fundamental constitutional re-orderings.

Given the remarkable profusion of theories for the study of the EU as a polity in its own right, integration scholars should aim at rediscovering a sense of process to rethink the archetypal laboratory of concepts on which novel understandings of polity were allowed to draw and expand. Normative theory, drawing from the likes of new republicanism, is an appropriate point of departure with far-reaching possibilities for the study of the EU as a new type of political constellation concerned with the quality of its own governance. The EU has thus to associate itself closely with the formation of a European civic space – *i.e.*, the equivalent of a *polis* whose *politeia* reflects its essential purpose. This approach accords with the EU's nature as a *synarchy* of democratic polities, or a mixed commonwealth of states and *demoi*, as well as with the view that the creation of a new political ordering in Europe should be a condition for uniting the member publics and their respective public spheres into a polycultural and polycentric *res publica*.<sup>65</sup> Therefore, the phrase "many peoples, one *demos*" captures the imagination of a Republic of Europeans based on a certain notion of democratic *civitas* that stems from a rich intellectual tradition of European political thought. This is more than just a democratic wish for the shape of things to come. Although it is a less than concrete strategy for democratization, it remains a virtuous cause that could assign meaning to a vision of politics that would still be part of a great democratic tradition.

<sup>65</sup> Kostas A. Lavdas & Dimitris N. Chrysochoou, A Republic of Europeans: Civic Unity in Polycultural Diversity, in: Marco Mascia (ed.), Intercultural Dialogue and Citizenship: Translating Values into Actions (2007); Lavdas and Chrysochoou (*supra* note 11).

