DEMOCRACY IN EUROPE

A Political Philosophy of the EU

Daniel Innerarity

The Theories, Concepts and Practices of Democracy

Series Editors
Jean-Paul Gagnon
University of Canberra
Canberra, Australia

Mark Chou
Australian Catholic University
Fitzroy, Australia

"Europe needs theory, or rather political philosophy. Given this provocative premise, Daniel Innerarity develops a brilliant argument aimed at overcoming the crisis of the European Union. We need a new narrative capable of taking up the challenge, posed by Europe, to rethink democracy in its complexity, beyond the nation-state model."
–Professor Elena Pulcini, *University of Florence, Italy*

"The project of European integration has been pursued without an agreed identification of its *finalitè*. When crises exploded, European leaders did not know how to deal with them. In Brussels, their strategy was muddling-through, in national capitals their narrative was TINA (there is no alternative). The 'bicycle approach' to European integration continues to be the unofficial philosophy of the EU. As Daniel Innerarity argues persuasively in this book, it is time to go beyond a mere 'processual' view of the EU. The question is not the depth of the integration but the quality of European democracy."
–Sergio Fabbrini, *Director of the LUISS*
School of Government, Rome, Italy

There are many types of democracies and many types of democrats. Though contemporary Western scholars and practitioners of democracy have tended to repeat a particular set of narratives and discourses, recent research shows us that there are in fact hundreds of different adjectives of democracy. What one theorist, political leader or nation invokes as democracy, others may label as something altogether different. Part of this has to do with the political nature of democracy. As a practice and concept, it is always contested. Yet instead of exploring these differences and ambiguities, many democrats today retreat to the well-worn definitions and practices made popular by Western powers in the twentieth-century.

The aim of this book series is to engage and explore democracy's many articulations. It seeks contributions which critically define, analyse and organise the many theories, concepts and practices that encompass democracy in all its forms. Both theoretical and empirical treatments of democracy, particularly when told from less conventional or more marginal perspectives, are especially encouraged.

More information about this series at
http://www.palgrave.com/gp/series/14410

"Discussions of the state of the EU across all sub-disciplines of 'European studies' are increasingly characterised by irritated signals of helplessness. What Europe needs at its core is a theoretical moment extensive enough to give an indication of its future. Innerarity's political philosophy excels through its synthesising of technically detailed and theoretical innovative reconstructions of present impasses, reconstructions which reveal encouraging and democratically legitimate potential."

–Professor Christian Joerges,
Hertie School of Governance, Germany

Daniel Innerarity

Democracy in Europe

A Political Philosophy of the EU

palgrave
macmillan

Daniel Innerarity
University of the Basque Country
Donostia, Spain

Translated by
Sandra Kingery
Lycoming College
Williamsport, PA, USA

Cover illustration: Katarzyna Bialasiewicz

Printed on acid-free paper

For Geneviève and Serge Champeau,
Europeans like those who set the European Union in motion
and like those who now deserve a better Europe.

Preface

The European integration strategy consisted of conceding primacy to processes over results and assuming that success was guaranteed. Thus the idea of irreversibility, the lack of contingency plans or the absence of any reflection about a possible failure, which was especially visible in the case of the single currency, was agreed upon as an irrevocable commitment. When there have been crises, European leaders have not known how to do anything other than convince their electorates that there is no alternative. This is the conceptual framework which gave rise to the so-called "bicycle theory" of European integration, which posits that integration must keep moving forward, especially during a crisis. Although, as Ralf Dahrendorf once said, "I often cycle in Oxford, and if I stop pedaling I do not fall; I simply put my feet on the ground". It is the time for reflections and choices. The debate about "more or less Europe" disguises what should be the true objective: another Europe, the possibility of thinking it and configuring it in another way. What is in question is not the depth of the integration but the quality of European democracy.

Donostia, Spain   Daniel Innerarity

CONTENTS

Introduction: Understanding European Complexity

It is said that an Englishman was praising the operation of a certain device and a Frenchman objected: "Yes, that works well in practice, but does it work well in theory?" It is not very appropriate to tell a joke reproducing national stereotypes of a Europe that is so often blocked by its national short-sightedness, but it may be useful to explain what I intend to say. My hypothesis is that the EU is living a "theoretical moment", that is, a moment where conceptual innovation is essential if we want to escape the deadlock in which we find ourselves, which is, first and foremost, a conceptual deficit. The current moment seems to agree with a character in Mozart's *Cosí fan tutte* who claimed that everything needs philosophy. It is true that the European integration crisis cannot simply be solved with a good theory, but we will not emerge from the current crisis without a clarification of what is at stake. We need to talk more about concepts than about mechanisms and leaders. New meanings, rather than financial or institutional engineering solutions, will lead us out of the crisis; it is less a matter of political will than a matter of understanding what is truly at stake. It is not a problem that can be solved through institutional procedures and leadership, but a crisis that must be well diagnosed, so that the basic concepts of democracy can be reconsidered in the context of that new and complex reality that is the European Union and in a globalized world where profound social and political changes are taking place.

1

1   A Political Philosophy for Europe

Among the many deficits attributed to the EU, one of the ones that is least denounced—although it is no less important—is the intelligibility deficit. There are big controversies as to whether Europe is democratic or fair, representative or efficient, but there is no doubt that it is currently incomprehensible, making it nearly impossible for anyone to understand it. Europe has lost its sovereigns and has not recreated one at the European level. Instead, the sovereigns have been replaced by a consensual or asymmetrical machine, depending on the situation, that avoids conflicts and enshrines irresponsibility. Europe cannot make sense as long as there is no narrative that can be understood and accepted by its citizens (which may even justify its relative distance, the element of delegation or complexity that inevitably accompanies it). For these reasons, I maintain that the EU must be understood as a complex democracy, not based on democracy models related to the nation state, and it thus has great potentialities when it comes to thinking about how to politically organize more difficult, open and complex spaces.

Why a philosophy of the European Union? One could easily object that we do not lack theories and that my statement actually hides the "exclusive competence" desire shown by any other discipline. There have been some claims about the importance of philosophy for the development of an appropriate concept of the European Union (Friese and Wagner 2010; Olsen 2004), but there are also those who consider that European constitutionalism is over-theorized (Krisch 2005, 326; Schütze 2009, vii) or that the integration is not so much a question of theoretical reflection but of empirical observation, "a process that must be understood rather than philosophically built" (Müller 2003, 69).

I understand the distrust when faced with excessively theoretical approaches that usually wander comfortably through the corridors of theory and avoid institutional design or the complexity of the political game. But if political philosophy has any ambition, it is to breach that gap between theory and practice, between normative and descriptive, which is a sign of exhaustion shown by theories about Europe. One consequence of this rupture is the lack of cooperation or of an interdisciplinary approach between philosophy, law, and the political and social sciences. Some lack proximity to the institutional praxis, while others lack theoretical development; some disciplines have such a normative horizon that they forget the social conditions needed for moving theories into practice, while others

suffer from a limited interest in the theories of democracy or in the history of concepts. That lack of interest is repaid with a perplexity hidden by an excess of empirical studies with little significance.

Moravscik (2006) is right in his assessment that there are too many normative theories in European Studies, but in my opinion, there is a more radical problem: there is a dichotomy between factual and normative that has turned this field into a battle between realists without much hope and idealists with little knowledge. What we probably need the most is a theory of Europe that is neither a simple description of the institutional mechanism nor a vague cosmopolitan haze. And this is precisely the topic about which philosophy still has a lot to say. The polarization between theory and practice, between normative approaches and an empirical point of view, between disciplines dealing with values and those more comfortably moving amongst functional realities, has given rise to many different controversies within the human and social sciences. This dissociation is both a problem and a symptom, and we will not make Europe's reality comprehensible if we do without a certain assessment horizon. But we cannot address this shortcoming if we maintain a level of exhortative speech which seems to care very little about the real game of interests, the weight of our historical past or the multiple determining factors that limit political action in a space of deep interdependences. Given the current status of European integration, we should not merely await a description of facts or an abstract normative model when it comes to political philosophy, but we should expect a critical response and research into the possibilities of shaping the future ahead of us. Understanding the EU is not merely a descriptive exercise, but a reflection with normative consequences, that is, it determines *which* expectations may reasonably be considered in relation to its form of government, its legitimacy and its democraticness. It is not the same to view it as an intergovernmental negotiation or a transnational experiment; we will not suggest the same solutions if we understand it as an aggregation of interests or as a deliberative discussion required by the political transformations of contemporary societies, their possibilities and specific risks.

Political philosophy is essential to understanding such a polity that is as unique and novel as the EU in relation to the model of the nation state. It even has some comparative advantages to the extent that it is not a discipline whose evolution is closely tied to the conceptual universe of the states, as is the case with Political Science, International Relations or Constitutional Law. At the same time, the EU poses such a huge challenge

for political philosophy and the theories of democracy that it imposes an obligation to verify certain presuppositions and to examine the conceptual and practical resistance in new contexts. I am convinced that it will be a valuable contribution to European Studies that seem to have lost the capacity to develop a general theory about the meaning of integration. The abandonment of ontological matters and the preference for individual institutions and policy areas have generated a great deal of empirical material but have left a fragmented and excessively specialized space, without theoretical ambitions or the ability to develop an all-encompassing notion of what is at stake (Bickerton 2012; Ludlow 2010, 24).

2   Problems of Narrative

This is the context where the problem of formulating a new narrative for the European Union is considered with special intensity, once certain big narratives, which made it comprehensible and conferred social legitimacy, are over. If Tocqueville's statement about human beings inventing things more easily than words to describe them is true (Karmis 2005, 152), it could be confirmed that after the action and the description, we still have one more difficulty: that of making it intelligible. We are referencing this third task when we talk about a narrative for Europe.

Since the different integration legitimacies have been weakened, the only powerful narratives that are still standing are populist rebuttals fed by that evil game of "blaming Brussels" and, above all, by the evidence that we are not up to the problems we need to manage. At a time when a lack of the epic is not compensated by functional legitimacy, a time when the European project cannot turn to emphatic achievements or the discreet favor of effectiveness, the landscape is filled with negative references. Everyone can understand what is being suggested when there is talk about the "monster of Brussels" (Enzensberger 2011), which, in the best case scenario, makes the appeal for "more Europe" appear to be mere weakness. Among other things, this is taking place because this is a moment of evolution for democratic societies in which, though there is no worthwhile legitimacy without effectiveness (whether economic or in regards to conflict resolution or the social order), the citizenship has the right to link the value of the European project to certain normative and strictly political hopes.

But in the worst case scenario, the rhetoric of progress in integration may implicitly suggest a deterministic historical linearity. The narrative of the Monnet method—"dynamics in small steps with sustainable significance" (Wessels 2001)—takes many things for granted and, at the same time, has a coercive resonance, inviting us to surrender to what will end up being imposed. Any narrative that suggests that what we should do has nothing to do with freedom, with a contingent configuration, but with acceptance, and submission to an inevitable dynamic has little or no future in a democratic society. A narrative is not a simple list of historical events, an inevitable dynamic or a list of our future obligations, but a story conferring certain significance to our past and future actions, a significance of which we approve. And the best way to ensure that a narrative is rejected is for it to imply that we are facing a reality that we cannot refuse.

In this sense, integration theories have focused all too much on inevitability. Explaining our crisis as a simple regression or stagnation of the integration process is mistaken and, above all, democratically unacceptable to the extent that it implies that our freedom is not convened in any way. Therefore, European narratives must stop thinking about integration as a linear process and about the crisis as an agent of change for that development and must pay more attention to the regressions and even the concept of European disintegration (Eppler and Scheller 2013). What I mean with this is that there will not be a Europeanist narrative as long as we keep it in a deterministic corset which discredits, in principle, all other possibilities. We made it much too easy when we established a simple antagonism to organize the controversies between the "pro-European" and the "eurosceptic". While discussions revolve around whether certain political decisions should be communitarized or continue in the arena of the states, these distinctions constitute a sufficient framework for analysis. But with the increasing complexity and multidimensionality of European politics, the distinctions clash with their own limits because many of our problems cannot be reduced to the "more or less Europe" issue. This is so, among other things, because our controversies do not focus exclusively on levels of competence but on the content of policies. Today, we discuss the political measures that can or must be adopted in order to achieve the objectives developed in the political fields that are already integrated, in such a way that those arguments cannot be categorized in pro-European or euroskeptical neutral perspectives.

3   THE DOUBLE DEMOCRATIC CHALLENGE OF THE EUROPEAN UNION

The idea of providing a narrative for the European Union suggests that we are going to explain what is inevitably complex in an arbitrarily simple manner. If that were the case, what we would get in terms of popularization would be lost in accuracy. We would have gained nothing if what has been understood and accepted was something substantially different from what we need to narrate. This is the crux of our problem, and the sooner we recognize it, the less exposed we will be to populist or technocratic simplifications.

The European Union is facing a democratic challenge, but that also implies a challenge to political philosophy. "The EU's democratic deficits reflect less about democracy in Europe than they do about democratic theory itself. The EU is a problem for democratic theory *because it is not the kind of thing that can be democratic* on modern accounts of democracy. Institutional deficits arise not because of faults in the design of democracy within the EU but because the normative significance of the same institutional designs changes when it is translated into a new context.… The true democratic deficit, I submit, lies on the side of democratic theory, which cannot comprehend developments like the EU" (Goodhart 2007, 575).

Thus, the question we need to ask ourselves is a double one: What contribution must political theory make in order to understand the European Union? And, what challenge does a polity as novel as the European Union pose to said political theory? If the former demands organizing institutions and decision-making procedures so they can achieve our criteria of democraticness, the latter implies revising those same criteria of democraticness to make them compatible with the complex realities of the European Union. The first move by itself leads to an extreme normativism, indifferent to the conditions of possibility within which our political life actually develops. If we only perform the second move, we would be degrading our democratic ideals to the facticity of our mediocre "muddling through". In my opinion, the only way to avoid moralism and cynicism is to understand the double democratic challenge—theoretical and practical—of the European Union and to solve it within a complex theory of democracy.

This operation would not be a kind of zero-sum game between theory and practice, between democratic values and political realities, but a huge possibility for both of them. So much so that, if we do it right, we could end up with a more sophisticated theory of democracy and more democratic institutions.

It would entail, first of all, chasing the aims of the European Union in relation to those of the member states, without subordinating the latter to the former. Neither subsidiarity nor assigning new roles to national Parliaments nor even the boundaries established by constitutional courts have managed to determine the type of power that corresponds to the EU. The current model has had a high cost in terms of detachment and victimization. The key would be a brand-new idea of power at the European level which would fully consider the interests of member states without imposing on them. For such a thing to be even thinkable and understandable, we are lacking great political innovations in Europe but, above all, we are lacking great political innovations within political thinking itself. It is not a matter of finding new institutions to adapt familiar ideas to new contexts, but a matter of understanding that changes in the configuration of our social reality, in Europe and in the whole world, demand a reconstruction of the theory of democracy which will remove everything that has been attached or linked to it as if it were an essential part of it (sovereignty, territoriality, homogeneity, statehood, to name just a few examples), rather than contingent additions which it could and should abandon.

So far, we have solved this problem either by trying to expand the basic concepts of democracy—taken as *demos*, popular representation or control—to cover the European sphere or by using the trick of believing that we are looking at a *sui generis* reality and, thus, basic categories of democracy could remain intact, admitting, in this case, a harmless exception. But the problem still awaits us, in its full seriousness: how can we think and build a democratic reality dissociated from its territorial basis and from the reality of a sovereign state? Solving this problem implies not only institutional innovation, but also and above all, the need to reconsider our concept of democracy. Or, stating it the other way around: We will only be able to achieve institutional innovation if we rethink our concept of democracy and the categories associated with it.

4   Europe, So Far and Yet So Close

When we talk about democratizing the EU, one of the commonplaces that comes into play is that of bringing the Union closer to the citizens, which would imply two things: bringing the Union closer to the will of the citizens and bringing decision-making centers closer to the citizens. This proposal has an element of the irrefutable—how could it fail to fulfill the democratic promise of turning into something close at hand and in agreement with its own aspirations—but it hides several contradictions, which make it incompatible with the true complexity of democracy in general and the EU in particular. It seems to be unaware, in the first place, of the great heterogeneity of what European citizens desire, depending on their social position or the country to which they belong. For some Europeans, the EU is not federal enough and for others too intergovernmental; there are those who criticize the lack of solidarity of the current procedures of governance, while others consider it an organization that encourages irresponsibility, and so on. In the second place, it seems unaware that the optimal level of decision-making is not always the one that is closest. What these two suppositions have in common regarding proximity is that they ignore the complexity within which the current integration process functions and they propose solutions that are too simple for a structure whose components and levels of decision-making are more heterogeneous than the well-intentioned democratizers seem to assume. If the EU is going to be more democratic, it will be so in the style of complex democracies. And that complexity is not only related to the diversity of its citizens but to the variety of issues about which it needs to decide, some of which may require proximity, but others that demand a certain distance. Representation in the EU is complex because it must represent not only EU citizens and citizens of the states but other values: it must represent economic interests, impartiality, knowledge, common-pool resources, long-term commitments and so forth. The problem with European democracy is not how to respond to people's mechanical demands or the results of opinion polls, but how to make a political synthesis between those demands and other values that deserve at least the same attention.

Like most commonplaces, the one that regrets the distance of Europe (and politics in general) is also true, whether it is because of a lack of intelligibility or because the ruling elites have interests that increasingly diverge from those of the citizens. Since this is (partially) true, its verification is of

little benefit to us, primarily because this is only *one part* of the problem. It would be wonderful if this distance were the *entire* problem; then we would know what to do and we could immediately begin to take the appropriate steps for rapprochement. But no, the problem is more complex than that, and it includes some uses of proximity that are as damaging as excessive distance. That which is immediate or close in space or time does not always protect and is not always obvious. Frequently, it is the most distant institution that frees us from close tyranny, as has happened so many times in the legal edifice of the European Union, whose common institutions have protected us from nearby arbitrariness. European Courts have often had more sensitivity to guarantee certain rights than domestic courts.

Therefore, what could previously be a certainty is now an inconsistent commonplace used to justify democratic self-government: the prejudice of thinking that the most immediate realm is necessarily the most appropriate, both in terms of legitimacy and effectiveness, to respond to the aspirations of self-government. Many issues only find their appropriate scale of democratic self-determination if we distance the usual level of decision-making and if, within the group of the "us" who need to decide, we include others who are very distant in space or time, especially if we want transnational democracy and intergenerational democracy to make sense. Proximity, subsidiarity, participation are terms that continue exercising a democratic fascination but that sometimes presuppose a world that is vertically articulated and no longer our own; in any case, they should be utilized in a reflexive and critical fashion, not as indisputable evidence, if we want to measure up to our democratic complexity.

This critical use of the concept of distance is especially valid for the European Union. When politics is exercised in contexts of dense interdependence and complexity, as is the special case of Europe, it is inevitable that the idea of democratic self-government will no longer make sense if we understand that the formation of political will happens in closed spaces or if we believe that those who decide and those affected by their decisions are identical. Increasingly, politics acquires the character of what we could call "the government of others", in the double sense of needing to get used to "others" intervening in our decisions, both "up" and "out", in the vertical sense of the experts (without whose knowledge we could not adopt reasonable political decisions) and in the horizontal sense of neighbors, who are affected by our decisions and are required to consider whether the burdens they impose upon us with their decisions are just as well. We must

balance the right of the people to make their own decisions with the obligation of not generating unjust burdens on other people, especially on those with whom we share a common destiny. For that reason, a complex democracy requires an element of "vertical" delegation, a sense of trust that is as critical and reversible as possible, and a "horizontal" intervention that can only be legitimized by reciprocity. Our right to intervene upon others is offset by our obligation to consider the way our decisions affect other people. There is a type of thinking here, which some people have called "deliberative supranationalism" (Joerges and Neyer 1997; Erikson 2000), which presupposes that we cannot measure the common good if we have a vertical model of democracy, which will pale as we are distanced from the sovereign individual. In reality, on the supranational level, values may appear that enrich democracy and allow us to identify certain responsibilities that we have with each other.

There are two things that kill politics: excessive distance and excessive closeness. In order to have a quality democracy that lives up to the complexity of the times in which we live, we must achieve an appropriate balance between expert knowledge and public opinion, between decision and responsibility, between us and them. Reflecting on European democracy can help us not only improve our common institutions but reinvigorate our ideas about democracy. In the face of those whose conception of democracy leads them to believe that the parliamentary system is a failed system of representation, the European Union teaches us that not everything in a democracy can be democratic in the direct sense of the word, such as popular self-determination. A complex democracy is one that can accept the compatibility of heterogeneous realities, including some that are not directly democratic or, if one prefers, are not elective and majoritarian democracies. Without these approaches, true democracy would not exist. Examining the European Union from the point of view of its deficiencies and democratic opportunities can be an exploratory exercise of that "continent of indirect democracy" (Rosanvallon 2008, 24) that allows us to correct certain deficiencies of electoral-representative democracy. No democracy with a minimal degree of complexity can do without a certain degree of delegation. A good deal of democratic disillusionment has to do with the fictitious (not in the sense of unreal, but constructed and contingent) nature of the relationship between those who govern and those governed. The full complexity of the matter is contained in the need to democratically justify that distance.

There is another sense in which the deepening of democracy requires some critical distance rather than closeness, and transnational practices may be of great help here. If there is something missing from our political culture, it is precisely the maintenance of an opportune distance. Distance from what? Distance, for example, from the tyranny of the moment, the pressure of immediate interests, the seduction to govern based on opinion polls or the universalization of our interests. The focus on immediate interests often prevents us from taking into consideration interests that are more distant in space or time, which does not make them any less important.

When the logic of the sovereign consumer is established in politics, this tends to dissolve into the immediacy of the short term. Politics is especially vulnerable to this because of the permanent electoral battles and the weight of public opinion. An increasing emphasis on polls and surveys makes us focus on current demands and register public opinion for shorter periods of time. Politics is enormously weakened if it is not able to introduce other criteria to balance out the possible tyranny of the present. If institutions of representative democracy are good for anything, it is to establish procedures that at least guarantee debate, the consideration of alternatives and constitutional guarantees. A democracy cannot function well: (1) if there are no functioning institutions of indirect democracy, such as regulatory, arbitration or judicial authorities (which tend to deteriorate when they are in the hands of the parties, in other words, when they are more direct); (2) if there is complete suppression of the process of delegation that should be part of all functioning governments (accepting, of course, that delegation is limited in time and must be accountable); (3) if public opinion at any given moment is imposed on other expressions of popular will that are less instantaneous and more long-lasting and so on. This seems to be one of the core reasons why politics is so dysfunctional and gives way to so many irrational situations (Innerarity 2012). Politics, including European politics, must free itself from the "demoscopic fear" (Habermas 2012), without giving in to elitist and technocratic arrogance.

5   The European Union as a Complex Democracy

The idea of a complex democracy can be used both to renew the concept of democracy, the main categories of which were coined in times of great simplicity, and to rethink our standards of democraticness without

attempting to manipulate the nature of a polity as complex as the current European Union. We should not surrender to the difficulty of the issue, theoretical as well as practical, and assume that the European Union has crossed some complexity limits beyond which the idea of democracy stops making sense.

It has been a great simplification to contemplate democracy, as well as the democracy of the European Union, on the basis of the model of the nation state. Many of the semantic explanations regarding the democratic deficit employ the idea of a deficit of statehood as a backdrop, even relating it to a failed state, instead of thinking of a non-state-based institutional reality in which other actors, approaches and legitimacies are at stake. If Tocqueville claimed that he was able to make sense of democracy in America without making use of the old models (Tocqueville 1994, 315–16), what should we forego as we configure democracy in Europe?

We should probably start by abandoning the prejudice of thinking that there is an incompatibility between complexity and democracy. Could it not be the case that when complexity increases, societies tend to be more democratic? Or, in other words, is it not unlikely for them to be governed in any non-democratic fashion? Thus, we could talk about the advantages of complexity for democracy and the advantages of democracy for complex realities; the former, because the multiplication of actors, interests and institutions of governance balance the exercise of power and complicate unilateral impositions; while the latter is due to the fact that democracy allows for better articulation of that plurality than any other government system. Democracy is not at odds with complexity; it is, on the contrary, the government system that best manages it due to its internal dynamism and its capacity for self-transformation.

In the face of Carl Schmitt's unacceptable conclusion that democracy is only possible when there is "exclusion or destruction of the heterogeneous" (1926, 14), we can confirm that many national systems of government successfully operate under conditions of profound heterogeneity. We should not exclude out of hand the possibility of adapting democratic institutions to contexts that, from the very beginning, do not make things any easier. Frank Michelman has talked about some "inhospitable conditions" for democracy in the complex society in which we live (1997, 154) and, indeed, the technical complexity of many of our decisions, the institutional density, the difficulties when it comes to delimiting the problems or the effects of decisions … these are properties that contrast with those categories through which we usually grant the "certificate" of democratic

quality and which have a certain tone of simplicity, immediacy and inclusion. If useful fictions of democracy were categories which allowed conferring a political format to societies that had to be democratized, today, in more complex societies, its ill-considered application can fatally depoliticize them. As Kelsen warned, the idea of a general interest and an organic solidarity that transcends the interests of a group, a class or a nationality is, ultimately, an anti-political illusion (1988, 33). The construction of general will today cannot be anything but a commitment between different actors, institutional levels, values, political cultures and so on.

Democracy solely exists when individuals obey laws of which—with all the institutional mediation that is present in a complex society—they are authors. Is it possible to insist on such authorship in complex political systems? This is the main challenge that post-national political entities, such as the EU, or global governance processes currently pose to political thinking, where there is an attempt to preserve complexity and manage it, not eliminate it.

When it comes to the European Union, the transition from technocratic simplicity to techno-populist complexity poses specific problems related to both government and legitimacy. For a long time, the more apolitical it seemed, the more successful economic integration has been, immunized before the political disagreements and with a reduced number of actors. Evidently, we are no longer there. It is this increasing complexity that leads me to share the scepticism of Christian Joerges about modern societies, and the EU in particular, being able to change in just one *big bang* (2015, 89). Many of the democratization proposals are infra-complex, insofar as they imply that there may be a pure inaugural moment or a strategy that entrusts the task to a single procedure.

Rather than a democratic deficit, Europe may have a democratic dilemma. Talking about deficit runs the risk of trivializing the complexity of the matter and causing expectations that the issue would be resolved if the criteria governing the democracies of the states were applied in the EU. Having, instead, a democratic dilemma means that we are facing something that cannot be resolved and that can only be rebalanced. There are two different democratization vectors—that of the member states and that of transnational challenges—neither of which can completely subsume the other, and this compound character of the Union must be respected in any democratic commitment reached. That is why the first complexity of the Union derives from the fact that there are three intervening realities: that of the states, the intergovernmental one and the

transnational one. It would be absurd to expect a solution to our problems by eliminating one of these scenarios or by its complete subordination. Europe's agenda should bid a definite farewell to the semantics of harmonization and seek the unity to move towards fair management of complex entities. It should do so at this historic moment when the need to understand democracy as a shared power is imperative: with sub-national governments and with supranational institutions, with a variety of public and private organizations, with NGOs and international agencies (Hirst 2000, 24).

In fact, in recent European studies, there are research lines pointing in this direction, and they deserve more attention. They coincide in being descriptive and critical at the same time, to the extent that they have introduced something very similar to complexity in their approaches. Those ways of placing the concept of complexity in the reflection on European democracy are, among others, worth being quoted; the idea of "demoicracy" (Nicolaïdis 2004; Cheneval 2011; Cheneval and Schimmelfennig 2013) to refer to a Europe acting in a united manner without constituting a unity; the concept of "compound polity" (Fabbrini 2010) that intends to balance the principle of equality between people with that of equality between states; the observation that there are elements of government and governance in the EU, that is, an intermixture of formal decision-making and informal relations between administrations, social actors and epistemic communities (Börzel 2010); the appeals to strengthen the element of diversity of actors and perspectives in our decision-making (Bronk and Jacoby 2013); and all those ideas trying to make pluralism more visible, as the idea of multiple unions (Olsen 2005) or transnational democracy (Bohman 2007). These are perspectives that go one step further from the rhetoric of the multi-level democracy that became the trend by the end of the last century and that still expected to organize that plurality in a hierarchical manner and in a single model, something that, in my opinion, does not do justice to the real complexity we have to manage.

The narrative of Europe as a complex democracy seems to be doomed to failure if what we expect is for people to understand it. Europe runs the risk of becoming a victim of complexity at a time when mass politics turns into populism and simple messages. Now, is it better that such a narrative is understandable if what is understood has little to do with what needed to be explained? And besides, complexity is not the same as complication. Complexity has less to do with the explanation of all the resourcefulness taking part in the institutional life of the European Union—confronted

with our ideas of causality and responsibility, placidly installed in the categorical framework of sovereign states—than with the ability to facilitate understanding of the fact that we are playing a less intuitive game, in which we must comprehend the logic, foreign to the national mentality but not especially obscure, of interdependences, of shared sovereignties, of common risks and opportunities or of binding interests.

It is true that it is very difficult for people to acknowledge a democratic structure in Europe when self-determination seems to succumb before complex negotiation systems and constrictions of all barely justified types, which enthrone the principle of the technically possible compared to what seems politically desirable based on the immediate evidence. Because of this difficulty, the debate confronts those who believe that democracy has to be reinvented beyond the boundaries of the nation state and those who think that modifying our traditional idea of democracy to fit a larger space will do, between those who do not seem to be too uncomfortable with a post-parliamentary democracy and those who see a possibility to release democracy from its old national format. And maybe our debates make us lose sight of the fact that the political practices of the Union—examined from the complexity perspective—are "both more democratically valuable than federalists recognize, and more perfectible than sovereigntists can live with" (Nicolaïdis 2012, 259).

The dispute regarding the nature of democracy is always in the background of the debates about the EU. But it is important to remember that we must understand the nature of the EU in order to be able to answer the question of its democraticness. This does not only mean that we should understand the real institutional *modus operandi* and surrender to what is, so often, a mediocre game, but that we should understand the logic and the objectives for which that institutional level is meant to exist, as well as the global context in which it has to act. If the EU were susceptible to a conventional democratization, then we would not have needed to create it; we already had the nation states to meet the requirements for democracy. A deficit at the level of the nation states had to occur in order for the idea and the need to invent another governance level to arise.

Necessary integration—which is something more than a simple aggregation—of politics in Europe, to the extent it implies a certain renunciation to a specific type of national prerogatives, will only be economically successful and democratically acceptable if citizens understand that such renunciation is compensated with new configuration abilities. European integration will only be valuable when it represents an improvement in the

provision of certain public goods that the states are no longer in any position to guarantee and when people understand that. That being said, such a democracy will not be configured in exactly the same way as the democracy we know, rather it will imply a transformation of democracy. Some people might object that this is the old trick of calling whatever exists now "democracy" and renouncing any normative hope. In order to disarm these critics, the complex democracy that the EU represents will have to be able to prove itself as the best way to organize complex societies and the easiest way to adopt decisions within these new contexts according to classic political criteria of legitimacy and justice.

Neither should we forget that the configuration of Europe is taking place during times in which we must also think about the constitutional structure of the global system. The EU may be at the forefront of the battle to configure democratic spaces beyond the nation state and may reduce the incongruence produced between global interdependence and the political instruments we have at our disposal.

The intention guiding a complex theory of democracy may be summarized in that piece of advice by Michael Oakeshott: "To distinguish the more permanent elements of the patterns of our politics … is to find oneself a little less perplexed and a little more understanding of even the unpleasing surface of politics. And if there is any conclusion I wish particularly to avoid, it is the fruitless conclusion that a virtuous politics would seek simplicity and 'shun ambiguous alloy', that what we ought to aim at is a resolution of the ambivalence and ambiguity of our politics or at least a formula under which they can be vanquished" (Oakeshott 1996, 20).

References

Bickerton, Christopher. 2012. *European Integration: From Nation-States to Member States.* Oxford: Oxford University Press.

Bohman, James. 2007. *Democracy Across Borders. From Demos to Demoi.* Cambridge: MA: Massachusetts Institute of Technology.

Börzel, Tanja. 2010. European Governance: Negotiation and Competition in the Shadow of Hierarchy. *Journal of Common Market Studies* 48 (2): 191–219.

Bronk, Richard, and Wade Jacoby. 2013. Avoiding Monocultures in the European Union: The Case for the Mutual Recognition of Difference in Conditions of Uncertainty. LEQS Paper No. 67.

Cheneval, Francis. 2011. *The Government of Peoples: On the Idea and Principles of Multilateral Democracy*. New York: Palgrave Macmillan.

Cheneval, Francis, and Frank Schimmelfennig. 2013. The Case for Demoi-cracy in the European Union. *Journal of Common Market Studies* 51 (2): 334–350.

Enzensberger, Hans Magnus. 2011. *Sanftes Monster Brüssel oder Die Entmündigung Europas*. Berlin: Suhrkamp.

Eppler, Annegret, and Henrik Scheller, eds. 2013. *Zur Konzeptionalisierung europäischer Desintegration. Zug- und Gegenkräfte im Europäischen Integrationsprozess*. Baden-Baden: Nomos Verlag.

Erikson, Erik O. 2000. Deliberative Supranationalism in the EU. In *Democracy in the European Union–Integration Through Deliberation*, ed. E.O. Eriksen and J.E. Fossum, 42–64. London: Routledge.

Fabbrini, Sergio. 2010. *Why the United States and Europe Are Becoming Similar*. Oxford: Oxford University Press.

Friese, Heidrun, and Peter Wagner. 2010. Survey Article: The Nascent Political Philosophy of the European Polity. *Journal of Political Philosophy* 10: 342–364.

Goodhart, Michael. 2007. Europe's Deficits Through the Looking Glass: The European Union as a Challenge for Democracy. *Perspectives on Politics* 3: 567–584.

Habermas, Jürgen. 2012. *Zur Verfassung Europas. Ein Essay*. Berlin: Suhrkamp.

Hirst, Paul. 2000. Democracy and Governance. In *Debating Governance: Authority, Steering, and Democracy*, ed. Jon Pierre. Oxford: Oxford University Press.

Innerarity, Daniel. 2012. *The Future and Its Enemies*. Stanford: Stanford University Press.

Joerges, Christian. 2015. The Legitimacy *Problématique* of Economic Governance in the EU. In *The Governance Report 2015*, Hertie School of Governance, ed. Mark Dawson, Henrik Enderlein and Christian Joerges. 69–94. Oxford: Oxford University Press.

Joerges, Christian, and Jürgen Neyer. 1997. From Intergovernmental Bargaining to Deliberative Political Processes: The Constitutionalisation of Comitology. *European Law Journal* 3 (3): 274–300.

Karmis, Dimitrios. 2005. *Theories of Federalism*. New York: Palgrave Macmillan.

Kelsen, Hans. 1988. *La Démocratie*. Paris: Economica.

Krisch, Nico. 2005. Europe's Constitutional Monstrosity. *Oxford Journal of Legal Studies* 25 (2): 321–334.

Ludlow, Piers. 2010. History Aplenty: But Still Too Isolated. In *Agendas in EU Studies: Stalking the Elephant*, ed. M. Egan, N. Nugent, and W.E. Paterson, 14–36. Basingstoke: Palgrave.

Michelman, Frank. 1997. How Can the People Ever Make the Laws? A Critique of Deliberative Democracy. In *Deliberative Democracy*, ed. J. Bohman and W. Regh, 145–171. Cambridge, MA: MIT Press.

Moravscik, Andrew. 2006. What Can We Learn from the Collapse of the European Constitutional Project? *Politische Vierteljahresschrift* 47 (2): 219–241.

Müller, Jan-Werner. 2003. *A Dangerous Mind: Carl Schmitt in Post-war European Thought*. New Haven: Yale University Press.

Nicolaïdis, Kalypso. 2004. The New Constitution as European "Demoi-cracy". *Critical Review of International Social and Political Philosophy* 7 (1): 76–93.

———. 2012. The Idea of European Demoicracy. In *Philosophical Foundations of European Law*, ed. Julie Dickson and Pavlos Eleftheriadis, 247–274. Oxford: Oxford University Press.

Oakeshott, Michael. 1996. *The Politics of Faith and the Politics of Scepticism*. New Haven: Yale University Press.

Olsen, Johan P. 2004. Unity, Diversity and Democratic Institutions: Lessons from the European Union. *Journal of Political Philosophy* 12: 461–495.

———. 2005. *Unity and Diversity-European Style*. Working Paper of the Arena. Center for European Studies, Oslo.

Rosanvallon, Pierre. 2008. *La légitimité démocratique: Impartialité, refl exivité, proximité*. Paris: Éditions du Seuil.

Schmitt, Carl. 1926. *Die geistesgeschichtliche Lage des heutigen Parlamentarismus*. München and Leipzig: Duncker & Humblot.

Schütze, Robert. 2009. *From Dual to Cooperative Federalism. The Changing Structure of European Law*. Oxford: Oxford University Press.

de Tocqueville, Alexis. 1994. *Democracy in America*. London: David Campbell.

Wessels, Wolfgang. 2001. *Jean Monnet − Mensch und Methode. Überschätz und überholt?* IHS Vienna Political Sciences Series, No 74.

Legitimacy Problems in Europe

Deficit of What? A Typology
of the Legitimacy Problems in the EU

We are still unable to correctly identify the true crisis in Europe: whether it is a question of a lack of *demos* or *cratos*; whether it is democracy, legitimacy, or justice that is inadequate; whether we are facing a problem of intelligibility or of too little politicization. I begin my analysis with three hypotheses: (1) None of the attempts to explain the crisis that focus on a single deficit or weakness seems satisfactory, so the discussion should focus on the way these types of deficiencies are expressed and the extent to which each one of them is involved. For this very reason, it makes no sense to entrust the entire solution to the strengthening of one single criterion (participation, effectiveness, or communication, for example). (2) Polarizing the legitimacy framework around two possibilities (input and output) seems to be a simplification that does not do justice to the intricate way in which the results and the procedures, effectiveness and consent are related in a democracy. (3) The resulting description cannot be less complex than that which it is attempting to describe, so the task of repairing EU legitimacy should be carried out through a sophisticated division of labor (between institutions, criteria, and values). The process of European integration may be one of the most interesting manifestations of a general problem in today's societies: how to reconstruct political authority to confront the new challenges of communal life.

The project of European integration has always been accompanied by the shadow of a suspicion of inadequate legitimacy. This distrust is